

DCN # 2048

REQUEST FOR PROPOSALS
TO PROVIDE
HEALTH INFORMATION RELATED SERVICES
FOR
THE ENTERPRISE IT SERVICES DEPARTMENT
OF
THE NEW YORK CITY HEALTH AND HOSPITALS CORPORATION

Issue Date: February 1, 2013

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SECTION I: Background and Purpose

The New York City Health and Hospitals Corporation (HHC) is seeking to enter into requirements contracts with multiple professional resource services firms. This panel of firms will have demonstrated expertise in the areas of Healthcare Information Systems and other related information technology services and allow the Corporation to secure resources on an as needed basis to support major software implementation, training, and maintenance activities including the implementation of industry recognized electronic health records and associated ancillary and support applications. Strong candidates will work jointly with HHC to ensure that a support structure and process is in place for the effective deployment of the EMR. They will provide specialized and trained expertise for a large number of implementation teams working throughout HHC's eleven hospitals, five long-term care sites, six diagnostic & treatment centers, and 80 plus clinics.

The IT support services companies will be selected based on a thorough analysis of each company's ability to provide the Corporation with the highest quality Healthcare Information services as well as the timely availability of resources proposed during the responses. The Corporation will only contract with firms that do not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions. The Corporation encourages women and minority owned businesses to submit proposals in response to this solicitation.

HHC intends to award a sufficient number of contracts as necessary to meet the IT services needs of our large organization. In the Corporation's sole discretion and in response to additional resource needs, this solicitation may be reopened to evaluate and incorporate additional vendors. Such additional enrollment periods, if any, will be posted as per HHC's policies and procedures. The ultimate decision for selecting a firm shall be made by an evaluation committee using the criteria included in this solicitation.

Work Order Procedures

After the contract award is made to vendor(s), whenever HHC determines a need for these services during the term of these requirements contracts, the HHC designated manager(s) will contact and consult with the designated account representative(s) from amongst the vendor organizations and issue a request of Statement of Work that will define the specific project requirements or business needs. The firms will work under the supervision of HHC's Enterprise Information Technology Services division.

Any questions regarding this Solicitation should be addressed to the following Point of Contact (POC):

**George Davidson, Senior Director
Clinical Information Systems
New York City Health and Hospitals Corporation
33 Whitehall St, 29th Floor
New York, NY 10004
Email: george.davidson@nychhc.org**

SECTION II: Timetable

Release Request for Proposal	<i>February 1, 2013</i>
Proposal Bidders Teleconference	<i>February 15, 2013 at 2pm – (RSVP to George Davidson (George.Davidson@nychhc.org) by February 12, 2013 if you plan to join the teleconference)</i>
Proposals due	<i>February 28, 2013 at 5pm</i>
Projected Vendors selection date	<i>March 29, 2013</i>
Projected Contract start date	<i>May 2013</i>

LATE OR UNSEALED PROPOSALS WILL NOT BE ACCEPTED (see ATTACHMENT A).
Unless it is determined that it is in the Corporation's best interest to accept such proposals.

Sealed proposals are to be delivered to:

**George Davidson
Senior Director, Central Office
Clinical Information Systems
33 Whitehall St, 29th Floor
New York, NY 10004**

Your full Proposal must be received no later than **February 28, 2013- 5pm EST.**

SECTION III: Scope of Services/Scope of Work

Vendors are invited to submit proposals to provide one or more of the following:

Implementation/Advisory Services

Required services and assignments may include, but are not limited to, expert consultation in one or more of the following:

- Current Epic Systems, Inc. (“EPIC”) Certification
- Business analysis and workflow assessments
- System implementations and upgrades
- Meaningful use assessments / roadmaps
- Project and program management
- Process redesign
- System conversions, interfaces analysis and integration services
- Mobile device development and integration services
- Project planning and strategic advice
- Business Intelligence and reporting
- QA testing plans, scripts, and analysis testing and tracking
- Clinical Transformation, adoption and CPOE
- Specialized professional clinical analysts working in IT
- Systems engineering including sever, desktop, and enterprise systems support
- System Architects
- Database administration
- .net and Java Programmers
- Share Point programmers and implementation specialists
- Report writer
- Security Administrator
- System Administrator
- Systems Architect

Examples of proposed resources may include:

- Project manager who can provide comprehensive project management planning, control and reporting. Planning, organizing and directing the activities of groups of analysts and project participants of various levels of expertise in implementation processes, such as analysis, design, implementation, testing and maintenance of EMR systems. PMP certification preferred
- Business analysts, who can interface with end users to determine and document requirements, identify documentation needs and potential flaws in design and planning. BA certification preferred
- Clinical analysts who can interface with end users to determine and define EMR characteristics as related to workflows and departmental needs. Clinical experience a plus. Particularly those familiar with clinical systems including EPIC, Allscripts, and Cerner.
- Technical Analysts, particularly those with experience in Health Information Technology and familiar with clinical systems including EPIC, Allscripts, and Cerner, as well as ancillary, laboratory, PACS and other support systems.
- Server engineers including AIX, VM, SAN, CISCO, VMX, UNIX, Linux, etc.

