#### **AGREEMENT**

#### **BETWEEN**

#### THE CITY OF NEW YORK

#### DEPARTMENT OF HEALTH AND MENTAL HYGIENE

and

#### TALKSPACE MEDICAL SERVICES NY PC

PIN# 24AS017001R0X00 / EPIN# 81623D0001001 (Demonstration project: Youth Virtual Mental Health Services)

AGREEMENT dated **October 1, 2023 ("Effective Date"),** between the CITY OF NEW YORK ("City") acting by and through its Department of Health ("Department"), having an office located at Gotham Center, 42-09 28<sup>th</sup> Street, Long Island City, New York 11101 ("Department" or "DOHMH"), and **TALKSPACE MEDICAL SERVICES NY, PC,** ("Contractor"), a corporation having its principal office located at 2578 Broadway, Suite 607, New York, New York, 10025-5642.

WHEREAS the Department is charged with the responsibility of protecting the health and well-being of the citizens of New York City; and

**WHEREAS**, the Department requires the services of a contractor to provide therapy via live video sessions and asynchronous messaging services to New Yorkers aged thirteen to seventeen; and

WHEREAS, the Contractor is an organization qualified to provide such services; and

**WHEREAS**, it was determined by the Agency Chief Contracting Officer ("ACCO") that acquisition of the Contractor's services for the Department's pilot project was appropriate as a Demonstration Project procurement under Section 3-11 of the City's Procurement Policy Board of Rules for the term of this Agreement; and

**WHEREAS**, the Contractor, having been awarded the contract, is ready, willing, and able to perform the services required under this contract.

**NOW, THEREFORE,** in consideration of the mutual promises herein set forth, the parties agree as follows:

# ARTICLE I — DEFINITIONS

#### **Section 1.01 Definitions**

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

- **A.** "Board of Directors" or "Board" means the board of directors, board of trustees, or a similar body vested with the duty and responsibility for management and oversight of Contractor's affairs as they relate to its performance under this Agreement.
- **B.** "Budget" means the line-item costs, performance based measures, or fee-for-service rate schedule attached hereto as Annex B.
- C. "Commissioner" or "Agency Head" means the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.
- **D.** "Comptroller" means the Comptroller of the City of New York.
- **E.** "Fiscal Agent" means an entity (if any) retained by the Department, or retained by Contractor at the direction of the Department, to issue payments to third parties on behalf of Contractor or otherwise to assist Contractor in the administration of its financial affairs.
- "Fiscal Manual" means a set of instructions provided by the Department to Contractor F. documenting the applicable policies and procedures of the Department for Contractor to use in such matters as record-keeping, bookkeeping, reporting, invoicing and claiming, budgeting, cost allocating, procurement, and payroll, as may be amended by the Department. The Fiscal Manual incorporated reference by and may be found online https://www1.nyc.gov/assets/doh/downloads/pdf/acco/fiscal-manual-for-human-services.pdf. The Fiscal Manual is not intended to amend the material terms of this Agreement with respect to the Scope of Work, the terms and conditions of this document, and Appendix A.
- **G.** "Improper Related Party Transaction" means a Related Party Transaction that violates Notfor-Profit Corporation Law section 715 and is not fair, reasonable, and in Contractor's best interest at the time Contractor's Board approved the transaction.
- H. "Law" or "Laws" means the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule, or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
- **I.** "Related Party" means any person associated with Contractor who is covered by the definition of "related party" in Not-for-Profit Corporation Law section 102. Related parties do not include City officials and employees acting within the scope of their official governmental duties.
- **J.** "Related Party Transaction" means any transaction, agreement or any other arrangement in which Contractor or any affiliate of Contractor is a participant that is covered by the definition of "related party transaction" in Not-for-Profit Corporation Law section 102.
- **K.** "State" means the State of New York.

#### ARTICLE II — TERM OF AGREEMENT

Section 2.01 The term of this Agreement shall begin October 1, 2023, and shall terminate on September 30, 2026.

Section 2.02 Renewal. Not Applicable.

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

#### ARTICLE III — SCOPE OF WORK AND BUDGET

Section 3.01 Scope of work.

- **A.** Services and Activities. Contractor shall provide the services and activities in program areas or programs listed and described in the Scope of Work attached hereto as **Annex A**.
- B. Healthy food environment. Not applicable.
- C. New York City Food Standards. Not applicable.

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

#### Section 3.03 Payment.

- **A.** The Department shall pay Contractor an amount not to exceed \$26,000,000.00 for all services provided under the Agreement. Payment shall be made in accordance with the Fiscal Manual and the Budget contained in **Annex B**. Payments shall be made in accordance with the Unit Cost Budget reimbursement plan outlined in Annex B. This Agreement shall not obligate the Department beyond the dollar amount designated as the maximum contract amount in the absence of a duly executed written contract amendment registered pursuant to Charter § 328.
- **B.** Invoices Request for Payment

To do business with the City, vendors must register and create an account in the City's <u>Pavee</u> <u>Information Portal (PIP)</u>. In PIP, vendors can view financial transactions with the City of New

York, register for Electronic Funds Transfer payments, report their subcontractors and subcontractor payments.

# PIP - https://a127-pip.nyc.gov/webapp/PRDPCW/SelfService

The <u>Vendor Invoice Processing System (VIPS)</u> is a payment request submission and tracking application. It is designed for NYC Health Department vendors to upload their invoices and all supportive documents, enter payment requests and track payment requests' statuses. All invoices and supporting documentation to request payment will have to be submitted via VIPS. The Vendor Administrator should complete the activation process or create a new payee/vendor code account on the Payee Information Portal.

# VIPS - <a href="https://www1.nyc.gov/site/doh/business/opportunities/vendor-invoice-processingsystem.page">https://www1.nyc.gov/site/doh/business/opportunities/vendor-invoice-processingsystem.page</a>

Contractor shall submit invoices to DOHMH on a quarterly basis in accordance with the schedule outlined in Annex B: Deliverable Budget. DOHMH agrees to pay Contractor within thirty (30) days after receipt of the invoice via direct payment methodology (ACH is preferred).

# **C.** Failure to Pay.

If DOHMH fails to make any payments required under this Agreement within the required timeframes, Contractor shall have the right to terminate this Agreement.

# Section 3.04 Cost allocating and duplication.

- **A. Duplication**. Contractor represents and warrants that the work to be performed under this Agreement shall in no way duplicate any work performed under other agreements between the City and Contractor, nor under any agreement with any other governmental funding source, except upon the express written permission of the Department. Costs attributable to the program and not paid for by the City are not duplication (e.g., program enhancements, unreimbursed portions of staff salaries) but are subject to the cost allocation provisions set forth below. Noncompliance with this Section 3.04 shall constitute a material breach of this Agreement.
- **B.** Cost allocation plan. Contractor shall accurately and equitably allocate costs that are attributable to the operation of two (2) or more programs among such programs, or that are attributable to two (2) or more governmental funding sources, by a method which represents the benefit of such costs to each program or funding source. Contractor shall upon commencement of services or as soon thereafter as practicable develop and deliver to the Department a cost allocation plan for the Department's approval.
- C. No cost allocation plan shall be approved by the Department unless such a plan:

- 1. Relates to allowable costs as defined in Laws and policies of the federal, State and City governments;
- 2. Relates to costs necessary for Contractor's performance pursuant to this Agreement;
- 3. Fairly and accurately reflects the actual allocable share of such cost with respect to this Agreement;
- 4. Is developed in accordance with generally accepted accounting principles; and
- 5. Is accompanied by such supporting documentation as the Department deems necessary to evaluate the plan.
- **D.** A cost allocation plan approved by the Department may be modified with the written approval of the Department.
- E. Notwithstanding any provision in this Section 3.04 to the contrary, the Department further reserves the right to withhold payments to Contractor for allocated costs in accordance with the Fiscal Manual or if the Department determines that such allocated costs have been incorrectly determined, are not allowable, or are not properly allocable pursuant to this Agreement and/or approved cost allocation plan.

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

# ARTICLE IV — FISCAL PROCEDURES

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

#### Section 4.02 Accounts.

**A.** Contractor shall maintain an account for the funds obtained from or through the City of New York related to this and all other agreements with the City, and shall maintain records for such account to track and clearly identify the funds obligated through this Agreement.

- **B.** Contractor shall notify the Department of the name, locations, and account numbers of all bank accounts in which any funds pursuant to this Agreement are maintained, and of any change in the name, location, or account numbers of such accounts within five (5) days of such establishment or change. Such bank shall have a branch located in New York City unless otherwise approved by the Department.
- C. Contractor shall notify the Department of the names, titles, and business addresses of such persons authorized by Contractor to receive, handle, or disburse monies under this Agreement, including the company name and company address where such persons are not employees of Contractor. Such notification must be in writing and furnished to the Department within five (5) days from the execution of this Agreement and within five (5) days from any subsequent change or substitution of authorized signatories.
- **Section 4.03** Advance. The amount of any advance to be paid to Contractor under this Agreement shall be determined solely by the Department in accordance with its Fiscal Manual and any applicable Comptroller directives. Advanced funds shall be used exclusively for the payment of expenditures and obligations authorized by and properly incurred in accordance with the Budget
- **Section 4.04** Financial reporting and invoicing. Contractor shall submit financial reports and invoices, along with required documentation, to the Department in accordance with the terms of the Fiscal Manual. Contractor acknowledges that repeated failure to submit required financial reports within the time limits prescribed may result in termination of this Agreement.

#### Section 4.05 Procurement requirements.

- A. Procurement records. To the extent applicable, Contractor shall retain records that detail the method of procurement, the basis for selection or rejection of a contractor, consultant or supplier, and the basis for the contract price. Contractor shall retain proper and sufficient bills, vouchers, duplicate receipts, and documentation for any payments, expenditures, or refunds made to or received by Contractor in connection with this Agreement. Contractor may maintain a petty cash fund in accordance with the Fiscal Manual; however, no expenditures may be made from such fund for procurements valued in excess of \$1,000. Contractor shall make all procurement expenditures in excess of \$1,000 by check or credit card.
- **B.** Extent of competition required. To the extent applicable, Contractor shall comply with the following requirements concerning competition.
- 1. Contractor must solicit and document at least three (3) written estimates for any payment made or obligation undertaken in connection with this Agreement for any purchase of goods, supplies, or services (including but not limited to consulting services) for amounts in excess of \$25,000 or, if this Agreement is a federally funded subrecipient agreement, for amounts in excess of \$3,500. The monetary threshold applies to payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity. Payments made or

obligations undertaken will not be artificially divided in order to avoid the requirements of this paragraph.

- 2. For any payment made or obligation undertaken in connection with this Agreement for any purchase of goods, supplies, or services (including but not limited to consulting services) for amounts between \$5,000 and \$25,000, Contractor shall conduct sufficient market research and/or competition to support its determination that the price of such purchased goods, supplies, services or equipment is reasonable. Notwithstanding the dollar amounts in the previous sentence, if this Agreement is a federally funded, subrecipient agreement, Contractor shall comply with the procurement methods required in 2 CFR section 200.320. The monetary thresholds apply to payments made or obligations undertaken in the course of a one (1) year period with respect to any one (1) person or entity. Payments made or obligations undertaken will not be artificially divided in order to avoid the requirements of this paragraph.
- 3. The City may retain the services of a Group Purchasing Organization (GPO) to facilitate the purchase of supplies or other items. If the City retains such a GPO, the Department may direct Contractor to utilize the services of such GPO. If Contractor is directed by the Department to use the GPO or if Contractor becomes a member of and makes purchases through the GPO retained by the City with or without the City's direction, Paragraph B shall not apply to those purchases and the procurement requirements will be satisfied through the use of the GPO.
- C. Compliance with State and Federal Law. If this Agreement is funded by a State or federal grant, additional procurement requirements may apply. To the extent that State and/or federal procurement requirements conflict with the procurement requirements herein, Contractor shall comply with the stricter requirement.
- **D.** Equipment. Not applicable.
- E. M/WBE suppliers. Contractor is encouraged to utilize businesses and individual proprietors listed on the NYC Online Directory of Certified M/WBE Businesses, available at <a href="https://www.nyc.gov/sbs">www.nyc.gov/sbs</a>, as sources for its purchases of goods, supplies, services, and equipment using funds obtained through this Agreement. Contractor is also encouraged to utilize businesses and individual proprietors owned/operated by people with disabilities as sources for its purchases of goods, supplies, services, and equipment using funds obtained through this Agreement.
- **F. Disputes with suppliers.** Contractor, without recourse to the City or the Department, shall be responsible for the settlement and satisfaction of all contractual obligations and administrative issues arising out of any procurement or leasing contracts paid with funds obtained through this Agreement.

#### Section 4.06 Limitation on use of funds.

**A. Proper purposes.** No funds obtained through this Agreement shall be spent for any expense not incurred in accordance with the terms of the Agreement. All such funds shall be administered in accordance with the Fiscal Manual.

- **B.** Real property. No funds obtained through this Agreement shall be spent for the purchase of any interest in or improvement of real property, unless included in the Budget or otherwise authorized in writing by the Department.
- C. **Disallowed costs.** Any cost found by the Department, the City or any auditing authority that examines the financial records of Contractor to be improperly incurred, including but not limited to Improper Related Party Transactions, shall be subject to reimbursement to the City. Failure to make said reimbursement shall be grounds for termination of this Agreement.

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

# Section 4.08 Failure to spend funds. Not applicable.

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

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

# ARTICLE V — RECORDS, DELIVERABLES, AUDITS AND REPORTS

Section 5.01 Records to be maintained; inspection; observation.

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

representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

Section 5.02 Deliverables and reports. Contractor shall submit the deliverables and periodic reports required by this Agreement, in accordance with the Scope of Work attached hereto. Contractor shall administer such assessment tools, collect and report such data, maintain records, make reports, and take such other actions consistent with the Scope of Work as may be directed by the Department. The Department will evaluate the Contractor's performance each year in the categories of timeliness, fiscal administration, and performance. Additional evaluation criteria or weighting of these subcategories may be specified in the Scope of Work.

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

**Section 5.04** Federal audit requirements. If applicable, Contractor shall fulfill the audit requirements of 2 CFR Part 200, Subpart F, and shall provide such audit to the Department within thirty (30) days after its receipt of the final audit by Contractor from the preparing accountant.

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

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

- A. If any Contractor is exempt from making annual filings to the Charities Bureau of the New York State Office of the Attorney General, Contractor will, at direction of City, provide the City with annual disclosure reports equivalent to those filings that Contractor would have filed with the State had it been required to file, except the filing that would have been required by Executive Law § 172-e. As of the effective date of this Agreement, the requirements are as follows:
- 1. Contractors with gross revenues less than \$250,000 in any fiscal year shall file a copy of the annual unaudited financial report that it is required to file pursuant to Not-for-Profit Corporation Law section 172-b(2-a) with the Department.
- 2. Contractors with gross revenues between \$250,000 and \$750,000<sup>1</sup> in any fiscal year shall file an annual financial statement with the Department, which includes an independent certified public accountant's review report in accordance with the "Statement on Standards for

 $<sup>^1</sup>$  As of July 1, 2021, this provision applies to contractors with gross revenues between \$250,000 and \$1,000,000. Human Services Standard EPIN 81623D0001001 10 of 34

Accounting and Review Services" issued by the American Institute of Certified Public Accountants. The financial statement shall be prepared in conformance with generally accepted accounting principles (GAAP), including compliance with all pronouncements of the Financial Accounting Standards Board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for-profit organizations.

- 3. Contractors with gross revenues in excess of \$750,000<sup>2</sup> shall file with the Department an annual audit report by an independent certified public accountant. Said audit report shall contain an opinion, signed by such certified public accountant that the financial statements are presented fairly in all material respects and in conformity with GAAP, including compliance with all pronouncements of the Financial Accounting Standards Board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for-profit organizations, and that the financial sheet and balance sheet present fairly the financial operations and position of the organization. The financial report must be signed by the president or other authorized officer and the chief fiscal officer under penalties of perjury that the statements are true and correct to the best of their knowledge.
- **B.** Contractors receiving funds pursuant to this Agreement in excess of \$1,000,000 will, at direction of City, provide to the Department an audit report from an independent certified public accountant containing an opinion that Contractor has appropriately allocated costs in accordance with the terms of the Agreement, including that the costs have not been improperly double-charged between multiple City and/or State contracts or between multiple governmental funding sources. Contractor may satisfy this requirement by including the appropriate analysis in any audits required pursuant to Section 5.04 or 5.05.
- Contractor must submit all required audit and financial reports under this Section to the Department within thirty (30) days after receipt of the final audit from its accountant and, if no audit is required, within thirty (30) days of filing with the Attorney General, but in any event no later than twelve (12) months after close of the audit period, or such period as determined by the Department. The audit and financial reports shall comply with the applicable provisions in the Fiscal Manual throughout the term of this Agreement, including terms mandating the audit period and frequency of such audits and reports.
- **D.** The Department may in its sole discretion conduct its own programmatic or financial audits of Contractor.

<sup>&</sup>lt;sup>2</sup> As of July 1, 2021, this provision applies to contractors with gross revenues in excess of \$1,000,000.

#### ARTICLE VI — PERSONNEL PRACTICES AND RECORDS

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

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

- A. Employee list. Contractor shall submit to the Department within thirty (30) days of the execution of this Agreement and upon request a list of certain employees, which shall include the Executive Director, Chief Financial Officer, Chief Operating Officer, and/or the functional equivalent of such positions, and key employees (as the phrase "key employee" is defined in the Instructions to IRS Form 990). For each listed employee, Contractor shall provide the current total compensation (including all benefits), all sources of the employee's total compensation, whether from this Agreement or another City, State, Federal or private source, and the dollar amount of compensation from each such source.
- **B.** Vacancies. Contractor shall notify the Department in writing within ten (10) days of their occurrence any appointments to or resignations from the positions of Executive Director, Chief Financial Officer, Chief Operating Officer, and/or the functional equivalent of such positions and appointments or resignations of key employees (as the phrase "key employee" is defined in the Instructions to IRS Form 990).
- C. Board compensation. Contractor shall submit to the Department within thirty (30) days of the execution of this Agreement and at the beginning of each new fiscal year a listing of all members of its Board of Directors and identify any of its members who receive compensation in any form, including but not limited to salary, stipend, per diem payments, and/or payments for services rendered, from Contractor or its affiliates, together with the amount of any such compensation, regardless of the source of its payment, and a description of its purpose.

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

# Section 6.04 Recruitment and hiring of staff.

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

and close-out of the program; and implementation of any corrective actions required by the Department.