- Specialty engineers such as networking, security, privacy and encryption.
- Mobile Applications specialists and designers.
- The Report Writer will provide application technology reporting for business applications. The role will also work closely with IT Management, developers, business users and other business analysts on requirements, system analysis, design and implementation of new modules, features, reports and business processes.
- The System Administrator's role is to manage and tune in-house computer software systems and network connections to ensure high levels of availability and security of the supported business applications. This individual also participates in the planning and implementation of policies and procedures to ensure system provisioning and maintenance that is consistent with company goals, industry best practices, and regulatory requirements.
- The System Analyst's role is to implement newly designed systems and parallel systems and revises existing systems, methods, procedures and designs. Performs analysis and modifies systems, procedures and forms to effect improvements, increase effectiveness in process flows to optimize corporate productivity.
- The Systems Architect's role is to strategically design and implement in-house information systems and networked software architectures that support core organizational functions, and assure their high availability. This individual will gain organizational commitment for all systems and software plans, as well as evaluate and select all technologies required to complete those plans. In addition, the Systems Architect provides technical leadership across the organization, from strategic decision making down to the project planning level.

IT Support Services

Required services and assignments may include, but are not limited to, expert consultation in one or more of the following:

- On-going application support: application architect, application engineer, application data administrator, application developer
- Interface with end users to resolve issues
- Optimization activities EMR and related systems.
- Remote monitoring
- Remote diagnostics
- Web based support tracking
- Administrative support for coordination, tracking, document preparation, and other administrative tasks.
- IT Human Resources support including candidate sourcing and recruitment
- Self-help and web-accessible reference guides tailored to caregivers and specific to the application solutions as implemented
- Caregiver direct access to application specific knowledge-base
- Service desk augmentation
- Frequently asked questions (FAQ) content - with the ability to further tailor based upon client's specific needs and scenarios
- Detailed and strategic planning including IT staffing modeling and financial modeling, Process implementation
- Security Administrator

Furthermore, the following positions with associated expertise will be requested from the candidate vendors:

- Application developers/programmers – required services may include coding, program development, program design, training and documentation, specific to chosen EMR. Including EMR certified specialists.
- Systems analyst – required services may include problem identification, system analysis, system design, systems evaluation, data modeling.
- Technical Consultant – required services may include expert consultation in the areas of application analysis and design including planning, modeling, capacity utilization measurement and performance monitoring, training and documentation.
- Interface Consultants - required services may include expert consultation in the areas of interface analysis and design including planning, utilization and performance monitoring, training and documentation.
- Technical Analysts, particularly those with experience in Health Information Technology and familiar with clinical systems including EPIC, Allscripts, and Cerner, as well as ancillary, laboratory, PACS and other support systems.
- Server engineers including AIX, VM, SAN, CISCO, VMX, UNIX, Linux, etc.
- Specialty engineers such as networking, security, privacy and encryption.
- Specialist in Hospital business solutions including but not limited to People Soft, Business Intelligence, finance, timekeeping, procurement systems and others.
- The Security Administrator provides technical assistance with the design, installation, operation, service and maintenance of a variety of multi-user information security systems. This role will also be responsible for initiating action in response to attempted intrusions, conduct vulnerability scans and ensure that responsible areas respond appropriately to findings. Assist in the preparation

of system security alerts that warn systems administrators of potential viruses, intrusions, or other systems security threats.

Training Services

Required services and assignments may include, but are not limited to, expert consultation in one or more of the following:

- Large scale company technology related training including needs analysis, curriculum/courseware development
- Developing materials for training and education
- One-on-one training, classroom style training, eLearning/CBT, train the trainer.
- Competency assessment and training impact analysis
- On site go live support in clinical and/or non clinical areas.
- Application training and optimization.
- Clinicians who train other clinicians (e.g physicians, PA's Nurses, Lab technicians)
- Vendor specific trainers including trainers for EPIC, Allscripts, and Cerner products as well as many ancillary departments, Laboratory, and PACS areas.

Managed Services

HHC will also consider proposals from firms offering a vendor-neutral management solution to manage multiple, qualified staffing suppliers who will compete to fill requirements as stated in statements of work.

SECTION IV: PROPOSAL PROCEDURES AND REQUIREMENTS

Please follow the instructions below:

A. PROPOSAL EVALUATION PROCEDURES

1. **Minimum Qualification Requirements:** Proposers must meet the following minimum qualification requirements. These requirements must be detailed in a **cover letter** as indicated in **Section IV B**, below.

- a. Proposers must be in the Healthcare IT business greater than 5 years
- b. Proposers must have staffed at least 50% of large, multi-hospital enterprise installations: greater than 6 hospitals systems or 3000 beds.
- c. Proposers should have specific Healthcare IT services dedicated to EMR implementation that address HHC's requirements for Epic Applications and Project Management certifications. Please see examples of proposed resources under scope of services on Section III of this proposal.

2. Only those proposers having met the above criteria will have their proposals reviewed.

3. **Evaluation Committee**

- a. The Evaluation Committee shall be comprised of a minimum of five (5) persons who will evaluate the components of this solicitation. The Evaluation Committee shall evaluate and rate all responses meeting the Minimum Qualification Requirements
- b. The Evaluation Committee will make a determination to award contracts to multiple responders based on a qualification criteria described below.
- c. The Evaluation Committee may require proposers to give oral presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein.
- d. If it is in the best interest of the Corporation, the Evaluation Committee reserves the right to waive or modify any mistakes in proposals that are deemed by the Evaluation Committee to be non-material.
- e. A contract shall be awarded to the proposers based on the evaluation factors set forth in the RFP subject to the Corporation's right to reject all proposals.

4. **Evaluation Criteria:**

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

a. Experience, Resources, Past performance

45%

<i>b. Organizational Capability</i>	20%
<i>c. Fee Schedule/Proposed Cost</i>	35%

B. PROPOSAL PACKAGE

Proposers must submit a proposal package with the following items in the order listed below.

1. **Cover Letter**: The proposer shall submit a cover letter that outlines the minimum qualifications requirements as stated above in Section IV, A: Proposal Evaluation Procedures. The Cover Letter shall be signed and dated by an individual authorized to enter into a contract with the Corporation on behalf of the proposer, and shall acknowledge receipt of all addenda, if applicable.
2. **Title Page**: The title page must include the proposal title, the document control number (DCN), name, address, tax ID number and phone number of the proposer and its principal contact.
3. **Executive Summary**: The 1-2 page summary must encapsulate the plan of action or approach to the requirements of this solicitation, deliverables, if appropriate, and a summary of the cost information.
4. **Table of Contents**: The table of contents should facilitate locating all key points in the proposal.
5. **Firm's Background and Organization**: Provide a description of your company. Include, at a minimum:
 - Company history;
 - Company Size;
 - Most recent annual report;
 - Number of personnel in the New York metropolitan area; and,
 - Any other company background information that the proposer would like to include for consideration
 - Vendor's Table of Organization including all vendor employees and sub-contractor personnel traditionally and currently used by the vendor.
6. **Technical Proposal**: The goal of this RFP is for HHC to have the EMR system implemented and subsequently supported in the most cost effective way possible. The services described above include the functions and expertise that are needed for the implementation to be successful.

The proposer should demonstrate that they can provide these capabilities in a manner that will reduce cost over time with references, certifications, expertise and experience of the personnel being offered through this response.

The proposer should describe how the deliverables will be managed and how they will be

done in a way to meet HHCs time line. Any additional costs anticipated (e.g. billed project management time) must be specified in the response.

- a. The following information is required on the experience and the background of the individuals providing the services that are proposed. This should include the following information about the people who are directly responsible for the services that will be provided to HHC including a submission of the “IT Service Category Staff Information Form” (**Attachment C**) and a current resume for each proposed staff member.
 - For Implementation services:
 - Education and degrees
 - Proper IT related Certifications and any industry recognized tools, techniques, processes or program languages; or software; database platform, operating system used that is relevant for the type of staff being offered; PMP, BA, or other industry recognized certification
 - Total years of IT experience for each individual staff
 - For IT Support services:
 - Information Technology education and degrees certification
 - Years of Information Technology experience
 - For Training services:
 - Education and degrees
 - Years of Information Technology experience
 - Proper IT related Certifications and any industry recognized tools, techniques, processes or program languages; or software; database platform, operating system used that is relevant for the type of staff being offered
- b. The proposer must provide the details on similar recently completed projects along with its budget. A list of current clients and their contact information must be provided. Proposers must provide a minimum of three detailed references where services are provided which are similar in complexity and scope to that required by HHC. The references should be similar in terms of organization type and number of locations The list of three (3) references should include the support, development and consultation functions for the IT Service Categories being proposed. Do not include current HHC facilities.

Reference List must include:

IT Service Categories being proposed, organization name, contact name/title/telephone number, synopsis of work performed. Work reported on the reference list must have been undertaken during the last twenty-four (24) month period. As stated above, HHC is not to be included as a reference.

A separate list of references is required for each IT Service Category being proposed.

- c. General qualifications and resumes of vendor employees and sub-contractor personnel that will be available to work on HHC projects within the group being proposed.

Qualifications must include at a minimum the software experience (product/years) and type/number of systems developed or experienced by the vendor's personnel.

- d. The individual qualifications/resumes for individuals must include at a minimum:
 - i. Brief summary of career work experience highlighting experience, related to the respective response to the RFP
 - ii. A listing of projects/engagements that the individual successfully completed. For each, include a brief summary of the requirement, the individual's role, organization name (or type of organization) and period of time.
 - iii. A listing of specific work skills
 - iv. A listing of specific certifications held and year obtained.

A separate set of qualifications and resumes is required for each IT Service Category being proposed.