# B. Background checks.

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

# C. Drug-free workplace.

- 1. Contractor shall conspicuously post at any facility at which activities funded in whole or in part through this Agreement occur or provide to employees performing services under this Agreement, a statement notifying employees performing services under this Agreement that the unauthorized use, possession, distribution, dispensing, and manufacture of controlled substances are prohibited
- 2. Contractor shall require staff members who provide work under this Agreement to notify Contractor in writing of his/her arrest or conviction for violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such arrest or conviction. Contractor shall thereafter notify the Department within ten (10) calendar days of Contractor's receipt of the above-described notice of conviction from a staff member or of the date Contractor otherwise received actual notice of such conviction.
- 3. Contractor shall take one of the following actions within thirty (30) calendar days of receiving notice of such a conviction with respect to any staff member who performs work under this Agreement so convicted: (i) appropriate personnel action, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (ii) require such convicted staff member to participate satisfactorily in a drug abuse assistance or rehabilitation

program approved for such purposes by a federal, State, or local health, law enforcement, or other appropriate agency, and to comply with the Contractor's statement made in accordance with Article 6.04(C)(1).

4. Nothing in this Article 6.04(C) shall limit Contractor from providing a more stringent drug-free workplace policy.

#### Section 6.05 Board of Directors.

- A. Except as provided in Paragraph B of this Section 6.05, Contractor's employees and members of their immediate families, as defined in Paragraph C of this Section 6.05, may not serve on the Board or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.
- **B.** If the Board has more than five (5) members, then Contractor's employees and members of their immediate families may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees and members of their immediate families are prohibited from deliberating and/or voting and being present during deliberation and/or voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees and members of their immediate families may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.
- C. Without the prior written consent of the Commissioner, no person may hold a job or position with Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. For the purposes of this Section 6.05, a member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this paragraph, a member of the Board is deemed to exercise authority over all employees of Contractor.
- **D.** If Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of Contractor's total revenues, then Contractor must have a minimum of five (5) persons on its Board.
- E. This Section 6.05 shall apply only if Contractor is a not-for-profit corporation. Section 6.06 Conflict of interest policy.

A. If required by section 715-a(a) of the Not-for-Profit Corporation Law, Contractor shall maintain a Conflict of Interest Policy that includes, at a minimum, the following provisions:

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

# <u>ARTICLE VII — PROGRAM FACILITY</u>

**Section 7.01 Suitability.** Not applicable.

Section 7.02 Signage. Not applicable.
Section 7.03 Security and emergency plan.

A. Prior to the commencement of services under this Agreement, Contractor shall adopt, implement, and instruct staff regarding a written plan to provide for the safety and security of clients, participants, staff, and Contractor's facility, including procedures to follow during emergencies. Contractor shall maintain a current file of emergency contacts for each client and participant, which shall include, to the extent available, the names, addresses, telephone numbers, and locations where such contacts can be reached. A security plan applying to all of Contractor's operations rather than specifically to the City-funded operations shall be sufficient to comply with the terms of this requirement. Contractor shall cooperate with the City during any emergency affecting Contractor's services and/or facilities.

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

# ARTICLE VIII — CENTRAL INSURANCE PROGRAM

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

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

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

# ARTICLE IX — REPRESENTATIONS AND COVENANTS OF CONTRACTOR

**Section 9.01 Eligibility.** Contractor represents and warrants that it has complied and continues to comply with the eligibility requirements set out in the solicitation document (e.g., the request for proposals) under which it proposed for and was awarded this Agreement. Any material change in the eligibility compliance information supplied in Contractor's contract proposal must be

reported to the Department within a reasonable time thereof. Failure to do so will be deemed a material breach of this Agreement and could result in termination of this Agreement.

# Section 9.02 Program services.

- **A.** Unlawful discrimination. Except where expressly set forth in the Scope of Work and approved by the Department, Contractor represents and warrants that eligibility for admission to the services funded through this Agreement shall not be restricted on the basis of actual or perceived age, race, color, religion, creed, national origin, alienage or citizenship status, sex, gender, sexual preference or sexual orientation, disability (including presence of a service dog), marital status, partnership status, military status, or any other class protected from discrimination by Law.
- **B.** Fee. Contractor further represents and warrants that no clients or participants shall be charged a fee or required to make any other payment or purchase or participate in any activity designed to raise funds as a condition of eligibility for or participation in the services funded through this Agreement, except as required by Law or unless a waiver of this provision is approved in writing by the Department. Waivers may be considered under the following conditions: (i) Contractor's total costs for the services set forth in the Scope of Work exceed the total value of the Agreement; (ii) Contractor's fees for services and/or the arrangements made to include those participants unable to pay such fees are deemed reasonable and appropriate by the Department; and (iii) the fees are set at a level that does not discourage or impede participation by members of the community to be served by the services.
- C. Immigration status. In connection with the services provided under this Agreement, Contractor shall not inquire about a client or potential client's immigration status unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) Contractor is required by law to inquire about such person's immigration status.
- Section 9.03 Allegations of abuse or maltreatment. Contractor will notify the Department within twenty-four (24) hours of promptly determining that reasonable cause exists to suspect that any of Contractor's administrators or staff, including both paid and volunteer, has abused, maltreated, neglected, assaulted or endangered the physical welfare of any program participant. In addition, if such reasonable cause is found, Contractor shall take appropriate action to remove the person from the proximity of program participants while the matter is being investigated by Contractor. The term abuse shall mean the infliction of physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ. The term maltreatment shall mean (i) treatment that results in serious physical injury other than by accidental means, or (ii) neglect or failure to exercise a minimum degree of care that impairs, or places in imminent danger of being impaired, the physical, mental or emotional condition of a program participant. Contractor shall provide telephone notice to the Department within twenty-four (24) hours of determining that reasonable cause exists, followed by a written report, to be delivered to the Department within three (3) business days. Compliance

with this reporting requirement does not satisfy any other legally mandated reporting of abuse, such as to the New York State Central Registry ("SCR").

# <u>ARTICLE X — MISCELLANEOUS</u>

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

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

- This Agreement, including the Scope of Work (Annex A), the Budget (Annex B), and the attached riders,
- Appendix A: General Provisions Governing Contracts or Consultants, Professional, Technical, Human, and Client Services, including Schedule A, Addendum to Appendix A Section 5-08, and the NYC Earned Safe and Sick Time Act Contract (ESSTA) Rider,
- Data Security Terms Rider,
- NYC Office of Technology & Innovation (OTI), Identifying Information Rider,
- Health Services Addendum List of Excluded Individuals/Entities (MEDICAID) Rider,
- Labor Peace Agreement Rider, Certification, and Attestation, and
- Executive Order No. 64, Rider, and Certification

**Section 10.03 Notices.** All notices and requests hereunder by either party shall be in writing and directed to the address of the parties as follows:

# NEW YORK CITY DEPARTMENT OF HEALTH & MENTAL HYGIENE

42-09 28th Street, 18h Floor

Long Island City, New York 11101

Attn: Marnie Davidoff, Assistant Commissioner

#### TALKSPACE MEDICAL SERVICES NY, PC

2578 Broadway, Suite 607 New York, New York, 10025-5642

Attn: Legal Department

Section 10.04 Compliance with Relevant Laws. Contractor shall comply with, and shall ensure that its subcontractors comply with, all applicable laws protecting the confidentiality, privacy, and

security of confidential information and laws relating to the provision of healthcare, including but not limited to, the following:

- A. The Health Insurance Portability and Accountability Act of 1996, and the regulations promulgated thereunder, as the law and regulations may be amended; and
- B. New York State laws and any regulations promulgated thereunder, as the law and regulations may be amended, including but not limited to: New York Public Health Law §18 (Access to Patient Information) and Article 27-F (HIV and AIDS Related Information); New York Mental Hygiene Law §\$22.05 and 33.13; New York Civil Rights Law §79-*l*; New York General Business Law §399-ddd (Confidentiality of Social Security Account Numbers), §399-h and §899-aa; and chapter 5 of title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York.

#### ARTICLE XI— SUPPORTIVE SERVICES AND TECHNICAL ASSISTANCE

Section 11.01 Availability of supportive services and technical assistance. At its sole discretion, the City may provide, either directly or through its designee, technical assistance to Contractor in such areas as: (1) program planning, development, coordination, and dissemination of information; (2) preparation of reports and materials required by the City and/or other governmental entities with jurisdiction over Contractor's activities relating to the operation of services funded through this Agreement; (3) compliance with applicable Laws, guidelines, and administrative memoranda; and/or (4) issues or matters affecting Contractor's performance under this Agreement.

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

Section 11.03 Capacity Building and Oversight (CBO) Review for not-for-profit Contractors. Not applicable Contractor is not a NFP Contractor.

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

[THE REMAINDER OF THE PAGE IS INTENTIONALLY BLANK]

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

CITY OF NEW YORK DEPARTMENT OF HEALTH TALKSPACE MEDICAL SERVICES NY, PC

By:

By:

Title:

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

Approved as to Form and

Certified as to Legal Authority

# **ACKNOWLEDGEMENT BY CITY**

STATE OF NEW	YORK )				
:ss: COUNTY OF NEV	W YORK )				
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OF HEALTH, the instrument on behat the same for the pu	alf of the Commi	issioner, and he			
Notary Public or C	ommissioner of	Deeds.			
<u>ACKNOWLEDG</u>	MENT OF CO	NTRACTOR I	F A CORPOI	RATION	
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to me known, w					
instrument; and the said corporation as	at he signed his	ne corporation name to the for	egoing instrun	na wnich execute	ea the foregoing
Notary Public or C	ommissioner of	Deeds.			

# **ACKNOWLEDGMENT OF CONTRACTOR IF A PARTNERSHIP**

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came		_					
to me known,	who, being by me						
			: that he	e/she is			
partner of		. a limite	d/general par	rtnership e	xisting	under the 1	laws
of the State of		the part	nership desci	ribed in an	d which	1 executed	l the
foregoing instrum	nent; and that he/she s nding act of said part	signed his/her	name to the	foregoing i	instrum	ent as the o	duly
Notary Public or	Commissioner of Dec	eds.					
ACKNOWLED	GMENT OF CONT	RACTOR IF	AN INDIVI	<u>IDUAL</u>			
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the instrument, sa	id individual execute	d the instrume	ent.				
Notary Public or	Commissioner of Dec	eds.					
Notary Public or	Commissioner of Dec	eds.					

Annex A (Attached Separately)

Annex B (Attached Separately)

Appendix A (Attached Separately)

# Public Assistance Hiring Commitment Rider for HRA, DHS, ACS, DYCD, DFTA, DOHMH and SBS

- A. The Public Assistance Hiring Commitment is an initiative administered by the Human Resources Administration ("HRA") through its Business Link program, and seeks to match employers with qualified job-seekers. For the duration of this Contract, and subject to any qualified exceptions listed in **Subsection H** below, Contractor shall hire at least one (1) Public Assistance Recipient ("PA Recipient") for each two hundred fifty thousand dollars (\$250,000.00) in annual value of this Contract. If Contractor believes it should be exempted from the requirements of this Rider, Contractor may submit a request for an exemption based on the reasons outlined below in **Subsection H**.
- B. Contractor shall hire PA Recipients for employment of at least twenty (20) hours per week for the duration of at least one (1) year.
- 1. Contractor shall pay hired PA Recipients at least the legally mandated minimum wage.
- 2. Contractor may meet the requirements of this Rider through the hiring of PA Recipients by its subcontractors.
- 3. Positions of employment may be at any site or within any program operated by the Contractor.
- 4. In the event a PA Recipient hired by a Contractor is not retained for one (1) full year, the Contractor must hire and retain another PA Recipient for the remainder of the year in order to be credited for making one (1) required hire. When the Contractor replaces a hired PA Recipient before one (1) year has passed, this replacement will not count as an additional employee toward fulfilling Contractor's hiring requirement.
- 5. Contractor shall seek to retain hired PA Recipients beyond the one (1) year requirement of this Rider. In accordance with **Subsection H(3)** below, if Contractor retains a PA Recipient hired pursuant to this Rider beyond one (1) year, Contractor may qualify for a full or partial exemption of its hiring requirements in the subsequent year.
- C. Business Link will consult with Contractor to assess Contractor's employment needs and minimum job qualifications, as determined by Contractor. Business Link will make referrals appropriate to those needs. Within ten (10) calendar days of the commencement date and any subsequent anniversary date of the start date of this Contract, the Contractor shall submit (i) all Contract information where the counterparty is HRA, DHS, or ACS; and (ii) contact information for the Contractor's primary human resources contact and his/her supervisor; an organization chart, job titles, duties and qualifications for the last three years of hires in Contractor's organization; and the estimated volume of annual hires.

- D. Within thirty (30) calendar days of: (i) the commencement date of the Contract; or (ii) the date of program start (e.g., shelter opening), whichever date is later, and any subsequent anniversary date of the commencement date of this Contract, Contractor shall submit an implementation plan detailing how Contractor will meet the hiring requirements of this Rider. If necessary, Contractor may request the assistance of Business Link in developing its implementation plan; however, Contractor must still submit its implementation plan within thirty (30) calendar days of the Contract commencement date and subsequent anniversary dates. If Contractor is determined by HRA, in consultation with **DOHMH**, to be in compliance with this Rider during the previous Contract year, HRA will notify Contractor that it is not required to submit a new implementation plan.
- E. Contractor shall send all documentation to: HRA's Business Link Contractor Hiring Unit, located at 348 West 34th Street, New York, New York 10001. Documents may also be emailed to the Contractor Hiring Unit of Business Link at businesslink@hra.nyc.gov. Contractor shall submit any additional relevant information within ten (10) calendar days of a request from HRA. In consultation with **DOHMH**, HRA will review Contractor's documentation to determine the required number of PA Recipients Contractor shall hire and the allocated timeframe in which to hire these PA Recipients.
- F. Contractor shall begin instituting the implementation plan within ninety (90) calendar days of the Contract commencement date and shall notify HRA of potential job openings and their minimum job qualifications as determined by Contractor. As other job openings arise, Contractor shall send appropriate listings to HRA for the life of this Contract. Contractor may request the assistance of HRA in identifying potential employees. In such case, HRA will refer PA Recipients who meet Contractor's minimum qualifications as determined by Contractor for employment interviews.
- G. If Contractor fails to hire the specified number of PA Recipients by the later of either (i) the timeframe mutually agreed upon between HRA and Contractor or (ii) six (6) months from the commencement date; or fails to pay and retain PA Recipients in accordance with the requirements specified above, HRA in consultation with **DOHMH** will notify Contractor in writing, indicating what deficiencies are to be remedied. Within ten (10) calendar days of its receipt of this notice, Contractor shall respond to **DOHMH** and HRA in writing, and must include a corrective action plan identifying with specificity the steps Contractor intends to take to remedy any deficiencies identified. HRA will investigate Contractor's compliance with its corrective action plan and shall inform **DOHMH** as to the Contractor's performance with its CAP. If the identified deficiencies are not addressed to the satisfaction of HRA and **DOHMH**, **DOHMH** shall assess the agreed upon liquidated damages based on the calculation in Paragraph G(1) for each day and for each PA Recipient not hired or compensated in accordance with the provisions of this Rider.
- 1. Daily liquidated damages per PA Recipient will be calculated as the quotient of:

[(current minimum wage as of the commencement date and any subsequent anniversary date) \* 20 hours per week \* 52 weeks per year]
365 days

- 2. **DOHMH** retains the option to require Contractor to directly pay to **DOHMH**, or to deduct from any payment due or to become due to Contractor, such amount as may be assessed for liquidated damages.
- H. No later than ten (10) calendar days after the Contract commencement date and, for subsequent years, no later than the subsequent anniversary date of the commencement date of this Contract, Contractor may apply to HRA, for a complete or partial exemption from the requirements of this Rider. Any exemption granted will be effective for one (1) year only. Any application for an exemption must be in the form specified by HRA, accompanied by supporting documentation.
- 1. Contractor may qualify for a complete exemption if one (1) of the conditions below is demonstrated:
- a. The annual Contract amount is less than two hundred fifty thousand dollars (\$250,000.00) in annual value of personnel costs, excluding fringe benefits and other-than-personal-services (OTPS);
- b. Contractor's workforce within New York City is less than twenty (20) employees;
- c. Contractor possesses no vacancies and can demonstrate that no positions are reasonably foreseen to be available within one (1) year of the commencement or anniversary date of this Contract:
- d. Contractor is a party to a valid collective bargaining agreement covering all of Contractor's entry-level positions and such agreement limits Contractor to a hiring pool which does not include PA Recipients; or
- e. Complying with the hiring requirements of this Rider in any manner will cause extreme hardship.
- 2. Contractor may qualify for a partial exemption if one of the conditions below is demonstrated:
- a. The specified number of PA Recipients to be hired exceeds 10% of Contractor's workforce located within New York City; or
- b. A valid collective bargaining agreement covers some but not all entry-level positions and limits Contractor to a hiring pool which does not include PA Recipients.
- 3. Beginning with Year 2 of the Contract, Contractor may qualify for either a full or partial exemption from its yearly hiring requirements to the extent that Contractor can demonstrate that it hired the required number of PA Recipients during the previous year and that these hires remain employed by Contractor as of the anniversary date. Contractor shall submit all appropriate documentation when seeking an exemption based on a retained PA Recipient, including, but not limited to: payroll reports, pay stubs, and any other documentation HRA may require.
- 4. HRA will review Contractor's exemption request and will, in consultation and agreement with **DOHMH**, notify Contractor whether its exemption request is approved or denied. If Contractor's request is denied, Contractor shall: (i) within ten (10) calendar days of its receipt of Human Services Standard

notice from HRA, submit all documentation in accordance with **Section C**; and (ii) within thirty (30) calendar days of its receipt of notice from HRA, submit an implementation plan in accordance with **Section D**.

- I. At the end of each fiscal year, the Contractor Hiring Unit of Business Link will in consultation with **DOHMH**, notify Contractor as to whether the hiring requirements were met. Where the Contractor has failed to meet the requirements, Contractor may seek a modification to waive its unmet requirements if Contractor can demonstrate that it has made best efforts to meet the hiring requirements of this Rider. Evidence that Contractor utilized best efforts to meet the hiring requirements of this Rider include, but are not limited to:
- 1. Contractor contacted Business Link for assistance in identifying potential employees and cooperated with Business Link to identify possible openings within Contractor's organization;
- 2. Contractor made efforts to interview PA Recipients for open positions; documentation of these efforts must include at a minimum:
- a. The names, addresses, and telephone numbers for each PA Recipient interviewed, and whether they were referred to Contractor by HRA;
- b. Job description and specifications of the position a PA Recipient was interviewed for; and
- c. An explanation detailing why any PA Recipients interviewed were rejected for that position.

#### LANGUAGE ASSISTANCE RIDER FOR HRA

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

- A. Service Delivery. When a limited English proficient individual seeks or receives benefits or services from a Department Contractor, the Contractor shall provide promptly language assistance services in all interactions with that individual, whether the interaction is by telephone or in person. The Contractor shall meet its obligation to provide prompt language assistance services by ensuring that limited English proficient individuals do not have to wait unreasonably longer to receive assistance than individuals who do not require language assistance services.
- B. Translation. Where an application or form requires completion in English by a limited English proficient individual for submission to a state or federal authority, the Contractor shall provide oral translation of such application or form as well as certification by the limited English proficient individual that the form was translated and completed by an interpreter. The Contractor shall make all reasonable efforts to provide language assistance services in person by bilingual personnel. The Contractor shall screen bilingual personnel and interpreter personnel for their ability to provide language assistance services. The Contractor shall translate all documents into every covered language, as indicated in subsection 2, below. The Contractor shall provide annual training for bilingual personnel and interpreter personnel and ensure that they are providing appropriate language assistance services.
- 1. Notices. Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by the Contractor, the Contractor shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the Contractor shall inform the individual in his/her primary language of the right to free language assistance services. The Contractor shall post conspicuous signs in every covered language at all of its offices informing limited English proficient individuals of the availability of free language assistance services. The Contractor shall provide in all application and recertification packages a notice advising participants that free language assistance services are available at its offices and where to go if they would like an interpreter. This notice shall appear in all covered languages.
- 2. Covered Languages. "Covered Languages" shall mean Arabic, Chinese, Haitian Creole, Korean, Russian or Spanish. Nothing in this section shall preclude a Contractor from providing language assistance services beyond those required in this section.

# **MEDICAID RIDER**

# HEALTH SERVICES ADDENDUM LIST OF EXCLUDED INDIVIDUALS/ENTITIES (If Applicable)

The CONTRACTOR hereby acknowledges that the United States Office of the Inspector General ("OIG") has developed the "Exclusionary Rule" which prohibits payment by Federal health care programs for items or services furnished by persons and entities who or which have been excluded from participation in Federal health care programs, including, without limitation, MEDICAID, and that the OIG of the Department of Health and Human Services has developed a List of excluded Individuals/Entities that provide information to the health care industry, patients and the public, regarding individuals and entities currently excluded from participation in Medicare, Medicaid and all other Federal health care programs. A similar exclusionary list database has been developed by the New York State Office of the Medicaid Inspector.

The CONTRACTOR represents and warrants that neither it nor any of its employees, CONTRACTORs, contractors, subcontractors or agents (collectively, the "Providers"), who or which provide items or services under this Agreement is excluded, suspended or debarred from participation in any federal or state health care program or federally funded contracts and that the Providers and their employees, agents, CONTRACTORs and contractors possess all licenses required by law to perform such services.

The CONTRACTOR shall, prior to performing services pursuant to this Agreement, and periodically thereafter during the term of this Agreement, conduct searches before engaging the services of all proposed Providers to identify and exclude from participation all individuals and entities who or which have been excluded from participation in Federal health care programs. Such searches shall include searches through various federal and state sanction and exclusion databases, including, without limitation, the Federal Exclusions Database and searches offered through the Fraud section of the New York State Office of the Medicaid Inspector General in its List of Excluded Individuals/Entities ("LEIE"), and all successor websites, and after the CONTRACTOR's initial search for all persons or entities prior to the commencement of their provision of medical services the CONTRACTOR shall update its inquiries not less often than monthly. See the following databases:

https://www.omig.ny.gov/medicaid-fraud/medicaid-exclusions

#### http://exclusions.oig.hhs.gov/

In addition, before any new medical services provider performs medical services or provides items, such exclusionary searches of the new medical services provider shall also be conducted.

CONTRACTOR agrees to immediately inform DOHMH in writing as soon as it is aware that it or any of its employees, agents, or contractors providing items or services under this Agreement, or under any subcontractor agreement with one or more medical Providers, are subject to the imposition of any such sanctions or exclusion, or if any investigation or proceeding is instituted against a Provider that may result in such sanctions or exclusion.

The requirements set forth in this Addendum are material provisions of this Agreement and failure to comply with the provisions contained herein are cause for immediate termination by DOHMH in the event CONTRACTOR, or any of its employees, agents, CONTRACTORs, contractors or subcontractors, or their employees are listed on any federal or state sanction/exclusion list as being subject to sanctions or exclusion.

# Rider to Human Services Contracts Access to Non-Public Areas

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

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

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

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

# Rider to Human Services Contracts City of New York Health and Human Services Cost Policies and Procedures Manual

Effective immediately, the City of New York Health and Human Services Cost Policies and Procedures Manual ("Cost Manual"), available at nyc.gov/nrc, is hereby incorporated into and made a part of the Standard Human Services Contract. If there is a conflict between the terms of the Fiscal Manual (as defined in the Standard Human Services Contract) and the Cost Manual, the Cost Manual shall take precedence.

#### **CONTRACT SIGNATURE PAGE**

This Contract is entered by and between the City of New York ("City"), acting by and through the **DEPARTMENT OF HEALTH AND MENTAL HYGIENE**, and **Talkspace Medical Services NY PC** ("Contractor").

This Contract consists of this contract signature page as well as the following documents ("Contract Documents") which are located in the Documents tab of the PASSPort record titled **FY24-Demo Project-Talkspace Medic-24AS017001R0X00-81623D0001**.

- 1. Addendum to Appendix A Aug 2 2023 5:13PM
- 2. Annex A, Scope of Work Aug 17 2023 11:53AM
- 3. Annex B Budget Aug 14 2023 5:20PM
- 4. Appendix A Aug 2 2023 5:13PM
- 5. Data Security Terms Aug 14 2023 5:16PM
- 6. DOHMH Talkspace Agreement Final Aug 17 2023 12:09PM
- 7. EO 64 Rider Aug 17 2023 11:55AM
- 8. EO-64 Certification Aug 2 2023 5:16PM
- 9. ESSTA May 26 2023 4:08PM
- 10. Insurance Certificate Aug 24 2023 9:25PM
- 11. Labor Peace Agreement Certification Updated Jun 21 2023 1:50PM
- 12. Law Rider Jun 2 2023 1:46PM
- 13. LPA Attestation Aug 14 2023 5:12PM
- 14. LPA Certification Aug 14 2023 5:13PM
- 15. LPA Rider May 26 2023 4:07PM
- 16. Scope Jul 28 2023 12:56PM
- 17. Tax affirmation with seal Jun 29 2023 7:54PM
- 18. Updated LPA Rider May 26 2023 4:09PM

The above order does not represent an order of precedence. The Contract shall be governed by the order of precedence, if any, in the Contract Documents or by ordinary contract principles if no such order of precedence exists.

Each party is signing this Contract electronically on the date stated in that party's electronic signature.

By: Talkspace Medical Services NY PC

—6434F0657F66421...

(Signature)

John Reilly Name: \_\_\_\_

Title: \_\_\_\_\_Chief Legal Officer

Date: \_\_\_\_\_9/22/2023 | 09:24:23 EDT

# APPENDIX A

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#### **ARTICLE 1 - DEFINITIONS**

#### **Section 1.01 Definitions**

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

- A. "Agency Chief Contracting Officer" or "ACCO" means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.
- B. "Agreement" means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.
  - C. "City" means the City of New York.
- D. "City Chief Procurement Officer" or "CCPO" means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.
- E. "Commissioner" or "Agency Head" means the head of the Department or his or her duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his or her authority.
  - F. "Comptroller" means the Comptroller of the City of New York.
  - G. "Contractor" means the entity entering into this Agreement with the City.
- H. "Days" means calendar days unless otherwise specifically noted to mean business days.
- I. "Department" or "Agency" means the City agency or office through which the City has entered into this Agreement.
- J. "Law" or "Laws" means the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
- K. "Procurement Policy Board" or "PPB" means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.

- L. "PPB Rules" means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.
  - M. "SBS" means the New York City Department of Small Business Services.
  - N. "State" means the State of New York.

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

# **Section 2.01 Procurement of Agreement**

- A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a et seq.). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.
- B. For any breach or violation of the representation and warranty set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

#### **Section 2.02 Conflicts of Interest**

- A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.
- B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

## **Section 2.03 Certification Relating to Fair Practices**

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

#### Section 2.04 Disclosures Relating to Vendor Responsibility

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

# Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

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

#### **Section 2.06 Authority to Execute Agreement**

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

#### ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

## Section 3.01 Assignment

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

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

# **Section 3.02 Subcontracting**

- A. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.
  - 1. Approval when subcontract is \$20,000 or less. The Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$20,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal (www.nyc.gov/pip).
    - 2. Approval when subcontract is greater than \$20,000.
    - a. The Contractor shall not enter into any subcontract for an amount greater than \$20,000.00 without the prior approval by the Department of the subcontractor.
    - b. Prior to entering into any subcontract for an amount greater than \$20,000.00, the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal (<a href="www.nyc.gov/pip">www.nyc.gov/pip</a>) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.\(^1\)
    - c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

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

- d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).
- e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.
- f. For proposed subcontracts that do not exceed \$25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.
- B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:
  - 1. The work performed by the subcontractor must be in accordance with the terms of the Agreement between the City and the Contractor;
  - 2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;
  - 3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the Agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and
  - 4. The subcontractor specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.
- C. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

- D. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.
- E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.
- F. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.
- G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.
- H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

#### **ARTICLE 4 - LABOR PROVISIONS**

# **Section 4.01 Independent Contractor Status**

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

#### **Section 4.02 Employees and Subcontractors**

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

#### Section 4.03 Removal of Individuals Performing Work

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

# Section 4.04 Minimum Wage; Living Wage

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

- 4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).
- 5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.
- 6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.
- 7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.
- 8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or

any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

# **Section 4.05 Non-Discrimination in Employment**

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

- 3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and
- 4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 4.05.

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

- C. Admin. Code § 6-108. If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by Admin. Code § 6-108, that:
  - 1. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.
  - 2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

#### D. E.O. 50 -- Equal Employment Opportunity

- 1. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY §§ 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:
  - a. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability,

marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

- b. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;
- c. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;
- 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;
- e. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services ("DLS"); and
- f. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 2. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:
  - a. Disapproval of the Contractor; and/or
  - b. Suspension or termination of the Agreement; and/or
  - c. Declaring the Contractor in default; and/or

- d. In lieu of any of the foregoing sanctions, imposition of an employment program.
- 3. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.
- 4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).
- 5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).
- 6. Nothing contained in this Section 4.05(D) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

#### **Section 4.06 Paid Sick Leave Law**

- A. *Introduction and General Provisions.*
- 1. The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of

work in New York City to be provided with paid sick time.<sup>2</sup> Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

- 2. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City's Department of Consumer Affairs ("DCA"). DCA's rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").
- 3. The Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.
- 4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.
- 5. The PSLL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLL. The Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.
- B. *Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use.*
- 1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its "calendar year" pursuant to the PSLL ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

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

- 2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.
- 3. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:
  - a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
  - b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
  - c. closure of such employee's place of business by order of a public official due to a public health emergency; or
  - d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.
- 4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.
- 5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

- 6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.
- C. *Exemptions and Exceptions*. Notwithstanding the above, the PSLL does not apply to any of the following:
  - 1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);
  - 2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;
  - 3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
  - 4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
  - 5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
  - 6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
  - 7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
  - 8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.
- D. Retaliation Prohibited. An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

# E. Notice of Rights.

1. An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken

by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <a href="http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml">http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml</a>.

- 2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.
- F. Records. An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

#### G. Enforcement and Penalties.

- 1. Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.
- 2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.
- H. More Generous Polices and Other Legal Requirements. Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

# Section 4.07 Whistleblower Protection Expansion Act

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

- 1. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- 2. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- 3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:
  - a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and
  - b. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.
- 4. For the purposes of this Section 4.07, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.
- 5. This Section 4.07 is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of \$100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

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

#### Section 5.01 Books and Records

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

#### **Section 5.02 Retention of Records**

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

#### **Section 5.03 Inspection**

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department's Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department's Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records

documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

- B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. If observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.
- C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

#### Section 5.04 Audit

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

#### Section 5.05 No Removal of Records from Premises

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed

in the future) at City facilities or offices, the Contractor shall not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

#### Section 5.06 Electronic Records

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

#### **Section 5.07 Investigations Clause**

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

В.

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

C.

- 6. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- 7. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.
- D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:
  - 1. The disqualification for a period not to exceed five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
  - 2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
- E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:
  - 1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
  - 2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

- 3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
- 4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

#### F. Definitions

- 1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.
- 2. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- 3. The term "entity" as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.
- 4. The term "member" as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.
- G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

## **Section 5.08 Confidentiality**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports,

information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise ("disclosure demand"), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

- The Contractor shall provide notice to the Department within three days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 ("Personal Identifying Information"), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.
- C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.
- D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue

any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

- E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.
- F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

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

## Section 6.01 Copyrights and Ownership of Work Product

- A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.
- B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.
- C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully

cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

- D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.
- E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.
- F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

#### **Section 6.02 Patents and Inventions**

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

#### **Section 6.03 Pre-existing Rights**

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

#### Section 6.04 Antitrust

The Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the

United States relating to the particular goods or services procured by the City under this Agreement.

#### **ARTICLE 7 - INSURANCE**

# **Section 7.01 Agreement to Insure**

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

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

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

- 8. Other forms approved by the New York State Workers' Compensation Board; or
  - 9. Other proof of insurance in a form acceptable to the City.

# **Section 7.03 Other Insurance**

- A. Commercial General Liability Insurance. The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and "occurrence" based rather than "claims-made." Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.
- B. Commercial Automobile Liability Insurance. If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

#### C. Professional Liability Insurance.

- 1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.
- 2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.
- 3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance

unless a new policy is secured with a retroactive date, including at least the last policy year.

- D. Crime Insurance. If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.
- E. Cyber Liability Insurance. If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.
- F. *Other Insurance*. The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

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

- A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:
  - 1. be provided by companies that may lawfully issue such policies;
  - 2. have an A.M. Best rating of at least A-/VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
  - 3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.
- B. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

- C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.
- D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

#### **Section 7.05 Proof of Insurance**

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

referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

#### Section 7.06 Miscellaneous

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

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

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

#### **Section 8.01 Reasonable Precautions**

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

#### **Section 8.02 Protection of City Property**

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

#### Section 8.03 Indemnification

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

#### **Section 8.04 Infringement Indemnification**

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

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

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

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

#### **Section 8.06 Actions By or Against Third Parties**

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

#### **Section 8.07 Withholding of Payments**

- A. If any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.
- B. If any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.
- C. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City's tender of the claim or action without a reservation of rights.

- D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.
- E. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

#### **Section 8.08 No Third Party Rights**

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

#### **ARTICLE 9 - CONTRACT CHANGES**

#### **Section 9.01 Contract Changes**

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

#### **Section 9.02 Changes Through Fault of Contractor**

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

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

#### **Section 10.01 Termination by the City Without Cause**

- A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.
- B. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

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

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

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

#### **Section 10.03 Contractor Default**

- A. The City shall have the right to declare the Contractor in default:
- 1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;
- 2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;
- 3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;
- 4. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:
  - a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
  - b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
    - c. a criminal violation of any state or federal antitrust law;
  - d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. §§ 1961 *et seq.*, or the Mail Fraud Act, 18 U.S.C. §§ 1341 *et seq.*, for acts in connection with the submission of bids or proposals for a public or private contract;
  - e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
  - f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

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

#### **Section 10.04 Force Majeure**

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

#### **Section 10.05 Procedures for Termination**

- A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.
- B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

- 1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
- 2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
- 3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
- 4. Submitting to the Department, within 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and
- 5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

#### **Section 10.06 Miscellaneous Provisions**

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

#### **Section 10.07 Liquidated Damages**

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

#### ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

#### **Section 11.01 Prompt Payment**

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

#### **Section 11.02 Electronic Funds Transfer**

- In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or http://www.nyc.gov/dof in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.
- B. The Agency Head may waive the application of the requirements of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the

commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

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

#### **ARTICLE 12 - CLAIMS**

#### Section 12.01 Choice of Law

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

#### Section 12.02 Jurisdiction and Venue

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

#### **Section 12.03 Resolution of Disputes**

- A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.
  - 1. This Section 12.03 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.
  - 2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's

work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

- B. All determinations required by this Section 12.03 shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.
- C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

#### D. Presentation of Dispute to Agency Head.

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

- 2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.
- 3. Agency Head Determination. Within 30 Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.
- 4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.
- E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.
  - 1. Time, Form, and Content of Notice. Within 30 Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

- 2. Agency Response. Within 30 Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
- 3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within 15 Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.
- 4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have 45 Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 90 Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.
- F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:
  - 1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;
  - 2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and
  - 3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not

have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

- G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.
  - 1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.
  - 2. Agency Response. Within 30 Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to 30 Days.
  - 3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on it own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
  - 4. CDRB Determination. Within 45 Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of

time, not to exceed 90 Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

- 5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 Days after the date the parties are formally notified of the CDRB's decision.
- 6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.
- H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

#### **Section 12.04 Claims and Actions**

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

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

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

#### Section 12.06 General Release

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

#### Section 12.07 No Waiver

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

#### **ARTICLE 13 - APPLICABLE LAWS**

#### Section 13.01 PPB Rules

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

#### Section 13.02 All Legal Provisions Deemed Included

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

#### Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

#### **Section 13.04 Compliance With Laws**

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

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

- A. Discrimination in Public Accommodations. With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.
- B. Discrimination in Housing Accommodations. With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.
- C. Admin. Code § 6-123. In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.
- D. *Immigration status*. In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

#### Section 13.05 Americans with Disabilities Act (ADA)

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

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

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

#### **Section 13.06 Voter Registration**

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

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

- 3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.
- 4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.
- 5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.
- 6. For the purposes of Paragraph A of this Section 13.06, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.
- 7. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.
- C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:
  - 1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.
  - 2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

- 3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.
- 4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.
- D. Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:
  - 1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.
  - 2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.
  - 3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.
    - 4. The Contractor and the Contractor's employees shall not:
      - a. seek to influence an applicant's political preference or party designation;
      - b. display any political preference or party allegiance;
    - c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
    - d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.
- E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.
- F. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

#### **Section 13.07 Political Activity**

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

#### **Section 13.08 Religious Activity**

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

#### Section 13.09 Participation in an International Boycott

- A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 *et seq.*, or the regulations of the United States Department of Commerce promulgated thereunder.
- B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.
- C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

#### **Section 13.10 MacBride Principles**

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

#### **Section 13.11 Access to Public Health Insurance Coverage Information**

- A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.
- B. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section 13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.
- C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:
  - 1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.
  - 2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.
  - 3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such

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

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

#### **Section 13.12 Distribution of Personal Identification Materials**

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

#### **ARTICLE 14 - MISCELLANEOUS PROVISIONS**

#### **Section 14.01 Conditions Precedent**

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

#### Section 14.02 Merger

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

#### **Section 14.03 Headings**

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

#### **Section 14.04 Notice**

- A. The Contractor and the Department hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.
- B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by email and, unless receipt of the e-mail is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

#### **AFFIRMATION**

arrears to the City of otherwise, upon oblig or disqualified, by a relating to the respon	New York upon debt, contract or togation to the City of New York, and my agency of the City of New York, sibility or qualification of the proportion.	es that said proposer or bidder is not in taxes and is not a defaulter, as surety or d has not been declared not responsible, k, nor is there any proceeding pending oser or bidder to receive public contract
Full name of Propose	r or Bidder [below]	
Address		
City	State	Zip Code
□ A - □ Ind SOCIA □ B - □ Pa	AND INCLUDE APPROPRIATE dividual or Sole Proprietorships AL SECURITY NUMBER rtnership, Joint Venture or other unit OYER IDENTIFICATION NUMB	ncorporated organization
□ C - □ Co EMPL	rporation OYER IDENTIFICATION NUMB	ER
BySignature		
Title		