7. **Cost Proposal:** See *Attachment D – Vendor Response Cost Form*. An hourly rate schedule effective for two years plus three one-year renewal option years are required to be submitted for this RFP. Please provide your proposed costs for this project, as follows:
 - These rates must include any travel and expenses in the hourly rate. It is acceptable to plan to deliver some services remotely as secure remote access is available to vendors, though it is not optimal for most services requested in this RFP. At HHC's discretion, vendors may likely be required to be on site to conduct these services.
8. **Acknowledgment of any Addenda:** Proposer shall acknowledge in the transmittal letter the number of addenda issued.
9. **Exceptions to the General Contract Terms and Conditions and the Business Associate Agreement:** No exceptions to the General Contract Provisions, set forth in Attachment "B", or the Business Associate Agreement, set forth as part of Attachment B, are permitted. Any exceptions will render the vendor's proposal to be non-responsive.
10. **Confidential/Proprietary Information:** Proposers may specifically include in their response a section entitled "**Confidential, Proprietary Information or Trade Secrets.**" This section shall indicate the exact location in the proposal of all information claimed by the firm to be confidential or trade secrets. The firm shall also provide a justification as to why such material, upon request, should not be disclosed by the Corporation. Such information deemed by the proposer to be confidential/proprietary shall be easily separable from the non-confidential or non-proprietary sections of the proposal.
11. **Doing Business Data Form ("DBDF"):** The proposer must submit an accurate and complete DBDF, enclosed in a separate envelope. See Section VI (M) for an explanation of this requirement.

D. PROPOSAL PACKAGE SUBMISSION REQUIREMENTS

1. Proposals are due on or before **February 28, 2013** at or before 5:00 PM at the location prescribed in SECTION II - RFP TIMETABLE. **Proposals that are late or unsealed will not be considered.** The Corporation reserves the right to accept late proposals when it is in the best interest of the Corporation and the lateness of the proposal is deemed non-material.
2. Proposers shall be responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the information required in item 5, below, appears on the outer envelope used by such service.
3. Proposers shall deliver one (1) original and 6 copies of the Proposal Package. Please see Attachment A for the required items. Only one (1) original DBDF needs to be submitted (no additional copies are necessary), but must be provided in an envelope separate from the rest of the proposal.
4. Proposers are advised that there is a 15 page limitation for proposals. This limitation does not include the Executive Summary, exhibits or other attachments.

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

From:	Proposer Name/Address
To:	HHC – CO - CIS Attention: George Davidson 33 Whitehall Street 29 th floor New York, New York 10004 <u>Document Control# 2048</u> RFP Title: Health Information related services for NYCHHC Enterprise IT services Dept

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

SECTION V: CONTRACT AND PAYMENT

A. TERM OF CONTRACT

1. The term of the contract shall be for an initial 2 year period with up to 3- one year options to renew.

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

B. CONTRACT PROVISIONS

The contract to be entered into between the selected proposer and the Corporation shall contain negotiated provisions based upon the specific requirements set forth in this RFP and the selected firm's proposal, as well as the Corporation's General Contract Provisions. Attached (Attachment "B") is a sample contract that the Corporation customarily uses. Articles 1-3 will reflect the business terms as finally negotiated. Articles 4, et seq., are the Corporation's required legal terms and are not negotiable. (see Section IV.C.9, above). In addition, the contract will include a business associate agreement ("BAA") since the Corporation has determined that it is required for compliance with the privacy standards and other requirements relating to protected health information as defined in the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The terms and provisions of the BAA are also not negotiable.

C. PAYMENT

The selected firm shall be paid by HHC on the accepted completion of work. HHC reserves the right to issue requests for statements of work that would be time and materials or fixed fee, depending upon the nature of the scope of work and the needs of the Corporation.

SECTION VI: GENERAL INFORMATION

A. STATUS OF INFORMATION

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

B. COMMUNICATION WITH THE CORPORATION

Proposers are advised that, from the date this RFP is issued until the award of the contract, no contact with Corporation or other Corporation personnel related to this solicitation is permitted, except with George Davidson, Senior Director, who has been designated as the contact person.

C. PROPOSER INQUIRIES

1. All inquiries regarding this solicitation shall be addressed to the contact person named in this proposal. All substantive questions must be sent in writing to the contact person. The contact person may orally respond to inquiries of a non-substantive nature.
2. Proposers are advised that the Central Office Clinical Information Systems cannot ensure a response to inquiries received later than ten (10) calendar days prior to the Proposal Due Date.

D. ADDENDA TO THE RFP

1. The Network/Facility/Division shall issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFP it deems necessary prior to the Proposal Due Date in the form of written addenda.
2. It is the proposer's responsibility to assure receipt of all addenda. The proposer must verify with the designated contact person prior to submitting a proposal that all addenda have been received, and shall acknowledge in the transmittal letter the number of addenda issued.

E. MODIFIED PROPOSALS

1. A proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the Proposal Due Date and Time.
2. The Evaluation Committee shall consider only the latest timely version of the proposal.

F. PROPOSER'S OFFER

1. A proposal may be withdrawn in writing only prior to the Proposal Due Date and Time.
2. A proposer's offer shall be irrevocable until contract award.

G. LATE PROPOSALS, LATE MODIFICATIONS AND LATE WITHDRAWALS

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

H. COSTS INCURRED BY PROPOSERS

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

I. ORAL PRESENTATIONS

The Corporation may require proposers to give oral presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein.