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

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

## SCHEDULE A

Article 7 Insurance					
Types of Insurance (per Article 7 in its entirety, inclu paragraph)	ding listed	Minimum Limits and Special Conditions			
■ Workers' Compensation	§7.02	Statutory amounts.			
■ Disability Benefits Insurance	§7.02				
■ Employers' Liability	§7.02				
■ Commercial General Liability	§7.03(A)	\$ <u>1,000,000.00</u> per occurrence			
		\$1,000,000.00 personal & advertising injury (unless waived in writing by the Department)			
		\$2,000,000.00 aggregate			
		\$0 products/completed operations			
		Additional Insureds:			
		1. City of New York, including its officials and employees, and			
		2			
		3			
☐ Commercial Auto Liability	§7.03(B)	\$1,000,000.00 per accident combined single limit			
		If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90			
■ Professional Liability/Errors & Omissions		\$ <u>1,000,000.00</u> per claim			
	§7.03(C)				
☐ Crime Insurance	§7.03(D)	\$Employee Theft/Dishonesty			

	\$ Computer Fraud				
	\$ Funds Transfer Fraud				
	\$ Client Coverage				
	\$Forgery or Alteration				
	\$Inside the Premises (theft of money and securities)				
	\$ Inside the Premises (robbery or safe burglary of other property)				
	\$ Outside the Premises				
	\$ Money Orders and Counterfeit Money				
	City of New York is a loss payee as its interests may appear				
■ Cyber Liability Insurance §7.03(E)	with limits of no less than \$10,000,000 per claim and \$20,000,000 in the aggregate				
□ [OTHER]	[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]				
□ [OTHER]	[If other type(s) of insurance need to be required under the Contract, the Contracting Agency should (a) check the box and fill in the type of insurance in left-hand column, and (b) in this right-hand column, specify appropriate limit(s) and appropriate Named Insured and Additional Insured(s).]				
Section 10.07 – Liquidated Damages					
• Violation of Section 3.02(H), reporting subcontractors in the City's Payee Information Portal	\$100 per day				
•	<u>\$</u>				
Section 14	04 – Notice				

## **Appendix A January 2018 Final**

Department's Mailing Address and Email Address for Notices	NYC Department of Health & Mental Hygiene 42-09 28th Street Long Island City, New York 11101 Attn: Marnie Davidoff Assistant Commissioner mdavidof@health.nyc.gov
Contractor's Mailing Address and Email Address for Notices	TALKSPACE MEDICAL SERVICES NY, PC 2578 Broadway, Suite 607 New York, New York, 10025-5642 Attn: William Camacho, Treasurer william.camacho@talkspace.com

#### **CERTIFICATES OF INSURANCE**

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

# CITY OF NEW YORK CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker	or agent (typewritten)]
[Address of brok	er or agent (typewritten)]
[Email address or	f broker or agent (typewritten)]
[Phone number/F	Fax number of broker or agent (typewritten)]
[Signature of aut	horized official, broker, or agent]
[Name and title o	of authorized official, broker, or agent (typewritten)]
State of) ) ss.: County of)	
County of)  Sworn to before me this day of	20
NOTARY PUBLIC FOR THE STA	TE OF

### WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER



## REPORT

#### CORRUPTION, FRAUD, UNETHICAL CONDUCT

# RELATING TO A NYC-FUNDED CONTRACT OR PROJECT CALL THE NYC DEPARTMENT OF INVESTIGATION

212-825-5959

DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT:

New York City Department of Investigation (DOI) 80 Maiden Lane, 17th floor New York, New York 10038 Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT: www.nyc.gov/doi

All communications are confidential



Or scan the QR Code above to make a complaint

## THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

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



# ANNEX B DELIVERABLE BUDGET

Provider Name:	Talkspace Medical Services NY, P.C.					
Contract Number:	816-2427-8185.A01					
Contract Term:	10/1/2023 - 9/30/2026					
Scope Effective Dates:	10/1/2023 - 9/30/2026					
Program Unit Site Name:	Youth Virtual Mental Health Services					
Program Unit Site Primary Key:	25871					
Program Code:	TBD					
Bureau:	Bureau of Children, Youth, and Families					
Type of Unit:	Human Service					
Address Where Clients Will Be Served						
Days & Hours of Operations:	Open 24/7 Opens Closes Day					
	☐ Monday					
	□ Tuesday					
	Wednesday					
	Thursday Thursday					
	□ Friday					
	□ Saturday					
	Sunday					

Community Districts Served:	Bronx		1	□ 2	□ 3	□ 4
Ser veu.			5	□ 6	<b>7</b>	□ 8
			9	□ 10	<b>1</b> 1	□ 12
		•	All			
	Brooklyn		1	<b>2</b>	<b>3</b>	□ 4
			5	<b>6</b>	7	□ 8
			9	<b>1</b> 0	<b>1</b> 1	□ 12
			13	<b>1</b> 4	<b>1</b> 5	□ 16
			17	□ 18	<b>▼</b> All	
	Manhattan		1	□ 2	□ 3	□ 4
			5	□ 6	7	□ 8
			9	<b>10</b>	<b>1</b> 1	□ 12
		<b>&gt;</b>	All			
	Queens		1	2	3	□ 4
			5	<b>6</b>	7	8
			9	□ 10	<b>1</b> 1	□ 12
			13	<b>1</b> 4	✓ All	

Staten Island

		1	2	3	All
Deliverable Budget:	following terms  - Talkspa per quar clients p  - If they r backup paymen - If they o prorated the quar - If at the unduplic	ce must serveter, in order per term year meet the quardocumentation of \$2,000,000 not meet the amount (e.g. ter, they will end of the texated clients, 2000 for the texated clients, and the serveter is the serveter of the texated clients, and the serveter is the serveter of the texated clients, and the serveter is the serveter of the	terly minimum to reach a to terly minimon and repor 00 for that cone quarterly if they reach receive 80% rm year, they and have no	um, and provets, they will quarter. minimum, the 4,000 under to \$1,600,000 ye reach a totoot yet been per will receive	ney will receive a uplicated clients in 000 for that quarter)



# ANNEX A SCOPE OF WORK

Provider Name:	Talkspace Medical Services NY, P.C.					
Contract Number:	816-2427-8185.A01					
Contract Term:	10/1/2023 - 9/30/2026					
Scope Effective Dates:	10/1/2023 - 9/30/2026					
Program Unit Site Name:	Youth Virtual Mental Health Services					
Program Unit Site Primary Key:	25871					
Program Code:	TBD					
Bureau:	Bureau of Children, Youth, and Families					
Type of Unit:	Human Service					
Address Where Clients Will Be Served						
Days & Hours of Operations:	Open 24/7 Opens Closes Day					
	☐ Monday					
	□ Tuesday					
	Wednesday					
	Thursday Thursday					
	□ Friday					
	□ Saturday					
	Sunday					

Community Districts Served:	Bronx		1	□ 2	□ 3	□ 4
Serveur			5	□ 6	<b>7</b>	8
			9	<b>10</b>	11	□ 12
		~	All			
	Brooklyn		1	□ 2	<b>a</b> 3	□ 4
			5	6	7	□ 8
			9	<b>1</b> 0	<b>1</b> 1	□ 12
			13	<b>1</b> 4	□ 15	□ 16
			17	<b>18</b>	<b>▼</b> All	
	Manhattan		1	□ 2	□ 3	<b>4</b>
			5	□ 6	7	8
			9	<b>10</b>	<b>1</b> 1	□ 12
		>	All			
	Queens		1	2	3	□ 4
			5	<b>a</b> 6	□ 7 □ 11	□ 8
			9	<b>1</b> 0	<b>1</b> 1	□ 12
			13	<b>1</b> 4		

Staten Island

		1	2	3	All	
Program Description:						
	General Talksp	ace Service	and Produ	ct paramete	ers:	

- Talkspace will provide the services outlined in this contract via a standard, proprietary, HIPAA-compliant Platform, which is developed, owned and determined by Talkspace.
- Talkspace will provide a dedicated URL and co-branded Welcome Page is assigned to support the NYC Department of Health and Mental Hygiene ("DOHMH") program as the Parties mutually agree.
- Talkspace will provide DOHMH with ongoing Platform enhancements through standard product releases.
- Talkspace will provide the therapy services outlined in this contract with unlimited, asynchronous text, audio and video messaging and/or through a one live scheduled 30-minute video session monthly, with the option of two 30-minute video sessions per month if recommended by the therapist. If the eligible teen requires two (2) sessions monthly for more than four months, the eligible teen will be recommended to transfer to a higher level of service or referral to 988/NYC **WELL**
- Talkspace will provide DOHMH with projected utilization and real time ongoing capacity management as part of initial implementation and ongoing capacity planning.

# **Therapy Services Overview**

- Available to eligible users, who are Eligible Teens, as defined and agreed upon and described in the Eligible Validation section, are the following services from Talkspace:
  - unlimited, asynchronous text, audio and video messaging
  - o and/or one live scheduled 30-minute video session monthly,
  - And with the option of two 30-minute video sessions per month if recommended by the therapist. If the eligible teen requires two (2) sessions monthly for more than four months, the eligible teen will be recommended to a transfer to a higher level of service or referral to 988/NYC WELL
  - Talkspace Self-Guided<sup>TM</sup> program as designed for Eligible Teens.

collectively, the "Talkspace Services"

 The Talkspace Services, as well as any additional services described herein, shall be available as of the Effective Date of the Agreement.

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- Eligible Teens have the ability to send messages asynchronously (i.e., text, audio, or video messages) twenty-four (24) hours a day, seven (7) days a week. Asynchronous messages will be responded to by a licensed NYS therapist typically within twelve hours of matching. Response times for messages after initial communication will depend on the Provider's calendared working hours and the cadence and preference of the Eligible Teen.
- The Talkspace Platform and support services are delivered in English; therapy Services may be offered in other languages based on provider availability Translation services provided as required by applicable law.
- Therapy Services are individual, one-on-one services and do not include family services but do include a youth dependent thirteen and over if applicable.
- Asynchronous messaging is typically commenced the same day as initial contact and continues unabated during the tenure of the Services with the matched Provider.
- Asynchronous messaging will be provided to Eligible Teens on an unlimited basis with no message or word count limit imposed.
- If the Eligible Teen adds the available monthly video session with their matched Provider, it typically takes several days, but no more than seven days, to schedule the initial video session, dependent mainly on the Eligible Teen's availability and responsiveness to scheduling requests.
- Eligible Teen can also schedule a cadence of future video sessions each month dependent on the available slots in the Provider's calendar. Monthly videos occur by mutually agreed upon scheduling.
- Providers are expected to contact the Eligible Teen within the first twenty-four (24) hours of matching to initially connect and establish a treatment plan, communication preference and typical cadence. After the initial communication, Providers typically communicate at least once or twice daily during their calendared working hours depending on the cadence and preference of the Eligible Teen.

•

- Talkspace sends out regular reminders via in-app notifications, emails, and texts to encourage engagement by the Eligible Teen.
- If a referral to psychiatry is needed, the Eligible Teen will be referred to the resources available from 998/NYC Well via a warm hand-off<sup>1</sup> by the Talkspace provider.

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<sup>&</sup>lt;sup>1</sup> Warm Hand-Off: is a transfer of care between two members of the health care team, where the handoff is transparent to the recipient of care, as it allows the recipient of care and their parents, if permitted under law, to hear what is said, to engage in the communications, and to have the opportunity to clarify or correct information or ask questions about their care.

• Talkspace when seeking reimbursement from DOHMH for services it provided to Eligible Teens, during the term of the Agreement, shall not in addition submit any claims to third-party payers for payment for the same items and services Talkspace provided to the Eligible Teen.

# **Implementation**

- Talkspace account management and professional services team will support implementation.
- Talkspace will provide to DOHMH a draft implementation plan based on agreed upon initial go-live date.
- Talkspace shall provide to DOHMH a HIPAA-compliant mechanism folder established for file and material exchange.
- Talkspace will provide to DOHMH a standard Welcome Page Configuration, Standard File Templates (when applicable), Communication Portal/Materials, and Report Samples.
- Talkspace will conduct overall readiness testing according to mutually agreed upon timeline and protocol(s).

# **Eligibility & Consent**

- Talkspace is solely responsible for eligibility screening and proper registration on the Talkspace Platform.
- Eligibility for services from Talkspace shall be determined based on the terms set forth in the Eligibility Validation section, herein.
- Eligible Teen must register on the Talkspace platform by entering their birth date, New York City home address, phone number, valid email address . If the youth is unstably housed and without a permanent home address, an alternative method will be provided to verify eligibility.
- Talkspace will follow New York Mental Hygiene Consent protocol for the Eligible Teen as detailed in those Regulations (N.Y. Mental Hygiene Law § 33.21) including conditions under which the Eligible Teen may self-consent to care.

# **Parental Consent Process**

- Eligible Teen may provide the email address of parent/guardian during initial registration.
- Talkspace will provide a link to a Talkspace consent form on the Talkspace platform through the provided email address.
- If it is determined that consent is not required, the matched Talkspace Provider will document the determination in the medical record consistent with New York Mental Hygiene Consent protocols.

Eligibility Validation, Registration, Matching & Discharge

# **Eligibility Validation**

- New York City teenagers will be eligible to register for the services outlined in this contract between the first day of their thirteenth (13th) year to the last day of their seventeenth (17th) year, or June 30th of the year they turned eighteen as long as they registered during their seventeenth year (hereinafter ages 13-17 or "Eligible Teen").
- Talkspace will receive written (via electronic means) informed consent from the parent or legal guardian of the individual who is between the ages of 13 and 17, and who is a minor as defined by New York State Mental Hygiene Law §33. 21.
- No diagnosis of a mental health condition will be required to utilize the services outlined in this contract.
- Talkspace will verify eligibility by a consent from a parent or guardian confirming age and address of the Eligible Teen parties.

# **Registration Process**

- Eligible Teen may enter the URL or scan the QR code to access the Talkspace-DOHMH landing page.
- Eligible Teen will be required to answer personal questions about their mental health and preference for therapy at the time of registration.

# Matching

- Talkspace proprietary matching algorithm will match each Eligible Teen with a NYS licensed therapist ("Provider") based on the Eligible Teens' preferences, care needs, and Provider availability.
- Once matched, Eligible Teen may review information about their Provider, including years of professional experience, areas of expertise, and a description of the Provider's clinical approach.
- Eligible Teen can expect communication from the assigned Talkspace Provider within the first twenty-four (24) of the Provider's available hours to connect and establish care.<sup>2</sup>
- Eligible Teens have the discretion to work with their matched Provider for the duration of Services (maximum of four months). If the Eligible Teen and Provider

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<sup>&</sup>lt;sup>2</sup> Each Provider has a calendar of available "working hours" which is defined as five (5) days a week, during which time the Provider will make available to a newly matched Eligible Teen.

determine that care would be best provided by an alternative Provider, a new match will be facilitated.

# **Discharge**

- Talkspace may discharge an Eligible Teen if: (i) the treatment has been successfully completed, (ii) the Eligible Teen requires a higher level of care, (iii) Eligible Teen self-disengagement, or (v) in the rare case of a violation of the Talkspace Terms of Use (i.e., abusive language, posting or inappropriate materials etc.).
- If the Eligible Teen has disengaged from care, the Provider will offer, personalized follow-up for missed appointments to re-engage the young person before initiating discharge.
- If the Eligible Teen has been identified as "at-risk" by their Provider and has disengaged from care, the Provider will follow-up with the Eligible Teen and encourage the Eligible Teen to utilize the resources available from 998/NYC Well
- Talkspace Providers ensure that continuity of care is maintained as the Eligible Teen transitions to other resources. Medical records may be sent to the new Provider as needed and Provider video/audio transitions meetings may occur at the discretion of the Provider.
- If ongoing care is needed, the Eligible Teen will be referred to 988/NYC Well for additional resources based on the Eligible Teen's needs, insurance status, and preferences as determined by 988/NYC Well

# Screening, Outcomes & Measurement

- Talkspace standard, condition-specific, clinical scales used for (baseline and follow-ups) are incorporated into the service and youth's experience (e.g. including, but not limited to: GAD, PHQ, DAS, EAT, AUDIT).
- Eligible Teens indicating suicidality and substance abuse are assessed by the Providers in the initial intake using standard and proprietary risk assessment tools.
- Any Eligible Teen identified with substance use disorder will be referred to the resources available from 998/NYC Well.

# Training/Webinars, Marketing and Communications by Talkspace to DOHMH staff managing the Talkspace project:

• DOHMH shall have access to up to four (4) annual Talkspace curated webinars designed to increase mental health awareness and reduce stigma (one per quarter and public to all enterprise clients).

- DOHMH shall have access to Talkspace recorded demo video(s) highlighting the user experience.
- DOHMH shall have access to clinical content videos to raise awareness on general topics related to youth mental health. These videos will not contain any patient-specific information.
- Talkspace shall provide to DOHMH a Communications Plan identifying key areas of marketing and engagement strategies within 30 days of execution of this Agreement.
- DOHMH will have ongoing access to multimedia creative files and templates within the Talkspace communications portal for mutual communication planning.
  - DOHMH may add a custom logo or plan details to files, when relevant.
- During the term of this Agreement, any new creative materials designed by DOHMH for this project shall comply with the Talkspace brand guidelines provided in the client toolkit.
  - Talkspace may ask DOHMH to review newly designed materials to ensure Talkspace brand and product description accuracy.
- DOHMH understands that Eligible Teens may also view Talkspace's national advertising campaign across TV, out-of-home, direct mail, podcast/radio, and social media. However, Talkspace agrees not to use this effort to generate marketing/mailing/or other distribution lists for its national efforts not specific to this project.
- Talkspace shall request permission from DOHMH each time Talkspace wishes to use DOHMH's logo on its website. Talkspace will provide DOHMH a client example and provide samples of how the website will look.
- Talkspace will provide to DOHMH all marketing materials and the Toolkit for DOHMH's review before deployment.
- Talkspace Marketing and Communications Team will adapt marketing program materials to be customized for New York City.
- Talkspace marketing materials will be provided by Talkspace to the DOHMH, including but not limited to creative materials such as program name and tagline, as well as implementation materials such as "how to get started" guides for teens and parents, and design for other promotional materials. Talkspace will coordinate with the DOHMH to ideate and implement rollout program ideas to teens, parents, and any other stakeholders to drive awareness and utilization of the program city wide.
- Talkspace will use its corporate owned media assets to market the program (i.e., social media and press releases).

**Customer Service & Technical Support to Eligible** 

# **Teens and DOHMH**

- Talkspace will provide DOHMH with dedicated email support for technical and Platform related inquiries and will respond to DOHMH inquiries within one business day.
- Talkspace will provide DOHMh with customer support seven (7) days a week, from 9am - 7pm EST during the week, and 9am - 5:30pm EST during the weekend. Support staff may be reduced on Talkspace observed holidays (list of holidays will be provided upon request)

# **Therapy Network and Case Management**

- Talkspace will provide the services outlined in this contract via Licensed Providers, who are credentialed according to National Committee for Quality Assurance (NCQA) guidelines and are licensed in the State of New York .
- Talkspace will evaluate and determine network capacity to provide the services outlined in this contract on a continual basis.
- Talkspace Providers shall adhere to their licensure guidelines.
- Talkspace will monitor providers who are providing the services outlined in this contract for quality of service, clinical quality, productivity, and client experience through the central oversight of their Director of Provider Operations and their Senior Vice President of Network and Provider Operations. In addition, our Chief Medical Officer will ensure that protocols are medically sound and meet treatment best practice protocols.
- Talkspace clinical Quality Management (QM) team will provide ongoing monitoring of the Provider network that will be providing the services outlined in this contract, using a combination of quality factors, Eligible Teen surveys and internal auditing. QM processes will be performed in collaboration with the Talkspace Compliance Team to ensure that issues are addressed promptly and in the best interest of the Eligible Teen.
- Talkspace's compliance team will provide additional oversight to ensure that their policies, processes, and protocols meet regulatory requirements. QM and compliance monitoring will be performed continuously with weekly, monthly and quarterly reporting to the dedicated DOHMH Talkspace Project Team leads and corporate leadership.
- Talkspace's matched Provider will determine if the Eligible
  Teen is a good match for Talkspace services and modalities. If
  the Eligible Teen requires a higher level of care, the Provider
  will refer the Eligible Teen to 988/NYC Well and ensure a
  warm hand-off.
- A baseline assessment will be conducted at the time of registration based on presenting concern(s) with additional

assessments sent every twenty-one (21) days to measure symptom reduction. Eligible Teen and the Provider have access to review and change clinical scores and adjust treatment plans as appropriate.

# **Support and Intervention**

- Talkspace's proprietary crisis management tool will use machine learning to review the asynchronous posts of Eligible Teens every four (4) hours—and will notify Providers of a potentially heightened risk. Providers will then assess the risk and determine if additional resources are needed. If, in the rare event, that the Eligible Teen is an acute risk, the Provider may reach out to the Eligible Teen 's emergency contact and/or notify the appropriate authorities.
- While providing the services outlined in this contract, each Provider will follow Talkspace's established Risk Management/Crisis Intervention policy which includes, but is not limited to: providing crisis information, establishing communication and link to DOHMH-NYC Crisis resources (988/NYC Well) and sharing the Eligible Teen's established safety plan as a reminder, and alerting Risk Management for assessment. Risk Management and the Provider work collaboratively to determine the next steps related to alerting the appropriate individuals, if needed.
- Eligible Teens receiving the services outlined in this contract can contact Talkspace support by email or phone to report any concerns and escalate those concerns to the appropriate departments as needed. If it is determined that the concern warrants additional escalation, Eligible Teens will be provided instructions on submitting a formal complaint.
- Talkspace will analyze client usage data for the continued development of therapeutic tools and validation of efficacy of the services provided via this contract.
- Privacy related questions or concerns can be reported to privacy@talkspace.com and legal@talkspace.com is available for Eligible teen reporting.

# Reporting by Talkspace

- Reports from Talkspace will be delivered to the DOHMH via a single, secure, HIPAA compliant mechanism as mutually agreed upon.
- Talkspace will record and report on activities and outcomes as stipulated by DOHMH. Data will be accurate and submitted within mutually agreed upon timeframes.
- All reporting will be based on the calendar year and provided quarterly.
- Talkspace reports to DOHMH will not include PHI.

# **Talkspace Standard Reports:**

# • Monthly Registration Counts:

Monthly registration counts will support DOHMH's ongoing monitoring of Talkspace usage and impacts of marketing efforts.

- Monthly registration reports will be automated and delivered to DOHMH specific via HIPAA compliant mechanism as mutually agreed.
- o Monthly reports will be made available to DOHMH no later than the 10th of the following month.

# • Quarterly Talkspace Metrics:

Talkspace aggregate Quarterly reports will be designed to provide relevant data and outcomes to DOHMH (e.g. registration information, network availability, demographic profile data, engagement, presenting issues, outcomes improvement and satisfaction data)

- Quarterly reports will be delivered to DOHMH via specific HIPAA compliant mechanism within 30 days following the reporting period.
- o Outcomes data will require 30+ users completing a baseline and one or more follow ups.
- o Satisfaction data will require 30+ survey responses.

# **Account Management & Customer Success Services**

- Talkspace will provide a project team exclusively for DOHMH stakeholders and is monitored and staffed by a core team of specialists from Talkspace, who are subject matter experts in how Talkspace's platform and services work and who can troubleshoot and manage delegation and ongoing operations with DOHMH.
  - Inquiries from DOHMH to Talkspace will be responded to within one business day.
  - Talkspace's project team will have direct oversight of any questions or issues experienced by DOHMH's population.
  - Talkspace will appoint a Project Manager to serve as the primary point of contact for DOHMH. The Talkspace Project Manager will provide key data to DOHMH through regular reports and provide information about the Talkspace platform functionality and enhancements.
  - The dedicated DOHMH project team within Talkspace, will follow up on any needs or initiatives related to this Agreement and its implementation and operational needs.

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Number of Unduplicated Clients Served in the Term Year:  Year:  Y2024  T Y2025 Y2026  2 0,000  2 2 2 0,000  Unduplicated Clients Served' is defined as Eligible Teens accessing and registering for the Talkspace Services. The quarterly minimum targets are detailed in Annex B: Deliverable Budget. The quarterly minimums shall be tracked as a rolling average to ensure that the overall annual target of 20,000 is reached.									
Levels of Service: Visits	FY2024 NA	FY2025 NA	FY2026 NA	FY202 NA	27				
Target Population:	living in required	New York to utilize t	ned as any city. N his platfor ces each te	lo diagn m. A m	osis of a 1 inimum o	nental	healtl	n conditio	n is
Program capacity:	FY2024 NA	FY2025 NA	FY2026 NA	FY202 NA	27				

# **CITY OF NEW YORK**

# ADDENDUM TO APPENDIX A JANUARY 2018 FINAL

This Addendum modifies Appendix A January 2018 Final, General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services ("Appendix A"), as set forth below.

Subsection B of Section 5.08 (Confidentiality) of Appendix A is deleted in its entirety and replaced with the following:

# **Section 5.08 Confidentiality**

\* \* \*

- B. Where in connection with the services under this Agreement the Contractor, or its employees, subcontractors, or agents, will have access to, acquire, disclose, or use any data that includes private information (as defined in Admin. Code § 10-501(b)), the Contractor shall provide written notice to the Department within three days of the earlier of discovery by the Contractor or notification to Contractor of any breach of security (as defined in Admin. Code § 10-501(c)). Such notice shall inform the Department of the nature and scope of the breach of security.
  - 1. Upon such discovery or notification of such breach of security, the Contractor shall take reasonable steps to determine the cause(s) of such breach and to remediate the cause(s) of such breach, shall provide written notice to the Department of such steps, and shall cooperate with any investigation conducted by the City of such breach. Such cooperation includes, but is not limited to, promptly responding to the City's reasonable inquiries and providing prompt access to in human and machine readable format all evidentiary artifacts associated with such breach of security, such as relevant records, logs, files, data reporting, and other materials.
  - 2. In the event of such breach of security, the Contractor shall cooperate and coordinate with the City regarding any notifications determined by the City to be made to individuals affected by such breach.
  - 3. Without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of such notifications to individuals affected by the breach of security and/or other actions mandated by any Law, or administrative or judicial order, to address such breach of security, and to cover the costs of any fines or disallowances imposed by the State or federal government as a result of such breach. The City shall

also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of identity theft monitoring services for individuals affected by such breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such preventive measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.



# Labor Peace Agreement Certification Certification Prior to Contract Award or Renewal Pursuant to NYC Admin. Code § 6-145(c)

Contract Name:		E-PIN#:	
This certification is (select or	ne): $\square$ The first such certification u	ınder for contract award/renewal.	
	a subsequent (yearly) certifi	cation. If so, provide date of first cert	ification:
l,	()	print), the undersigned,	
am a duly authorized officer	of		(vendor name)
	of the city service contractor, bidde seeking renewal of a city service co		Check if updated from a previous certification
CEO Name:			
Telephone:	Email:		
•	arded or renewed (as applicable), I, the all applicable federal, state and local	undersigned, agree to comply with the laws.	requirements of NYC
contractor seeking renewal, as a regulating labor relations, in which	applicable, has been found by a court o	n which the bidder or proposer seeking a or government agency to have violated for icial action, administrative proceeding of laws.	ederal, state or local laws
New York City Administrative Co and any material uploaded to th and are accurate as of the date	ode, including the Vendor Questionnai e PASSPort system associated with so that this Labor Peace Agreement Certi cts to enter labor relations findings	onnaires pursuant to Subdivision (b) of ire and Principal Questionnaires, and thuch questionnaires contain records of a fication is executed:	nat such questionnaires all labor relations findings
Violation:	Date of Action:	Charging Agency:	
Summary:			
		Check if updated fro	om a previous certification $\Box$
Violation:	Date of Action:	Charging Agency:	
·			
		Check if updated fro	
1			m a previous cerunication 🗀
		(print) St	wear or affirm,
under penalty of perjury		,	wear or affirm,
	y, that the above information is	s accurate as of the date noted	wear or affirm,
		s accurate as of the date noted	wear or affirm,
Signed:	y, that the above information is	s accurate as of the date noted	wear or affirm,
Signed:County:_	y, that the above information is	s accurate as of the date noted	wear or affirm,



# Labor Peace Agreement Attestation Pursuant to NYC Admin. Code § 6-145(b)

Con	tract Name: E-PIN#:
1.	I,
	The above-named covered employer has entered into or is in negotiations for the following Labor Peace Agreements with the following labor organizations: (complete the below as applicable and add additional sheets as necessary)
	Class(es) of covered employees <sup>2</sup> covered by this LPA:
	_abor Organization Signature:
· 	Negotiations have been initiated with the following Labor Organization but have not yet concluded.  (labor organization)
(	Class(es) of covered employees <sup>2</sup> to be covered by this LPA:
	_abor Organization Signature:
	(authorized labor organization representative print and sign) (date)
	The following classes of covered employees are NOT currently represented by a labor organization and no labor organization has sought to represent them:
1	f, after the expiration of the 90-day period following the award or renewal date of the city service contract or the approval of a city service subcontractor, a labor organization seeks to represent the covered employees of a covered employer and the abor organization has provided notice to the contracting agency and the covered employer regarding such interest in accordance with the terms of the rider, as applicable, then the covered employer shall submit an attestation (signed by the labor organization) to the contracting agency (or, if the covered employer is a subcontractor, submit to the city service contractor for submission to the contracting agency) no later than 90 days after the date of notice stating that it has entered into a labor beace agreement with such labor organization or that labor peace agreement negotiations have not yet concluded.
Sig	n: Date: By signing, I am certifying the information contained in this attestation is true.

<sup>1 &</sup>quot;covered employer": a city service contractor or a city service subcontractor, having entered into a service contract with an agency of the City.

<sup>&</sup>lt;sup>2</sup> "covered employee": an employee of a covered employer who directly renders human services in performance of a city service contract, except that the term "covered employee" shall not include any building service employee.

# NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

# A. *Introduction and General Provisions.*

- 1. The Earned Safe and Sick Time Act ("ESSTA"), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the "Paid Safe and Sick Leave Law," requires covered employees (as defined in Admin. Code § 20-912) in New York City ("City") to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City's Department of Consumer and Worker Protection ("DCWP"), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq.* ("DCWP Rules").
- 2. The Contractor agrees to comply in all respects with the ESSTA and the DCWP Rules, and as amended, if applicable, in the performance of this agreement. The Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the ESSTA in performance of this agreement may result in its termination.
- 3. The Contractor (with **DCWP** must notify copy to at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP's guidance and must comply with DCWP's subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page.
- 4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City's administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.
- 5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to <a href="www.nyc.gov/PaidSickLeave">www.nyc.gov/PaidSickLeave</a> for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

- B. Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.
- 1. An employee who works within the City must be provided paid safe and sick time. Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.
- 2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.
- 3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:
  - a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
  - b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

<sup>&</sup>lt;sup>1</sup> Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

- c. closure of such employee's place of business by order of a public official due to a public health emergency;
- d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or
- e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:
  - 1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
  - 2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
  - 3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
  - 4. to file a complaint or domestic incident report with law enforcement;
  - 5. to meet with a district attorney's office;
  - 6. to enroll children in a new school; or
  - 7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.
- 4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an

employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

- 5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.
- 6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.
- 7. Safe and sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the safe and sick time was used.
- C. *Exemptions and Exceptions*. Notwithstanding the above, the ESSTA does not apply to any of the following:
- 1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);
- 2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;
- 3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;
- 4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- 5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- 6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. Retaliation Prohibited. An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

# E. Notice of Rights.

- 1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <a href="https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page">https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page</a>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.
- 2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.
- F. *Records*. An employer must retain records documenting its compliance with the ESSTA for a period of at least three years, and must allow DCWP to access such records in furtherance of an investigation related to an alleged violation of the ESSTA.

# G. Enforcement and Penalties.

- 1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.
- 2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

- 3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.
- H. More Generous Polices and Other Legal Requirements. Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

# New York City Mayoral Executive Order No. 64 Rider Responsibility of Contracted Providers of Human Services in Relation to Matters Involving Allegations of Sexual Harassment

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

# Section 1.01 Background.

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

# Section 1.02 Definitions.

- A. "Agency" means the City agency or office through which the City of New York has entered into this Agreement.
- B. "Agreement" means the agreement between the Agency and the Contractor, to which this rider has been added.
- C. "Certification Date" means 30 days after the date that the Agreement is registered pursuant to Section 328 of the New York City Charter, or if this rider is added by an amendment, the date said amendment is registered pursuant to Section 328 of the New York City Charter.
- D. "DOI" means the New York City Department of Investigation.
- E. "Human Services" means services provided to third parties, including social services such as day care, foster care, home care, homeless assistance, housing and shelter assistance, preventive services, youth services, and senior centers; health or medical services including those provided by health maintenance organizations; legal services; employment assistance services, vocational and educational programs; and recreation programs.
- F. "PassPort" means New York City's digital Procurement and Sourcing Solutions Portal;
- G. "Contractor" means the entity providing Human Services under a contract with the City of New York.

H. "Rider" means this New York City Mayoral Executive Order No. 64 Rider.

# Section 1.03 Reporting.

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

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

# Section 1.04 Annual Certification.

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

# **Section 1.05 Contractor's Duty to Investigate.**

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

# Section 2.

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

# Section 3.

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

# **Chapter 8: Earned Safe and Sick Time Act.**

### § 20-911 Short title.

This chapter shall be known and may be cited as the "Earned Safe and Sick Time Act."

(Am. L.L. 2017/199, 11/6/2017, eff. 5/5/2018; Am. L.L. 2020/097, 9/28/2020, eff. 9/30/2020)

#### § 20-912 Definitions.

When used in this chapter, the following terms shall be defined as follows:

"Calendar year" shall mean a regular and consecutive twelve month period, as determined by an employer.

"Chain business" shall mean any employer that is part of a group of establishments that share a common owner or principal who owns at least thirty percent of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in general business law section 681; provided that the total number of employees of all such establishments in such group is at least five

"Child" shall mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

"Commissioner" shall mean the commissioner of consumer and worker protection.

"COVID-19 child vaccination time" shall mean paid time that an employer provides to an employee that can be used as set forth in section 20-914.1 of this chapter.

"Department" shall mean the department of consumer and worker protection.

"Domestic partner" shall mean any person who has a registered domestic partnership pursuant to section 3-240 of the code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

"Domestic worker" shall mean any person who provides care for a child, companionship for a sick, convalescing or elderly person, housekeeping, or any other domestic service in a home or residence.

"Employee" shall mean any "employee" as defined in subdivision 2 of section 190 of the labor law who is employed for hire within the city of New York who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law, and not including those who are employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

"Employer" shall mean any "employer" as defined in subdivision (3) of section 190 of the labor law, but not including (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207. In determining the number of employees performing work for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation per week fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted.

"Family member" shall mean an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; the child or parent of an employee's spouse or domestic partner; any other individual related by blood to the employee; and any other individual whose close association with the employee is the equivalent of a family relationship.

"Family offense matter" shall mean an act or threat of an act that may constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision 1 of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions 1, 2 and 3 of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household.

"Grandchild" shall mean a child of an employee's child.

"Grandparent" shall mean a parent of an employee's parent.

"Health care provider" shall mean any person licensed under federal or New York state law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

"Hourly professional employee" shall mean any individual (i) who is professionally licensed by the New York state education department, office of professions, under the direction of the New York state board of regents under education law sections 6732, 7902 or 8202, (ii) who calls in for work assignments at will determining his or her own work schedule with the ability to reject or accept any assignment referred to them and (iii) who is paid an average hourly wage which is at least four times the federal minimum wage for hours worked during the calendar year.

"Human trafficking" shall mean an act or threat of an act that may constitute sex trafficking, as defined in section 230.34 of the penal law, or labor trafficking, as defined in section 135.35 and 135.36 of the penal law.

"Member of the same family or household" shall mean (i) persons related by consanguinity or affinity; (ii) persons legally married to or in a domestic partnership with one another; (iii) persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household; (iv) persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time; and (v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

"Parent" shall mean a biological, foster, step- or adoptive parent, or a legal guardian of a person, or a person who currently stands in loco parentis to another person or a person who stood in loco parentis when an employee was a minor child.

- "Public disaster" shall mean an event such as fire, explosion, terrorist attack, severe weather conditions or other catastrophe that is declared a public emergency or disaster by the president of the United States, the governor of the state of New York or the mayor of the city of New York.
- "Public health emergency" shall mean a declaration made by the commissioner of health and mental hygiene pursuant to subdivision d of section 3.01 of the New York city health code or by the mayor pursuant to section 24 of the executive law.
- "Public service commission" shall mean the public service commission established by section 4 of the public service law.
- "Safe time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivision b of section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.
- "Safe/sick time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.
- "Sexual offense" shall mean an act or threat of an act that may constitute a violation of article 130 of the penal law.
- "Sibling" shall mean an employee's brother or sister, including half-siblings, step-siblings and siblings related through adoption.
- "Sick time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivision a of section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.
- "Spouse" shall mean a person to whom an employee is legally married under the laws of the state of New York.
- "Stalking" shall mean an act or threat of an act that may constitute a violation of section 120.45, 120.50, 120.55, or 120.60 of the penal law.