J. DISCUSSIONS/NEGOTIATIONS

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

K. PROPOSER ACCEPTANCE OF RFP AND CONTRACT PROVISIONS

1. Submission of a proposal signifies to the Corporation the proposer's intention to compete for the award of a contract to provide IT staffing and related services based on the specific type of service being bid and that the proposer understands and accepts that the terms and conditions as specified in this RFP and in the General Contract Provisions (Attachment B), shall become part of the final contract.
2. No Exceptions to the General Contract Provisions, set forth in Attachment "B", and the BAA, set forth as part of Attachment B, are permitted. Any exceptions will render the vendor's proposal to be non-responsive.

L. CONTRACT AWARD

1. The Corporation reserves the right to award a contract to a firm other than the vendor offering the lowest overall cost.
2. The contracts resulting from this solicitation shall be awarded to the highest-rated responsible proposers based on the evaluation factors set forth in the RFP. The award of a contract does not commit the Corporation to use the equipment or services of the selected firm.
3. Any proposed contract award shall be subject to all required oversight approvals.
 - MacBride Principles;
 - Approval of completed VENDEX Questionnaires;
 - Submission of an accurate and complete Doing Business Data Form;
 - Approval of completed Supply and Services Employment Report;
 - Compliance with New York State Executive Law, Article 15-A;
 - The Corporation's Contract Review Committee and Board of Directors approval, the firm's execution of the contract, and approval by the Corporation's President.

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

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

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

1. In accordance with the New York State Executive Law, Article 15-A, Section 310, service contracts awarded with fees in excess of twenty-five thousand dollars (\$25,000) must comply with the Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) program. If the firm intends to subcontract any of the services under this contract, it is required to utilize New York State-certified MBEs and WBEs as subcontractors. The Corporation has established goals of M/WBE participation for this contract, as follows: *MBE 18 % and WBE 7 %*. Although the Corporation has established levels of M/WBE participation for this contract as shown above, HHC encourages firms to exceed these goals.
2. Failure to meet these goals may result in administrative action by the Corporation. However, where it appears that a contractor/consultant cannot, after a good faith effort, comply with the M/WBE participation goals established above, the firm may apply for a partial or total waiver of these requirements prior to or during the contract period. Requests must be made to the President, through the Assistant Vice President for Affirmative Action/Equal Employment Opportunity during solicitation or prior to submission of the final payment requisition. Requests must satisfy the requirements of New York State Executive Law, Article 15-A, 5 NYCRR Section 543.7 ("Waivers") and Section 543.8 ("Good Faith Efforts").

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

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

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

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

P. RFP POSTPONEMENT/CANCELLATION

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

ATTACHMENT “A”: PROPOSAL PACKAGE CHECKLIST

I. Sealed Envelope (addressed as set forth on *page 15* of the RFP)

One (1) set of originals and six (6) sets of copies of the Proposal Package that include each of the following documents:

- ☐ Proposal Cover Letter
- ☐ Title Page
- ☐ Executive Summary
- ☐ Table of Contents
- ☐ Narrative
- ☐ IT Service Category Staff Information Form
- ☐ Technical Proposal
- ☐ Cost Proposal
- ☐ Acknowledgment of Addenda, if any
- ☐ Agreement with the Terms and Conditions Specified in the RFP and Attachment “B,” General Contract Provisions
- ☐ Doing Business Data Form

II. Outer Sealed Envelope (Addressed as set forth on *page 15* of the RFP).

The outer sealed envelope shall be addressed as follows below:

From:	Proposer Name/Address
To:	HHC – CO - CIS Attention: George Davidson 33 Whitehall Street 29 th floor New York, New York 10004
RFP Title:	<u>Document Control# 2048</u> Health Information Related services for HHC Enterprise IT Services Dept

LATE OR UNSEALED PROPOSALS WILL NOT BE CONSIDERED

**ATTACHMENT "B": GENERAL CONTRACT PROVISIONS AND
BUSINESS ASSOCIATE AGREEMENT**

Contract between

**NEW YORK CITY
HEALTH AND HOSPITALS
CORPORATION**

and

DATE

Term: _____

Expiration Date: _____

Renewal: Yes _____ No _____

Amended: _____

Agreement made as of this _____ day of _____ 2013 (this "Agreement") by and between the New York City Health and Hospitals Corporation (the "Corporation"), a public benefit corporation created under the laws of the State of New York, having its principal place of business at 125 Worth Street, New York, New York 10013, and _____ the "Contractor"), a _____ organized under the laws of _____ with its principal _____ place _____ of _____ business _____ at _____.

W I T N E S S E T H:

WHEREAS, the Corporation conducted a competitive selection process for consulting services, using a request for proposals (the "Solicitation") and, as a result of the Corporation's evaluation process, determined that the Contractor's proposal best meets the requirements of the Solicitation and would be most advantageous to the Corporation; and

WHEREAS, the Contractor wishes to enter into an agreement with the Corporation to provide such services and the Corporation has taken all necessary company actions to authorize it to retain the Contractor to perform such services.

NOW THEREFORE, the parties agree as follows:

ARTICLE 1

TERM OF AGREEMENT

1.1 TERM

This Agreement, when fully signed and delivered, shall be effective as of the date first above written, and shall continue in effect for two years (the "Initial Term") unless it is earlier terminated as provided herein. The Corporation, at its sole option and discretion, may renew this Agreement for up to an additional one, two or three successive one-year term(s). The Corporation shall notify the Contractor in writing of its intention to renew this Agreement at least 30 days prior to the expiration of the Initial Term or any renewal term.