(Am. L.L. 2015/104, 11/30/2015, eff. 3/29/2016; Am. L.L. 2017/199, 11/6/2017, eff. 5/5/2018; Am. L.L. 2020/080, 8/28/2020, eff. 8/28/2020; Am. L.L. 2020/097, 9/28/2020, eff. 9/30/2020; Am. L.L. 2021/172, 12/24/2021, retro. eff. 11/2/2021)

Editor's note: For related unconsolidated provisions, see Appendix A atL.L. 2015/104, L.L. 2020/080, and L.L. 2021/172.

#### § 20-913 Right to safe/sick time; accrual.

- a. All employees have the right to safe/sick time pursuant to this chapter.
- 1. All employers that employ five or more employees, all employers of one or more domestic workers, and any employer of four or fewer employees that had a net income of one million dollars or more during the previous tax year, shall provide paid safe/sick time to their employees in accordance with the provisions of this chapter. An employer shall pay an employee for paid safe/sick time at the employee's regular rate of pay at the time the paid safe/sick time is taken, provided that the rate of pay shall not be less than the highest applicable rate of pay to which the employee would be entitled pursuant to subdivision 1 of section 652 of the labor law, or any other applicable federal, state, or local law, rule, contract, or agreement. Such rate of pay shall be calculated without allowing for any tip credit or tip allowance set forth in any federal, state, or local law, rule, contract, or agreement.
- 2. All employees not entitled to paid safe/sick time pursuant to this chapter shall be entitled to unpaid safe/sick time in accordance with the provisions of this chapter.
- b. All employers shall provide a minimum of one hour of safe/sick time for every thirty hours worked by an employee, provided that employers with ninety-nine or fewer employees shall not be required under this chapter to provide more than a total of forty hours of safe/sick time for an employee in a calendar year and further provided that employers with one hundred or more employees shall not be required under this chapter to provide more than a total of fifty-six hours of safe/sick time for an employee in a calendar year. Nothing in this chapter shall be construed to discourage or prohibit an employer from allowing the accrual of safe/sick time at a faster rate or the use of safe/sick time at an earlier date than this chapter requires.
- c. An employer required to provide paid safe/sick time pursuant to this chapter who provides an employee with an amount of paid leave, including paid time off, paid vacation, paid personal days or paid days of rest required to be compensated pursuant to subdivision 1 of section 161 of the labor law, sufficient to meet the requirements of this section and who allows such paid leave to be used for the same purposes and under the same conditions as safe/sick time required pursuant to this chapter, is not required to provide additional paid safe/sick time for such employee whether or not such employee chooses to use such leave for the purposes included in section 20-914 of this chapter. An employer required to provide unpaid safe/sick time pursuant to this chapter who provides an employee with an amount of unpaid or paid leave, including unpaid or paid time off, unpaid or paid vacation, or unpaid or paid personal days, sufficient to meet the requirements of this section and who allows such leave to be used for the same purposes and under the same conditions as safe/sick time required pursuant to this chapter, is not required to provide additional unpaid safe/sick time for such employee whether or not such employee chooses to use such leave for the purposes set forth in section 20-914 of this chapter.
- d. Safe/sick time as provided pursuant to this chapter shall begin to accrue at the commencement of employment or on the effective date of the local law that created the right to such time, whichever is later. An employee shall be entitled to use safe/sick time as it is accrued, except that employees of any employer of four or fewer employees that had a net income of one million dollars or more during the previous tax year may use paid safe/sick time as it is accrued on or after January 1, 2021, and that employees of any employer of one hundred or more employees may use any accrued amount of paid safe/sick time that exceeds forty hours per calendar year on or after January 1, 2021.
- e. Employees who are exempt from the overtime requirements of New York state law or regulations, including the wage orders promulgated by the New York commissioner of labor pursuant to article 19 or 19-A of the labor law, shall be assumed to work forty hours in each work week for purposes of safe/sick time accrual unless their regular work week is less than forty hours, in which case safe/sick time accrues based upon that regular work week.
- f. The provisions of this chapter do not apply to (i) work study programs under 42 U.S.C. section 2753, (ii) employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117, (iii) independent contractors who do not meet the definition of employee under subdivision 2 of section 190 of the labor law, and (iv) hourly professional employees.
- g. Employees shall determine how much accrued safe/sick time they need to use, provided that employers may set a reasonable minimum increment for the use of safe/sick time which shall not exceed four hours per day.
- h. For employees of employers with ninety-nine or fewer employees, up to forty hours of unused safe/sick time as provided pursuant to this chapter shall be carried over to the following calendar year, and for employees of employers with one hundred or more employees, up to fifty-six hours of unused safe/sick time as provided pursuant to this chapter shall be carried over to the following calendar year; provided that no employer with ninety-nine or fewer employees shall be required to (i) allow the use of more than forty hours of safe/sick time in a calendar year or (ii) carry over unused paid safe/sick time if the employee is paid for any unused safe/sick time at the end of the calendar year in which such time is accrued and the employer provides the employee with an amount of paid safe/sick time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of such year; and further provided that no employer with one hundred or more employees shall be required to (i) allow the use of more than fifty-six hours of safe/sick time in a calendar year or (ii) carry over unused paid safe/sick time if the employee is paid for any unused safe/sick time at the end of the calendar year in which such time is accrued and the employer provides the employee with an amount of paid safe/sick time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of such year.
- i. Nothing in this chapter shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued safe/sick time that has not been used.

j. If an employee is transferred to a separate division, entity or location in the city of New York, but remains employed by the same employer, such employee is entitled to all safe/sick time accrued at the prior division, entity or location and is entitled to retain or use all safe/sick time as provided pursuant to the provisions of this chapter. When there is a separation from employment and the employee is rehired within six months of separation by the same employer, previously accrued safe/sick time that was not used shall be reinstated and such employee shall be entitled to use such accrued safe/sick time at any time after such employee is rehired, provided that no employer shall be required to reinstate such safe/sick time to the extent the employee was paid for unused accrued safe/sick time prior to separation and the employee agreed to accept such pay for such unused safe/sick time.

(Am. L.L. 2017/199, 11/6/2017, eff. 5/5/2018; Am. L.L. 2020/097, 9/28/2020, eff. 9/30/2020)

#### § 20-914 Use of safe/sick time and COVID-19 child vaccination time.

- a. Sick time.
  - 1. An employee shall be entitled to use sick time for absence from work due to:
- (a) such employee's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care; or
- (b) care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care; or
- (c) closure of such employee's place of business by order of a public official due to a public health emergency or such employee's need to care for a child whose school or childcare provider has been closed by order of a public official due to a public health emergency.
- 2. For an absence of more than three consecutive work days for sick time, an employer may require reasonable documentation that the use of sick time was authorized by this subdivision. For sick time used pursuant to this subdivision, documentation signed by a licensed health care provider indicating the need for the amount of sick time taken shall be considered reasonable documentation and an employer shall not require that such documentation specify the nature of the employee's or the employee's family member's injury, illness or condition, except as required by law. Where a health care provider charges an employee a fee for the provision of documentation requested by their employer, such employer shall reimburse the employee for such fee.
  - b. Safe time.
- 1. An employee shall be entitled to use safe time for absence from work due to any of the following reasons when the employee's family member has been the victim of domestic violence pursuant to subdivision thirty-four of section two hundred ninety-two of the executive law, a family offense matter, sexual offense, stalking, or human trafficking:
- (a) to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
- (b) to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
- (c) to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
  - (d) to file a complaint or domestic incident report with law enforcement;
  - (e) to meet with a district attorney's office;
  - (f) to enroll children in a new school; or
- (g) to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.
- 2. For an absence of more than three consecutive work days for safe time, an employer may require reasonable documentation that the use of safe time was authorized by this subdivision. For safe time used pursuant to this subdivision, documentation signed by an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the employee or that employee's family member has sought assistance in addressing domestic violence, family offense matters, sex offenses, stalking, or human trafficking and their effects; a police or court record; or a notarized letter from the employee explaining the need for such time shall be considered reasonable documentation and an employer shall not require that such documentation specify the details of the domestic violence, family offense matter, sexual offense, stalking, or human trafficking. An employer shall reimburse an employee for all reasonable costs or expenses incurred for the purpose of obtaining such documentation for an employer.
- c. An employer may require reasonable notice of the need to use safe/sick time or COVID-19 child vaccination time. Where such need is foreseeable, an employer may require reasonable advance notice of the intention to use such time, not to exceed seven days prior to the date such usage of time is to begin. Where such need is not foreseeable, an employer may require an employee to provide notice of the need for the use of such time as soon as practicable.
- d. Nothing herein shall prevent an employer from requiring an employee to provide written confirmation that an employee used safe/sick time pursuant to this section.
- e. An employer shall not require an employee, as a condition of taking safe/sick time or COVID-19 child vaccination time, to search for or find a replacement worker to cover the hours during which such employee is utilizing time.
- f. Nothing in this chapter shall be construed to prohibit an employer from taking disciplinary action, up to and including termination, against a worker who uses safe/sick time provided pursuant to this chapter for purposes other than those described in this section or uses COVID-19 child vaccination time provided pursuant to this chapter for purposes other than those described in section 20-914.1.

(Am. L.L. 2017/199, 11/6/2017, eff. 5/5/2018; Am. L.L. 2020/097, 9/28/2020, eff. 9/30/2020; Am. L.L. 2021/172, 12/24/2021, retro. eff. 11/2/2021)

Editor's note: For related unconsolidated provisions, see Appendix A atL.L. 2021/172.

# § 20-914.1 COVID-19 child vaccination time.

- a. An employee who is a parent of a child under the age of 18, or the parent of an older child who is incapable of self-care because of a mental or physical disability, shall be entitled to four hours of COVID-19 child vaccination time per vaccine injection, for each such child, for an absence from work due to any of the following reasons associated with such child's COVID-19 vaccination:
  - 1. Accompanying such child to receive a COVID-19 vaccine injection; or

- 2. Caring for such child who is experiencing temporary side effects from a COVID-19 vaccine injection.
- b. COVID-19 child vaccination time shall be paid at an employee's regular rate of pay at the time the time is taken, provided that the rate of pay shall not be less than the highest applicable rate of pay to which the employee would be entitled pursuant to subdivision 1 of section 652 of the labor law, or any other applicable federal, state, or local law, rule, contract, or agreement. Such rate of pay shall be calculated without allowing for any tip credit or tip allowance set forth in any federal, state, or local law, rule, contract, or agreement and shall not be charged against an employee's accrual or use of safe/sick time under this chapter. COVID-19 child vaccination time must be paid no later than the payday for the next regular payroll period beginning after the COVID-19 child vaccination time was used by the employee.
- c. An employer may require that within seven days of an employee's use of COVID-19 child vaccination time, the employee provide reasonable documentation that the child for whose care the COVID-19 vaccine time is claimed has received a COVID-19 vaccine injection.
- d. An employer shall not require an employee to work additional hours to make up for the original hours for which such employee was absent or to search for or find a replacement employee to cover the hours during which the employee is absent pursuant to this section.

(L.L. 2021/172, 12/24/2021, retro, eff, 11/2/2021)

Editor's note: For related unconsolidated provisions, see Appendix A atL.L. 2021/172.

### § 20-915 Changing schedule.

Upon mutual consent of the employee and the employer, an employee who is absent for a reason listed in subdivision a of section 20-914 of this chapter may work additional hours during the immediately preceding seven days if the absence was foreseeable or within the immediately subsequent seven days from that absence without using safe/sick time to make up for the original hours for which such employee was absent, provided that an adjunct professor who is an employee at an institute of higher education may work such additional hours at any time during the academic term. An employer shall not require such employee to work additional hours to make up for the original hours for which such employee was absent or to search for or find a replacement employee to cover the hours during which the employee is absent pursuant to this section. If such employee works additional hours, and such hours are fewer than the number of hours such employee was originally scheduled to work, then such employee shall be able to use safe/sick time provided pursuant to this chapter for the difference. Should the employee work additional hours, the employer shall comply with any applicable federal, state or local labor laws.

(Am. L.L. 2017/199, 11/6/2017, eff. 5/5/2018)

# § 20-916 Collective bargaining agreements.

- a. The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) such agreement provides for a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof. Comparable benefits shall include, but are not limited to, vacation time, personal time, safe/sick time, and holiday and Sunday time pay at premium rates.
- b. Notwithstanding subdivision a of this section, the provisions of this chapter shall not apply to any employee in the construction or grocery industry covered by a valid collective bargaining agreement if such provisions are expressly waived in such collective bargaining agreement.
- c. Notwithstanding subdivisions a and b of this section, the requirement to provide COVID-19 child vaccination time as set forth in section 20-914.1 cannot be waived.

(Am. L.L. 2017/199, 11/6/2017, eff. 5/5/2018; Am. L.L. 2021/172, 12/24/2021, retro. eff. 11/2/2021)

Editor's note: For related unconsolidated provisions, see Appendix A atL.L. 2021/172.

# § 20-917 Public disasters.

In the event of a public disaster, the mayor may, for the length of such disaster, suspend the provisions of this chapter for businesses, corporations or other entities regulated by the public service commission.

#### § 20-918 Retaliation and interference prohibited.

- a. No person shall interfere with any investigation, proceeding or hearing pursuant to this chapter.
- b. No person shall take any adverse action against an employee that penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise rights under this chapter or interfere with an employee's exercise of rights under this chapter and implementing rules.
- c. Adverse actions include, but are not limited to, threats, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, informing another employer of an employee's exercise of rights under this chapter, blacklisting, and maintenance or application of an absence control policy that counts protected leave for safe/sick time or COVID-19 child vaccination time as an absence that may lead to or result in an adverse action. Adverse actions include actions related to perceived immigration status or work authorization.
  - d. An employee need not explicitly refer to a provision of this chapter or implementing rules to be protected from an adverse action.
- e. The protections of this section shall apply to any person who mistakenly but in good faith asserts their rights or alleges a violation of this chapter.
- f. A causal connection between the exercise, attempted exercise, or anticipated exercise of rights protected by this chapter and implementing rules and an employer's adverse action against an employee or a group of employees may be established by indirect or direct evidence.
- g. For purposes of subdivision b of this section, a violation is established when it is shown that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.

(Am. L.L. 2020/097, 9/28/2020, eff. 9/30/2020; Am. L.L. 2021/172, 12/24/2021, retro. eff. 11/2/2021)

Editor's note: For related unconsolidated provisions, see Appendix A atL.L. 2021/172.

# § 20-919 Notice of rights.

- a. 1. An employer shall provide an employee with written notice of such employee's right to safe/sick time pursuant to this chapter, including the accrual and use of safe/sick time, the calendar year of the employer, and the right to be free from retaliation and to file a complaint with the department. Such notice shall be in English and the primary language spoken by that employee, provided that the department has made available a translation of such notice in such language pursuant to subdivision b of this section. Such notice shall also be conspicuously posted at an employer's place of business in an area accessible to employees.
- 2. Such notice shall be provided to each employee at the commencement of employment. For employees who were already employed prior to the effective dates of provisions of this chapter establishing their right to safe/sick time, such notice shall be provided within thirty days of the effective date of the local law that established each such right.

- b. The department shall create and make available notices that contain the information required pursuant to subdivision a of this section concerning safe/sick time and such notices shall allow for the employer to fill in applicable dates for such employer's calendar year. Such notices shall be posted in a downloadable format on the department's website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the department.
- c. The amount of safe/sick time accrued and used during a pay period and an employee's total balance of accrued safe/sick time shall be noted on a pay statement or other form of written documentation provided to the employee each pay period.
- d. Any person or entity that willfully violates the notice requirements of this section shall be subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice pursuant to this section.

(Am. L.L. 2017/199, 11/6/2017, eff. 5/5/2018; Am. L.L. 2020/097, 9/28/2020, eff. 9/30/2020)

#### § 20-920 Employer records.

Employers shall make and retain records documenting such employer's compliance with the requirements of this chapter for a period of three years unless otherwise required pursuant to any other law, rule or regulation, and shall allow the department to access such records, with appropriate notice and at a mutually agreeable time of day, in furtherance of an investigation conducted pursuant to this chapter.

(Am. L.L. 2020/097, 9/28/2020, eff. 9/30/2020)

#### § 20-921 Confidentiality and nondisclosure.

a. An employer may not require the disclosure of details relating to an employee's or his or her family member's medical condition or require the disclosure of details relating to an employee's or his or her family member's status as a victim of domestic violence, family offenses, sexual offenses, stalking, or human trafficking as a condition of providing safe/sick time under this chapter. Health information about an employee or an employee's family member, and information concerning an employee's or his or her family member's status or perceived status as a victim of domestic violence, family offenses, sexual offenses, stalking or human trafficking obtained solely for the purposes of utilizing safe/sick time pursuant to this chapter, shall be treated as confidential and shall not be disclosed except by the affected employee, with the written permission of the affected employee or as required by law. Provided, however, that nothing in this section shall preclude an employer from considering information provided in connection with a request for safe time in connection with a request for reasonable accommodation pursuant to subdivision 27 of section 8-107.

(Am. L.L. 2017/199, 11/6/2017, eff. 5/5/2018; Am. L.L. 2018/063, 1/19/2018, eff. 10/16/2018; Am. L.L. 2020/097, 9/28/2020, eff. 9/30/2020)

#### § 20-922 Encouragement of more generous policies; no effect on more generous policies.

- a. Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a safe/sick time or COVID-19 child vaccination time policy more generous than that which is required herein.
- b. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe/sick time or COVID-19 child vaccination time to an employee than required herein.
- c. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding safe/sick time or COVID-19 child vaccination time as provided pursuant to federal, state or city law.

(Am. L.L. 2017/199, 11/6/2017, eff. 5/5/2018; Am. L.L. 2021/172, 12/24/2021, retro. eff. 11/2/2021)

Editor's note: For related unconsolidated provisions, see Appendix A atL.L. 2021/172.

# § 20-923 Other legal requirements.

- a. This chapter provides minimum requirements pertaining to safe/sick time and COVID-19 child vaccination time and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe/sick time or COVID-19 child vaccination time, whether paid or unpaid, or that extends other protections to employees.
- b. Nothing in this chapter shall be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation, nor shall anything in this chapter be construed to diminish or impair the rights of an employee or employer under any valid collective bargaining agreement.
- c. Where section 196-b of the labor law, or any regulation issued thereunder, sets forth a standard or requirement for minimum hour or use of safe/sick time that exceeds any provision in this chapter, such standard or requirement shall be incorporated by reference and shall be enforceable by the department in the manner set forth in this chapter and subject to the penalties and remedies set forth in the labor law.

(Am. L.L. 2017/199, 11/6/2017, eff. 5/5/2018; Am. L.L. 2020/097, 9/28/2020, eff. 9/30/2020; Am. L.L. 2021/172, 12/24/2021, retro. eff. 11/2/2021)

Editor's note: For related unconsolidated provisions, see Appendix A atL.L. 2021/172.

# § 20-924 Enforcement and penalties.

- a. The department shall enforce the provisions of this chapter. In effectuating such enforcement, the department shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this chapter and investigate complaints received by the department in a timely manner. The department may open an investigation upon receipt of a complaint or on its own initiative.
- b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within two years of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any natural person providing information relevant to enforcement of this chapter unless disclosure of such person's identity is necessary to the department for resolution of its investigation or otherwise required by federal or state law. The department shall, to the extent practicable, notify such person that the department will be disclosing his or her identity prior to such disclosure.
- c. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint. Within fourteen days of written notification of an investigation by the department, the person or entity under investigation shall provide the department with a written response and such other information as the department may request. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.
- d. The department shall have the power to impose penalties provided for in this chapter and to grant each and every employee or former employee all appropriate relief. Such relief shall include: (i) for each instance of safe/sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this chapter or two hundred fifty dollars, whichever is greater; (ii) for each instance of safe/sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker, or for each instance an employer requires an employee to work additional hours without the mutual consent of such employer and employee in violation of section 20-915 of this chapter to make up for the original hours during which such employee is absent pursuant to

this chapter: five hundred dollars; (iii) for each violation of section 20-918 not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars and equitable relief as appropriate; (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, two thousand five hundred dollars and equitable relief, including reinstatement, as appropriate; (v) for each employee covered by an employer's official or unofficial policy or practice of not providing or refusing to allow the use of accrued safe/sick time in violation of section 20-913, five hundred dollars; (vi) for each instance of COVID-19 child vaccination time taken by an employee but unlawfully not compensated by the employer, three times the wages that should have been paid under this chapter or two hundred fifty dollars, whichever is greater; and (vii) for each instance of COVID-19 child vaccination time unlawfully denied or charged against an employee's paid safe/sick time accruals, five hundred dollars.

- e. Any entity or person found to be in violation of the provisions of sections 20-913, 20-914, 20-914.1, 20-915 or 20-918 of this chapter shall be liable for a civil penalty payable to the city not to exceed five hundred dollars for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed seven hundred fifty dollars for the second violation and not to exceed one thousand dollars for each succeeding violation. Penalties shall be imposed on a per employee basis.
- f. The department shall annually report on its website the number and nature of the complaints received pursuant to this chapter, the results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this chapter, and the average time for a complaint to be resolved pursuant to this chapter.

(Am. L.L. 2020/097, 9/28/2020, eff. 9/30/2020; Am. L.L. 2021/172, 12/24/2021, retro. eff. 11/2/2021)

Editor's note: For related unconsolidated provisions, see Appendix A atL.L. 2021/172.

# § 20-924.1 Enforcement by the corporation counsel.

The corporation counsel or such other persons designated by the corporation counsel on behalf of the department may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for the enforcement of any order issued by the department pursuant to this chapter or for the correction of any violation issued pursuant to section 20-924, including actions to mandate compliance with the provisions of such order, secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

(L.L. 2020/097, 9/28/2020, eff. 9/30/2020)

# § 20-924.2 Civil action by corporation counsel for pattern or practice of violations.

- a. Cause of action.
- 1. Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of this chapter, the corporation counsel or such other persons designated by the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.
- 2. The corporation counsel or such other persons designated by the corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.
- 3. Nothing in this section prohibits the department from exercising its authority under section 20-924 or the city charter, provided that a civil action pursuant to this section shall not have previously been commenced.
- b. *Investigation*. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to subdivision a of this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.
- c. Civil penalties and relief for employees. In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than \$15,000 for a finding that an employer has engaged in a pattern or practice of violations of this chapter. Any civil penalty so recovered shall be paid into the general fund of the city. The trier of fact may, in addition, award relief of up to \$500 to each employee covered by an employer's official or unofficial policy or practice of not providing or refusing to allow the use of earned time in violation of section 20-913.

(L.L. 2020/097, 9/28/2020, eff. 9/30/2020)

### § 20-925 Designation of agency. [Repealed]

(Repealed L.L. 2015/104, 11/30/2015, eff. 3/29/2016)

Editor's note: For related unconsolidated provisions, see Appendix A atL.L. 2015/104.

# **Identifying Information Rider**

# 1. Purpose.

Contractor agrees to comply with this Identifying Information Rider ("Rider") and the Identifying Information Law, as applicable, in the performance of this Agreement.

### 2. Definitions.

- A. "Access" to Identifying Information means gaining the ability to read, use, copy, modify, process, or delete any information whether or not by automated means.
- B. "Agency" means a City agency or office through which the City has entered into this Agreement.
- C. "Authorized Users" means employees, officials, subcontractors, or agents of Contractor whose collection, use, disclosure of, or access to Identifying Information is necessary to carry out the Permitted Purpose.
- D. "Chief Privacy Officer" means the City's Chief Privacy Officer.
- E. "Collection" means an action to receive, retrieve, extract, or access identifying information. Collection does not include receiving information that Contractor did not ask for.
- F. "Contractor" means an entity entering into this Agreement with the City.
- G. "Disclosure" means releasing, transferring, disseminating, giving access to, or otherwise providing identifying information in any manner outside Contractor. Disclosure includes accidentally releasing information and access to identifying information obtained through a potential unauthorized access to Contractor's systems or records.
- H. "Exigent circumstances" means cases where following this Rider would cause undue delays.
- "Identifying Information" means any information provided by the City to Contractor or obtained by Contractor in connection with this Agreement that may be used on its own or with other information to identify or locate an individual.
- J. "Identifying Information Law" means §§ 23-1201 1205 of the Administrative Code of the City of New York.
- K. "Permitted Purpose" means a use of Identifying Information that is necessary to carry out Contractor's obligations under this Agreement.

L. "Use" of Identifying Information means any operation performed on identifying information, whether or not via automated means, such as collection, storage, transmission, consultation, retrieval, disclosure, or destruction.

# 3. General Requirements.

- A. Contractor will use appropriate physical, technological, and procedural safeguards to protect Identifying Information.
- B. Contractor will restrict collection, use, disclosure of, or access to Identifying Information to Authorized Users for a Permitted Purpose.
- C. Contractor will comply with the Citywide Cybersecurity Requirements for Vendors and Contractors set forth by the New York City Office of Technology and Innovation and its Office of Cyber Command as they appear at https://nyc.gov/infosec. Contractor will ensure that Authorized Users understand and comply with the provisions of this Agreement applicable to Identifying Information.
- D. Contractor and Authorized Users will not use Identifying Information for personal benefit or the benefit of another, nor publish, sell, license, distribute, or otherwise reveal Identifying Information outside the terms of this Agreement.

### 4. Collection.

- A. Absent Exigent Circumstances (Section 7), Contractor may collect Identifying Information if the collection:
  - i. has been approved by the Agency Privacy Officer;
  - ii. is required by law or treaty;
  - iii. is required by the New York City Police Department in connection with a criminal investigation; or
  - iv. is required by a City agency in connection with an open investigation concerning the welfare of a minor or an individual who is not legally competent.

#### 5. Disclosure.

- A. Absent Exigent Circumstances (Section 7), Contractor may disclose Identifying Information if the disclosure:
  - i. has been approved by the Agency Privacy Officer;
  - ii. is required by law or treaty;

- iii. is required by the New York City Police Department in connection with a criminal investigation; or
- iv. is required by a City agency in connection with an open investigation concerning the welfare of a minor or an individual who is not legally competent; or
- v. has been authorized in writing by the individual to whom such information pertains or, if the individual is a minor or is otherwise not legally competent, by the individual's parent, legal guardian, or other person with legal authority to consent on behalf of the individual.

# 6. Disclosures of Identifying Information to Third Parties.

Unless prohibited by law, Contractor will promptly notify the Agency Privacy Officer of any third-party requests for Identifying Information, cooperate with the Agency Privacy Officer to handle such requests, and comply with the Chief Privacy Officer's policies and protocols concerning requirements for a written agreement governing the disclosure of Identifying Information to a third party.

# 7. Exigent Circumstances.

- A. Notwithstanding Section 4 (Collection) and 5 (Disclosure), if Contractor collects or discloses Identifying Information due to Exigent Circumstances, then as soon as practicable after the collection or disclosure but not to exceed 24 hours, Contractor will send to the Agency Privacy Officer in writing:
  - i. The name, e-mail address, phone number, and title of a Contractor point of contact with sufficient knowledge and authority who will respond promptly to and collaborate with the Agency Privacy Officer;
  - ii. A description of the Exigent Circumstances, including a detailed timeline, all involved parties, the types of Identifying Information disclosed or collected, and Contractor's estimate of the likelihood of the Exigent Circumstances reoccurring.
- B. If the Agency Privacy Officer determines the collection or disclosure was not made under Exigent Circumstances, the collection or disclosure will be deemed in violation of this Rider and subject to the provisions of Section 8(A)-8(D).

# 8. Unauthorized Collection, Use, Disclosure of, or Access to Identifying Information.

- A. If Contractor collects, discloses, uses, or accesses Identifying Information in violation of this Rider, Contractor will:
  - notify the Agency Privacy Officer in writing as soon as practicable but no later than 24 hours after discovery, including a description of the collection, disclosure, use, or

access, the types of Identifying Information that may have been involved or compromised, the names and affiliations of the parties (if known) who gained access to Identifying Information without authorization, and a description of the steps taken, if any, to mitigate the effects of the collection, disclosure, use, or access incident;

- ii. cooperate with the Agency Privacy Officer and relevant City officials, including the City's Chief Privacy Officer, Office of Cyber Command, and the City's Law Department, to investigate the occurrence and scope of the collection, disclosure, use, or access, and make any required or voluntary notices; and,
- iii. take all necessary steps, as determined by the Agency Privacy Officer, to prevent or mitigate the effects of the collection, disclosure, use, or access.
- B. If there is an alleged collection, use, disclosure, or access violation, the Agency may investigate the alleged violation. Contractor will cooperate with the investigation, which may include prompt:
  - provision to the City of information related to security controls and processes, such as third-party certifications, policies and procedures, self-assessments, independent evaluations and audits, view-only samples of security controls, logs, files, incident reports or evaluations;
  - ii. verbal interviews of individuals with knowledge of Contractor's security controls and processes or the unauthorized collection, use, disclosure, or access;
  - iii. an evaluation or audit by the City of Contractor's security controls and processes, and the unauthorized collection, use, disclosure, or access;
  - iv. an evaluation or audit by Contractor of its security controls and processes and the unauthorized collection, use, disclosure, or access, and provision of any attendant results to the City; or,
  - v. an independent evaluation or audit to be provided to the City of Contractor's security controls and processes, and the unauthorized collection, use, disclosure, or access.
- C. If the Agency Privacy Officer or Chief Privacy Officer determines that notification to affected individuals is required pursuant to the policies and protocols promulgated by the Chief Privacy Officer under subdivision 6 of Section 23-1203, then the Agency Privacy Officer will inform Contractor whether the Agency or the Contractor will issue the notification. If the Agency Privacy Officer directs Contractor to issue the notification, the notification will be issued in writing as soon as practicable and will conform to the Agency Privacy Officer's instructions as to form, content, scope, and recipients.

#### D. Monies and Set-Off.

- i. Contractor will pay for services deemed necessary by the Agency Privacy Officer to address Contractor's collection, disclosure, use, or access of Identifying Information in violation of this Rider, subject to limitations of liability contained elsewhere in this Agreement. These services may include: (a) credit monitoring services; (b) notifications; (c) payment of any fines or disallowances imposed by the State or federal government related to a collection, use, disclosure, or access in violation of this Rider; (d) other actions mandated by any law, administrative or judicial order, Agency Privacy Officer, or the Chief Privacy Officer.
- ii. At the Agency Privacy Officer's discretion, the Agency may pay for services deemed necessary to address Contractor's collection, disclosure, use, or access of Identifying Information in violation of this Rider. If the Agency pays for any of these services, it may submit invoices to Contractor and Contractor will promptly reimburse the Agency.
- iii. If Contractor refuses to pay for services deemed necessary by the Agency Privacy Officer, the City may, for the purpose of set-off in sufficient sums without waiver of any other rights and remedies:
  - a. withhold further payments under this Agreement to cover the costs of notifications and other actions mandated by any law, administrative or judicial order, Agency Privacy Officer, or the Chief Privacy Officer, including any related fines or disallowances imposed by the State or federal government;
  - b. withhold further payments to cover the costs of credit monitoring services, and any other commercially reasonable preventive measures;
  - c. instruct Contractor to pay directly for the services detailed in this subsection 8©(iii)(a) and 8(C)(iii)(b) using monies remaining to be earned under this Agreement.
- E. Contractor is not required to make any notification that would compromise public safety, violate any law, or interfere with a law enforcement investigation or other investigative activity by the Agency.

# 9. Retention.

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

## 10. Reporting.

Contractor will provide the Agency with reports as requested by the Agency Privacy Officer or Chief Privacy Officer regarding Contractor's collection, retention, disclosure of, and access to Identifying Information. Each report will include information concerning Identifying Information collected, retained, disclosed, and accessed including: (a) the types of Identifying Information collected, retained, disclosed, or accessed; (b) the types of collections and disclosures classified as "routine" and any collections or disclosures approved by the Agency Privacy Officer or Chief Privacy Officer; and (c) any other related information that may be reasonably required by the Agency Privacy Officer or Chief Privacy Officer.

## 11. Coordination with Agency Privacy Officer.

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

## 12. Destruction of Identifying Information.

If the Agency instructs Contractor to destroy Identifying Information, Contractor will destroy it within 30 days after receiving the instruction in a way that it cannot be reconstructed, subject to any litigation holds. Contractor will provide written confirmation to the Agency Privacy Officer that it has destroyed the Identifying Information within 30 days after receiving the instruction. If it is impossible for Contractor to destroy the Identifying Information, Contractor will promptly explain in writing why it is impossible, and will, upon receiving the destruction request, immediately stop accessing or using the Identifying Information, and will maintain such Identifying Information in accordance with this Rider.

#### 13. Subcontracts.

- A. Contractor will include this Rider in all subcontracts to provide human services or other services designated in the policies and protocols of the Chief Privacy Officer.
- B. Contractor will be responsible to the Agency for compliance with this Rider by its subcontractors that provide human services or other services designated by the Chief Privacy Officer.

## 14. Conflicts with Provisions Governing Records and Reports.

To the extent allowed by law, the provisions of this Rider will control if there is a conflict between any of its provisions and, as applicable, either (a) Article 5 of Appendix A (General Provisions Governing Contracts for Consultants, Professional, Technical, Human, and Client Services); (b) if the value of this Agreement is \$100,000 or less and is funded by City Council Discretionary Funds,

Articl©(E) and Rider 1, Article 1 of this Agreement; or (c) if neither (a) nor (b) apply, the other provisions concerning records retention and reports designated elsewhere in this Agreement. The provisions of this Rider do not replace or supersede any other obligations or requirements of this Agreement.

# RIDER TO CITY SERVICE CONTRACTS PURSUANT TO NYC ADMIN. CODE § 6-145 LABOR PEACE AGREEMENTS FOR HUMAN SERVICES CONTRACTS

#### Sec. 1 DEFINITIONS.

- A. **Building service employee.** The term "building service employee" means any person, the majority of whose employment consists of performing work in connection with the care or maintenance of a building or property, including but not limited to a watchperson, guard, doorperson, building cleaner, porter, handyperson, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, or window cleaner.
- B. City service subcontractor. The term "city service subcontractor" means any person, including, but not limited to, a temporary services, staffing or employment agency or other similar entity, that pursuant to an agreement with the contractor, performs any of the services to be rendered pursuant to this contract, except that the term "city service subcontractor" shall not include any person who enters into a contract with the contractor the principal purpose of which is to provide supplies, or administrative services, technical support services, or any other similar services to the contractor that do not directly relate to the performance of the human services to be rendered pursuant to this contract. A person shall be deemed a city service subcontractor for the duration of the period during which such person performs such services under this contract.
- C. **Covered employee.** The term "covered employee" means an employee of a covered employer who directly renders human services in performance of this contract, except that the term "covered employee" shall not include any building service employee.
- D. **Covered employer.** The term "covered employer" means the contractor or a city service subcontractor, as applicable.
- E. **Human services.** The term "human services" means social services contracted for by an agency on behalf of third party clients including but not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, the operation of senior centers, employment training and assistance, vocational and educational programs, legal services and recreation programs.
- F. Labor organization. The term "labor organization" has the same meaning as set forth in subdivision (5) of section 152 of title 29 of the United States Code.
- G. Labor peace agreement. The term "labor peace agreement" means an agreement between a covered employer and a labor organization that seeks to represent employees who perform one or more classes of work to be performed pursuant to this contract, where such agreement: (1) requires that the covered employer and the labor organization and its members agree to the uninterrupted delivery of services to be rendered pursuant to this contract and to refrain from actions intended to or having the effect of interrupting such services; and (2) includes any other terms agreed to by the parties, which may relate to, but need not be limited to: (i) alternate procedures related to recognizing the labor organization for bargaining purposes, (ii) public statements, (iii) workplace access, and (iv) the provision of employee contact information.. For the purposes of this rider, the term "labor peace agreement" may include a collective bargaining agreement that is in effect.

#### Sec. 2 RESPONSIBILITIES OF THE CONTRACTOR

A. The contractor shall comply with all applicable requirements under Admin. Code § 6-145 and any rules promulgated pursuant thereto. Such requirements constitute a material term of this contract. The contractor's failure to comply with the requirements of Admin. Code § 6-145 may constitute a material

- breach by the contractor of the terms of this contract, and such failure shall be determined by the contracting agency.
- B. The contractor shall submit the Labor Peace Agreement Certification pursuant to Admin. Code § 6-145(c), as well as the Labor Peace Agreement Attestation pursuant to NYC Admin. Code § 6-145(b), attached hereto.
- C. If the contractor and/or city service subcontractor receives written notice of such a breach and fails to cure such breach within 30 days of such notice, the City shall have the right to pursue any rights or remedies available under the terms of this contract or under applicable law, including termination of the contract.
- D. If the contractor fails to perform in accordance with any of the requirements of this section and there is a continued need for the service, the contracting agency may (i) obtain from another source the required service as specified in this contract, or any part thereof; (ii) may charge the non-performing contractor for any difference in price resulting from the alternative arrangements; (iii) may assess any administrative charge established by the contracting agency; and (iv) may, as appropriate, invoke such other remedies as are available under the contract and applicable law.

#### Sec. 3 LABOR PEACE AGREEMENT CERTIFICATION

- A. Prior to the award or renewal of this contract, the bidder or proposer seeking award or the contractor seeking renewal shall have provided the awarding contracting agency a certification, in the form attached to this rider, containing the following information:
  - (1) The name, address and telephone number of the chief executive officer of the bidder or proposer seeking award, or the contractor seeking renewal, as applicable;
  - (2) A statement that, if the contract is awarded or renewed, the bidder or proposer seeking award, or the contractor seeking renewal, as applicable, agrees to comply with the requirements of Admin. Code § 6-145, and with all applicable federal, state and local laws; and
  - (3) A record of any instances during the preceding five years in which the bidder or proposer seeking award, or the contractor seeking renewal, as applicable, has been found by a court or government agency to have violated federal, state or local laws regulating labor relations, in which any government body initiated a judicial action, administrative proceeding or investigation of the bidder, proposer, or contractor in regard to such laws.
- B. The certification shall be signed under penalty of perjury by an officer of the bidder, proposer, or contractor and shall be annexed to and form a part of the contract.
- C. The contractor shall each year throughout the term of the contract submit to the contracting agency an updated version of the certification required under Admin. Code § 6-145(c), and identify any changes from the previous certification. During the term of this contract, the contractor shall make such certification during the 30-day period following each anniversary of the effective date of this contract.