ARTICLE 2

SCOPE OF SERVICES

2.1 SERVICES

The Contractor is to provide to the Corporation the services described in Exhibits "A" and "B" as defined below in Section 2.2 (the "Services").

2.2 EXHIBITS INCORPORATED

The Contractor's services shall meet the requirements outlined in the Solicitation issued by the Corporation dated _____ ("Exhibit A") and shall perform in accordance with the Contractor's proposal, entitled "_____,", dated _____ ("Exhibit B" or "Contractor's Proposal"). (Exhibits A and B are attached hereto and made a part of this Agreement.) To the extent that Exhibit A or Exhibit B is inconsistent with Articles 1 through 9 of this Agreement, then, such Articles shall control. In the event that Exhibit A is inconsistent with Exhibit B, Exhibit A shall control over Exhibit B.

2.3 SERVICES AND DELIVERABLES

2.3.1 The Services shall be at all times subject to the direction and control of the Corporation. The scope of work encompasses all tasks set forth in this Agreement. No services shall be undertaken by the Contractor without the prior written approval of the Corporation's designated project manager. This is a requirements contract and written work orders identifying the project and defining the scope will be issued to the Contractor on an as needed basis during the contract period by the Corporation's designated project manager.

2.3.2 Extensions as of Right. The Contractor shall be entitled to an extension of time for the performance of the Services to the extent caused: (1) by the acts or omissions of the Corporation, its officers, agents or employees; or (2) by supervening conditions beyond the control of the Contractor such as acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or illegal or strikes or labor disputes not brought about by any act or omission of the Contractor; provided, however, that the Contractor gives a contemporaneous notice to the Corporation setting forth in detail the nature of each alleged cause of delay, the date upon which each such cause of delay began and ended and the number of days of delay attributable to each such cause. Upon such notice, the Contractor shall be entitled to an extension of time for the performance of the Services equal to one day for each day of delay.

2.3.3 Discretionary Extensions. Upon request by the Contractor, the Corporation may, in its discretion, grant such extensions of time as it determines to be appropriate. Any such discretionary extension of time must be granted in writing to be effective.

2.4 STAFFING

The principal staff of the Contractor carrying out its responsibilities under this Agreement

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

ARTICLE 3 **COMPENSATION FOR SERVICES**

3.1 FEES

The Corporation shall pay, and the Contractor agrees to accept for the complete and satisfactory performance of all services required to be performed pursuant to this Agreement, an amount not to exceed \$_____. The Corporation will not reimburse the Contractor for out-of-pocket expenses.

3.2 CALCULATION OF COMPENSATION

3.2.1 Hourly Rates. The Contractor's compensation for the performance of the Services is based on the rates for each category of personnel for and on the actual time spent performing the Services, as indicated in Attachment C of the Contractor's Proposal. If less time should be required than has been estimated, the total fee for the Services will be lower than the amount indicated in said Attachment C. If more time should be required for the Services, the maximum fee for this Agreement shall nevertheless apply.

3.2.2 Payment on Deliverables. The fees for the tasks listed below will be paid by the Corporation on a fixed fee basis, pursuant to the schedule set forth below.

<u>Task/Deliverable</u>	<u>Payment Amount</u>
1.	\$_____
2.	\$_____
3.	\$_____

3.3 SUBMISSION OF MONTHLY INVOICES

The Contractor will submit monthly invoices to the Corporation for payment for the Services rendered in the preceding month, in accordance with the Contractor's rates for each category of personnel and for time actually spent rendering the Services in accordance with Section 3.2.1 and/or for the deliverables completed during the preceding month based on the provisions of Section 3.2.2. Each invoice shall be based upon work performed by the Contractor to the date of such invoice and/or the deliverables completed. Accompanying each invoice shall be sufficient detail to allow the Corporation to verify the adequacy, accuracy and reasonableness of the charges. Such detail shall include, but not be limited to, the period of time related to such invoice, the Services performed, the name and title of the professional, his/her hours worked and the billing rate. The Contractor shall provide whatever additional information the Corporation reasonably deems necessary.

3.4 PAYMENT OF INVOICES

The Corporation shall make its best efforts to pay the invoices submitted in the form required by this Article within forty-five (45) days of receipt thereof.

ARTICLE 4 **REPRESENTATIONS AND WARRANTIES**

4.1 PROCUREMENT OF AGREEMENT

The Contractor represents and warrants that: (a) no person, entity or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for the payment of a commission, percentage, brokerage fee, contingency fee or any other compensation; and (b) no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the Corporation to enter into this Agreement and the Corporation relies upon such representations and warranties in the execution hereof.

4.2 CONFLICT OF INTEREST

The Contractor represents and warrants that: (a) neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided; and (b) in the performance of or the rendering of services under this Agreement no person having such interest or possible interest shall be employed by it. To the best of the Contractor's knowledge after due investigation, no elected official or other officer or

employee of the Corporation or City of New York (the "City"), nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects such person's personal interest or the interest of any corporation, partnership or association in which such person is, directly or indirectly, interested; nor shall any such person have an interest, direct or indirect, in this Agreement or in the proceeds thereof. This Section 4.2 shall not prevent the Contractor's directors, officers, members, partners, or employees from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

4.3 NO DEFAULTS

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

4.4 FAIR PRACTICES

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

- a.** The prices in this Agreement have been arrived at independently without collusion, communication or agreement, with the intent of restricting competition, as to any matter relating to such prices with any competitor;
- b.** Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the opening of any proposal, bid or other response to the Corporation's solicitation, directly or indirectly, to any other bidder, proposer or to any other kind of competitor; and
- c.** No attempt has been made or will be made by the Contractor to induce any other person, partnership, corporation or other entity to submit or not to submit a proposal with the intent of restricting competition.

That the Contractor has (i) published price lists, rates, or tariffs covering services and goods being procured; (ii) informed prospective customers of proposed or pending publication of new or revised

price lists for such services and goods; or (iii) has sold the same services and goods to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraphs (a) or (b) above.

4.5 TERMINATION FOR BREACH OF REPRESENTATIONS AND WARRANTIES

For a breach or violation of the representations or warranties set forth above in Sections 4.1 and 4.4, the Corporation may terminate this Agreement upon 30 days prior notice to the Contractor, which notice shall specify the nature of the alleged breach. If the Contractor has not cured such breach (if de minimus and capable of cure) or explained the same to the satisfaction of the Corporation within such thirty (30) day period, then the Corporation may terminate this Agreement immediately upon notice to the Contractor without liability to the Contractor. This remedy, if effected, shall not constitute the sole remedy afforded the Corporation for the violation or breach of said representations and/or warranties, nor shall it constitute a waiver of the Corporation's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

4.6 LOWEST FEE

The Contractor represents and warrants that the direct fees for the Services charged to the Corporation pursuant to this Agreement shall be the lowest fees for such services which are charged by the Contractor to any of the Contractor's customers for like services under substantially the same circumstances. This representation and warranty includes those customers of the Contractor who are, as of the date of this Agreement, under contract with the Contractor and under any subsequent renewal of any such contract. Should the Corporation, at any time, determine that such representation and warranty has been breached, then the Corporation's payments to the Contractor hereunder shall be only at such "lowest fees."

4.7 BACKGROUND QUESTIONNAIRES

If the Contractor was required to complete the City's VENDEX questionnaires to qualify for this Agreement, then the Contractor represents and warrants that (a) all questions in the appropriate Principal and Vendor Questionnaires (the "Questionnaires") have been fully answered in accordance with the Vendor's Guide to VENDEX; (b) such information is in no respect misleading; and (c) the Questionnaires have been duly executed and submitted to the Corporation. The Contractor understands that the Corporation's reliance upon the completeness of the Contractor's answers and veracity of the information stated therein are material conditions to the Corporation's execution of this Agreement. The Contractor shall submit the appropriate Questionnaires, or if applicable, a "Certification of No Change" upon the extension or renewal of this Agreement. The Contractor shall

submit newly completed Questionnaires to the Corporation every three years. This Agreement shall be a nullity until the Contractor submits fully completed, signed and notarized Questionnaires to the Corporation. If, for any reason, final review of the Questionnaires and the Contractor's background by the Corporation cannot be obtained prior to full execution of this Agreement, this Agreement shall nevertheless be and continue to be in full force and effect, subject to the Contractor's agreement to proceed with due diligence and speed, making its best efforts in good faith to submit to the corporation all required questionnaires, not to exceed fourteen business days from the date of execution of this Agreement, which shall be fully completed, signed and notarized. Upon written notice to the Contractor, the Corporation may immediately suspend or terminate this Agreement upon written notice to the Contractor if it reasonably believes that Contractor is not making such efforts. In addition, after receipt of information from the Corporation's Office of the Inspector General or the City's Department of Investigation of the kind that would typically be used as a basis for finding a contractor not responsible to receive a contract award, the Corporation may immediately suspend or terminate this Agreement. Such termination notice will provide the Contractor with an opportunity to contest the accuracy of the information at a hearing before a panel of Corporation officials, at which hearing the Contractor may be represented by counsel. In no event shall any such termination affect the Corporation's obligation to pay for services satisfactorily performed and/or goods delivered in accordance with the Agreement prior to termination. The Corporation will pay Contractor for any services or deliverables satisfactorily performed or delivered, as applicable, on a *quantum meruit* basis, at the rates or prices set forth in the Agreement, as applicable.

4.8 PROHIBITION ON GIFTS AND GRATUITIES

The Contractor nor any of its directors, officers, members, partners, employees or agents shall directly or indirectly give any gift in any form, including but not limited to money, service, a loan, travel, entertainment, hospitality, thing or promise, to members of the Corporation's Board of Directors, Community Advisory Boards, Corporation officers, employees, or personnel working for any Corporation hospital auxiliary or professional or academic affiliate. If the Contractor, its employees or agents give any such gift to any such person, such act will constitute a material breach of the Agreement and the Corporation shall have a right to terminate the Agreement upon 10 days written notice to the Contractor on that basis.