#### Sec. 4 LABOR PEACE AGREEMENTS ATTESTATION

- A. No later than 90 days after the award or renewal of this contract the contractor shall either:
  - (1) submit an attestation to the contracting agency, in the form attached to this rider, signed by one or more labor organizations, as applicable, stating that the contractor has entered into or is in the process of negotiating one or more labor peace agreements with such labor organizations as have provided notice pursuant to section (4)(C)(1) of this rider, and identify: (i) the classes of covered employees covered by the labor peace agreements, (ii) the classes of covered employees not currently represented by a labor organization and that no labor organization has sought to represent,

- and (iii) the classes of covered employees for which labor peace agreement negotiations have not yet concluded; or
- (2) submit an attestation to the contracting agency stating that the contractor's covered employees are not currently represented by a labor organization and that no labor organization has sought to represent such covered employees by providing notice pursuant to section (4)(C)(1) of this rider.
- B. Where a labor organization seeks to represent the covered employees of the contractor after the expiration of the 90-day period following the award or renewal date of this contract, and the labor organization has provided notice to the contracting agency and the contractor pursuant to section (4)(C) of this rider regarding such interest, the contractor shall then submit an attestation signed by the labor organization to the contracting agency no later than 90 days after the date of notice stating that it has entered into a labor peace agreement with such labor organization or that labor peace agreement negotiations have not yet concluded.

#### C. For the purposes of this section:

- notice to the contractor by a labor organization shall be made in writing by a duly authorized representative of the labor organization to either (i) the chief executive officer of the contractor; or

   (ii) the business address or e-mail address provided for in section 14.04 of Appendix A of this contract; and
- (2) notice to the contracting agency shall be made in writing by a duly authorized representative of the labor organization to the contracting agency at the physical address or e-mail address provided for in section 14.04 of Appendix A of this contract.
- D. In evaluating any violation of this section or any other provision of this rider or Admin. Code § 6-145, the city shall consider any relevant conduct of a labor organization, the size of the contractor's business, the contractor's good faith efforts to comply with the terms of this rider and Admin. Code § 6-145, the gravity of the violation, the history of previous violations, and the failure to comply with recordkeeping, reporting or other requirements. In considering whether the contractor has exercised good faith efforts in attempting to comply with obligations related to the submission of attestations in compliance with this section, the city shall consider the contractor's documented efforts to negotiate with labor organizations.
- E. Notwithstanding any other provision of this rider, where a class of a contractor's covered employees are covered by a collective bargaining agreement with a labor organization, such contractor is neither required to include any statements in an attestation in regards to labor peace agreements or negotiations relating thereto with any other labor organization with respect to such class of covered employees, nor required to seek such other labor organization's signature on any attestation with respect to such class of covered employees.

#### Sec. 5 SUBCONTRACTORS

A. The contractor shall cause its city service subcontractors to comply with Admin. Code § 6-145, as applicable, and include the following provisions and the attached Labor Peace Agreement Attestation in each of its subcontracts with such city service subcontractors, and shall be responsible for collecting subcontractor attestations and providing them to the contracting agency:

## Labor Peace Agreements

A. No later than 90 days after the approval by the contracting agency of a city service subcontractor, such city service subcontractor, shall either:

- (1) submit an attestation to the contracting agency, through the city service contractor, signed by one or more labor organizations, as applicable, stating that the city service subcontractor has entered into or is in the process of negotiating one or more labor peace agreements with such labor organizations as have provided notice pursuant to subsection (C)(1), and identify: (i) the classes of covered employees covered by the labor peace agreements, (ii) the classes of covered employees not currently represented by a labor organization and that no labor organization has sought to represent, and (iii) the classes of covered employees for which labor peace agreement negotiations have not yet concluded; or
- (2) submit an attestation to the contracting agency, through the city service contractor, stating that the city service subcontractor's covered employees are not currently represented by a labor organization and that no labor organization has sought to represent such covered employees by providing notice pursuant to subsection (C)(1).
- B. Where a labor organization seeks to represent the covered employees of the city service subcontractor after the 90-day period following the approval of the city service subcontractor, and a labor organization has provided notice to the contracting agency and city service subcontractor pursuant to subsection (C) regarding such interest, the city service subcontractor shall then submit an attestation signed by the labor organization to the contracting agency no later than 90 days after the date of notice stating that it has entered into a labor peace agreement with such labor organization or that labor peace agreement negotiations have not yet concluded.

#### C. For the purposes of this section:

- (1) notice to the city service subcontractor by a labor organization shall be made in writing by a duly authorized representative of the labor organization to either (i) the chief executive officer of such city service subcontractor; or (ii) the business address or e-mail address set forth pursuant to the notice provisions of this city service subcontract; and
- (2) notice to the contracting agency shall be made in writing by a duly authorized representative of the labor organization to the contracting agency at the address or e-mail address provided for in section 14.04 of Appendix A of the agreement between the city service contractor and the contracting agency under which this city service subcontract is being performed.
- D. In evaluating any violation of this section, the city service contractor shall consider any relevant conduct of a labor organization, the size of the city service subcontractor's business, the city service subcontractor's good faith efforts to comply with the terms of this section and Admin. Code § 6-145, the gravity of the violation, the history of previous violations, and the failure to comply with recordkeeping, reporting or other requirements. In considering whether the city service subcontractor has exercised good faith efforts in attempting to comply with obligations related to the submission of attestations in compliance with this section, the city service contractor shall consider the city service subcontractor's documented efforts to negotiate with labor organizations.
- E. Notwithstanding any other provision of this section, where a class of a city service subcontractor's covered employees are covered by a collective bargaining agreement with a labor organization, such city service subcontractor is neither required to include any statements in an attestation in regards to labor peace agreements or negotiations relating thereto with any other labor organization with respect to such class of covered employees, nor required to seek such other labor organization's signature on any attestation with respect to such class of covered employees.
- F. The definitions in section 1 to the "Rider to City Service Contracts pursuant to Admin. Code § 6-145 Labor Peace Agreements for Human Services Contracts" to the agreement between the city service contractor and the contracting agency under which this city services subcontract is being performed shall apply to this terms used in section, unless another meaning is clear from context.

## Sec. 6 AWARD DATE

- A. For the purposes of this rider, the date of an award shall be deemed to be the date upon which a contract is signed by both the contractor and the contracting agency.
- B. For the purposes of this rider, the date of a renewal shall be deemed to be the date upon which a contract renewal is signed by both the contractor and the contracting agency.

#### Rider

## **Data Security Terms**

- I. **DEFINITIONS**
- 1.1. "Agreement" means the contract to which these Data Security Terms are attached.
- 1.2. "DOHMH" means New York City Department of Health and Mental Hygiene.
- 1.3. "City" means the City of New York
- 1.4. "Client Data" means the information related to Clients, included but not limited to PHI, that is created, received, maintained, transmitted, or accessed, by Talkspace to provide the Service.
- 1.5. "Protected Health Information" or "PHI" and "Electronic Protected Health Information" or "E-PHI" shall have the same meaning as the terms are defined in 45 CFR §160.103, except that PHI or E-PHI shall be limited to the information created, received, maintained, transmitted, or accessed by Talkspace or its subcontractors or agents to provide the Services.
- 1.6. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, and the regulations promulgated thereunder, as the law and regulations may be amended, including but not limited to the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as they may be amended.
- 1.7. "**Provider Systems**" means the facilities, systems, networks and IT environments that are used by Talkspace to process any Client Data or deliver any Services.
- 1.8. "Client" or "Clients" means a parent or guardian of a minor, a minor, and any other person or entity authorized by Talkspace to use the Service. Talkspace's employees, agents, and contractors are not Clients for purposes of this Agreement.
- 1.9. "**Process**" means to perform any act, omission or operation on or with respect to data, such as collecting, recording, organizing, storing, adapting, altering, retrieving, accessing, deleting, blocking, erasing, destroying, combining, reviewing, using, transmitting, disseminating or otherwise making data available.
- 1.10. **"Service" or "Services"** means the software-, platform-, infrastructure- or other solution for which Talkspace uses to provide telehealth mental health services to minors.
- 1.11. "Security Incident" means any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, availability or integrity of Client Data or Provider Systems, including by compromising the physical, technical, administrative or organizational safeguards implemented by Talkspace to protect the security, confidentiality, availability or integrity of Client Data or Provider Systems. Examples of a Security Incident include, but are not limited to, the unauthorized acquisition or use of unencrypted Client Data (or encrypted Client Data and the decryption key), network intrusions, ransomware infections, a breach of access credentials and DoS attacks.

#### II. Data Management and Security

- 2.1 <u>Safeguards to Protect Client Data</u>. Talkspace shall implement and maintain appropriate physical, technical, administrative, and organizational safeguards in accordance with the City cybersecurity requirements for vendors as they appear at <a href="https://nyc.gov/infosec">https://nyc.gov/infosec</a>, and applicable law including but not limited to HIPAA, to protect the security, confidentiality, availability, and integrity of Client Data.
- 2.2 <u>Backup and Recovery of Client Data</u>. As a part of the Services provided under this Agreement, Talkspace is responsible for creating, maintaining, and testing backup copies of Client Data. Talkspace is responsible for an orderly and timely recovery of the Services and Client Data in the event that the Services are interrupted.
- 2.3 Talkspace may not use, access, or perform any analytical analyses of any kind on data derived from Clients' usage of the Service, whether anonymized or aggregated or both, except as consented to in writing by Clients, or as required for Talkspace to provide the Service.
- <u>2.4</u> Talkspace agrees that Client Data shall remain in the United States.
- 2.5 Access to Client Data. Talkspace shall implement identity and access control policies and procedures in accordance with applicable law and industry best practices.
- <u>2.6 Security Incident.</u> In the event of any Security Incident, Talkspace shall:
  - 2.6.1 notify DOHMH as soon as possible, but in no event later than twenty-four (24) hours after confirmation of the Security Incident, and notify Clients as soon as practicable after discovery, informing affected Clients and DOHMH of the nature of the Security Incident, the harmful effects of which Talkspace is aware, and all actions Talkspace has taken and plans to take. For purposes of this section, a Security Incident is deemed to be discovered as of the first day on which it is known by Talkspace, its employees, subcontractors or other agents, or, by exercising reasonable diligence, should have been known by Talkspace, its employees, subcontractors or other agents;
  - <u>2.6.2</u> immediately remedy the Security Incident at Talkspace's expense in accordance with applicable privacy rights, laws, regulations, policies, standards, and industry best practices;
  - 2.6.3 provide to DOHMH a detailed written root cause analysis for any breach or compromise;
  - 2.6.4 provide Clients and DOHMH with updates when requested;
  - 2.6.5 in the case of PHI/e-PHI, or in the case of Private Information, as defined in Section 10-501(b) of the Administrative Code of the City of New York ("Private Information"), notify the affected individuals as soon as practicable but no later than required to comply with applicable law;
  - 2.6.6 in the case of PHI/e-PHI or Private Information, provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law, or, in the absence of any legally required period for monitoring services, for no less than twelve (12) months following the date of notification to such individuals;
  - <u>2.6.7</u> be responsible for recovering and/or recreating lost Client Data;

- 2.6.8 bear the responsibility and all related costs for any Security Incident, including the cost of any associated remedial actions or mitigation steps, consumer notification and related responses, credit monitoring, notification, regulatory investigations, fines, penalties, enforcement actions and settlements;
- <u>2.6.9</u> provide DOHMH with documentation that Talkspace's incident response plan has been implemented; and
- 2.6.10 provide DOHMH with a detailed corrective action plan describing the measures Talkspace shall undertake to prevent future occurrences as expeditiously as possible under the circumstances.
- 2.7 Notice in Event of Talkspace Receipt of Warrant, Subpoena, or other Governmental Request. If Talkspace is served with a warrant, subpoena or any other order or request from a court or government body or any other person for any Client Data, Talkspace shall, as soon as reasonably practical and not in violation of law, deliver a copy of such warrant, subpoena, order, or request to the impacted Client.
- 2.8 Access by DOHMH. For Client Data that is protected by the federal 42 CFR Part 2 regulations ("Part 2 regulations"), DOHMH agrees to maintain and destroy Client Data in a manner consistent with the Part 2 regulations, retain Client Data in compliance with applicable federal, state, and local record retention laws, and comply with the limitations on disclosure and use as required by the applicable Part 2 regulations. The parties acknowledge that confidential HIV related information is protected by New York State law, which prohibits further disclosure of such information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure of confidential HIV related information in violation of New York State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure of confidential HIV related information.

#### III. Data Privacy and Information Security Program

- 3.1. Talkspace Privacy and Security Program. Talkspace shall be responsible for establishing and maintaining a data privacy and information security program ("Privacy and Security Program") that includes appropriate physical, technical, administrative, and organizational safeguards, to: (a) ensure the security, confidentiality, availability, and integrity of Client Data; (b) protect against any anticipated threats or hazards to the security, confidentiality, availability, or integrity of Client Data; (c) protect against unauthorized or illegal or accidental disclosure, access to, destruction, alteration, modification, loss, acquisition or use of Client Data; (d) ensure the proper disposal of Client Data, if requested by a Client or required by applicable law; and, (e) ensure that all employees, agents, and subcontractors of Talkspace comply with all of the foregoing.
- <u>3.2. Security Controls</u>. Talkspace's privacy and security controls must include, but not be limited to, physical, administrative, software, and network security measures, employee screening, employee training and supervision, and appropriate agreements with employees and subcontractors.
- 3.3. Privacy and Security Audit. No less than annually, Talkspace shall conduct a comprehensive audit of its Privacy and Security Program and provide such audit findings to DOHMH if requested by DOHMH.

- <u>3.4. Logs</u>. Talkspace must generate, maintain, constantly monitor, and analyze security audit logs that contain the information as specified in the applicable NIST publication.
- 3.5. Vulnerabilities. Talkspace's software applications, and any third-party software applications embedded in Talkspace's software applications, must be free from vulnerabilities and defects. Talkspace must conduct vulnerability scanning for critical systems or systems hosting sensitive data as often as required by law, relevant policies, to maintain certifications. Talkspace must ensure that the application has been tested for known security vulnerabilities, including, without limitation, those listed in the "OWASP Top-10" as published by the Open Web Application Security Project (see www.owasp.org for current list of the top 10), NIST 800-53 and the NIST Cybersecurity Framework (CSF).
- <u>3.6. Authorization and Access</u>. Talkspace's access controls must enforce the following information technology security best practices with respect to its services:
  - <u>3.6.1.</u> <u>Least Privilege</u>. Talkspace shall authorize access only to the minimum amount of resources required for a function;
  - 3.6.2. Separation of Duties. Talkspace shall divide functions among its staff members to reduce the risk of one person committing fraud undetected; and
  - 3.6.3. Role-Based Security. Talkspace shall restrict access to its services to only authorized users. Talkspace shall base access control on the role a user plays in an organization.
  - 3.6.4. If not utilizing single sign on and Talkspace's previously authorized resource should no longer have authorization/ access, Talkspace shall immediately revoke authorization. Talkspace shall periodically scan for dormant accounts and expeditiously remove/deactivate.

# IV. VENDOR INDUCED INHIBITING CODE, HARDSTOP/PASSIVE LICENSE MONITORING, MALWARE AND OTHER DESTRUCTIVE MECHANISMS

Talkspace shall not include any vendor induced inhibiting code ("VIIC") or any other inhibitor in the Services or on reports and data submitted and provided to DOHMH. VIIC means any deliberately included application or system code that shall degrade performance, result in inaccurate data, deny accessibility, or adversely affect, in any way, programs or data or use of the Services. The Talkspace Services are provided to DOHMH and Clients with all terms and limitations present on the Talkspace Services platform at the time of each Client's initial account creation. The site and mobile application services are presented to DOHMH "As Is," "as available," "with all faults" and without any warranty of any kind, express or implied. To the fullest extent permissible under applicable law, Talkspace's Licensed Providers disclaim all warranties of any kind, either express or implied, including, but not limited to, any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement. Without limiting the foregoing, neither Talkspace nor its Licensed Providers warrant that access to the Talkspace Services platform or landing page, the materials and/or the services available through the platform or landing page will be uninterrupted or error-free, or that defects, if any, will be corrected. Except as otherwise provided herein, neither Talkspace nor its Licensed Providers make any representations: (i) about the accuracy, reliability, currency, quality, completeness, usefulness, performance, security, legality or suitability of the offered services through the platform or landing page access and (ii) that the services or the materials or the platform or landing page are appropriate or

available for use in all geographic locations...

#### V. ENCRYPTION AND AUTHENTICATION

- 5.1. Talkspace shall encrypt all Client Data, including backups, while at rest and in transit from end to end using encryption standards and methods that are approved and recommended by NIST and in accordance with this Agreement.
- 5.2. For password hashing, PBKDF2, Scrypt and Bcrypt or better must be used. Approved encryption algorithms must be of a minimum key length of 128 bits.
- 5.3. Digital Certificates that validate and secure communications used by the general public must be generated by trusted third-parties.

## VI. **CONFIDENTIALITY**

- 6.1. Talkspace agrees to hold confidential, both during and after the completion or termination of this Agreement, all Client Data. Talkspace shall use Client Data for no purpose other than providing the Services in accordance with this Agreement.
- 6.2. Talkspace agrees to maintain the confidentiality of Client Data by using a reasonable degree of care, and at least the same degree of care that Talkspace uses to preserve the confidentiality of its own confidential information.
- 6.3. Talkspace agrees that Client Data shall not be made available to any person or entity without the prior written approval of the Client, except that Talkspace may disclose Client Data to its employees, officers, agents and consultants ("Representatives") on a need-to-know basis to provide the Services to Clients. Talkspace shall ensure that its Representatives are bound by confidentiality obligations no less stringent than those in this Agreement, and shall be liable for a breach by its Representatives of the foregoing confidentiality obligations.
- 6.4. Unless authorized by the Client or required by law, Talkspace shall not disclose Client Data that is Private Information.
- 6.5. The obligation under this section not to disclose shall not apply where Talkspace is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise ("disclosure demand"), provided that Talkspace complies with the following unless prohibited by law: (a) Talkspace shall provide advance written notice to the affected Client that it received a disclosure demand to disclose such reports, information or data, (b) if requested by the Client, Talkspace shall not disclose Client Data until the Client has exhausted legal rights, if any, to prevent disclosure of all or a portion of the Client Data, and (c) Talkspace shall reasonably cooperate with the Client in minimizing the Client Data disclosed.