ARTICLE 5

AUDIT BY THE CORPORATION AND THE CITY

5.1 DOCUMENTATION SUBJECT TO AUDIT

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

5.2 SUBMISSION OF DOCUMENTATION

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

5.3 MAINTENANCE OF RECORDS

The Contractor shall maintain separate and accurate books and records in accordance with generally accepted accounting standards consistently applied that sufficiently and properly reflect all direct and indirect costs expended in the performance of this Agreement. The Contractor shall retain such documents for six (6) years after the final payment or termination of this Agreement, whichever is later. The Contractor shall make available all such records for periodic audit and review by the Corporation, the City, the State, the Federal Government and other persons duly authorized by the Corporation.

5.4 WITHHOLDING OF PAYMENT

If an investigation, inspection or audit is commenced, the Corporation has the right to withhold payment of any disputed amounts, if any payment is due, until all the requirements set forth above have been satisfactorily met by the Contractor, and, in such event, the Corporation must escalate any withheld payments that are the subject of such investigation, inspection or audit to the Contractor's management. While such dispute resolution is ongoing, the Corporation has the right to withhold payment pursuant to the process, if any payment is due, in an amount equal to the payment amounts that are subject of such dispute.

ARTICLE 6

COVENANTS OF THE CONTRACTOR

6.1 CONTRACTOR'S EMPLOYEES, AGENTS, AND CONTRACTORS

6.1.1 No officer, agent or employee of the Contractor, and no independent contractor engaged by the Contractor to perform work under this Agreement, are either employees of the

Corporation or the City and none are under contract to either the Corporation or the City. The Contractor alone is responsible for their work, direction, compensation and personal conduct while performing pursuant to this Agreement. Neither the Corporation nor the City shall be responsible for: (a) the acts, omissions, liabilities or obligations of the Contractor or any person, firm or entity engaged by the Contractor; or (b) taxes of any nature.

6.1.2 Prior to assigning any employee, agent or independent contractor to work at a Corporation site, the Contractor shall conduct a criminal history background check (a “Background Check”) on such person covering the three years prior to such proposed assignment. A Background Check must include, for residents of the State, a criminal history record search of the State Office of Court Administration’s records for all 62 State counties. In addition, the Contractor shall conduct a Background Check through the records for any other state in which the person resided in the last three years. The Corporation may require the Contractor to perform a more extensive Background Check on workers who will have direct contact with mentally ill or minor patients, provide nursing home or home health care services or in certain other situations. The Contractor shall also comply with all applicable federal, state or local statutes or regulations requiring Background Checks. After reviewing an individual’s Background Check report, the Contractor shall provide a written, signed certification to the Corporation stating that there is nothing in such person’s background that would render him or her unsuitable to work in a health care setting or at a Corporation administrative office. The Contractor shall maintain the Background Check reports for six years. The Corporation may audit the Contractor’s records to verify compliance with this Section.

6.2 LIABILITY

6.2.1 The Contractor shall be solely responsible for any physical injuries to, or death of, its officers, agents, or employees, or any other person arising during the performance of the Services and for all damage to any property sustained during its operations and under this Agreement resulting from any act or omission to act by the Contractor or any of its officers, employees, agents, or independent contractors. The Contractor shall be solely responsible for ensuring the safety of its officers, employees, agents and independent contractors. The Contractor shall indemnify, defend and hold harmless the Corporation and the City from any liability, damage, cost or suit arising out of the performance of this Agreement except to the extent that any of the same are due to the sole negligence of the Corporation or the City.

6.2.2 If any claim is made or any action is brought against the Corporation or the City arising out of the acts or omissions to act of an officer, employee, agent or independent contractor of the Contractor, with regard to the performance of this Agreement, then the Corporation shall have the right to withhold payments due to the Contractor in a reasonable amount required to meet the

Contractor's obligations of indemnification as aforesaid but only to the extent that such claims are not being defended by the Contractor's insurance carrier or such insurance carrier has not otherwise accepted responsibility for such claims.

6.3 INSURANCE

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

6.3.1.1 The Contractor shall maintain, at its sole cost and expense, Commercial General Liability Insurance covering the Contractor as Named Insured and the Corporation and City as Additional Insureds in the amount of at least Two Million Dollars (\$2,000,000) per occurrence. Such insurance shall protect the Corporation and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, and shall be "occurrence" based rather than "claims-made."

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

6.3.1.3 At the Corporation's direction, if professional services are provided pursuant to this Agreement, each of the Contractor and all subcontractors of the Contractor providing professional services, shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least Two Million Dollars (\$2,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional Services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

6.3.1.4 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.

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

6.3.1.6 If vehicles are used in the provision of the Services, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

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

6.3.2 General Requirements for Insurance Coverage and Policies. All insurance obtained by the Contractor shall satisfy the following requirements.

6.3.2.1 All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Corporation. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the Corporation.

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

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

6.3.3 Proof of Insurance. The following evidence of insurance shall be required.

6.3.3.1 For Workers' Compensation Insurance, Disability Benefits

Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within 10 days of award of this Contract (ACORD forms are not acceptable proof of workers' compensation coverage):

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the Corporation.

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

6.3.3.3 Certificates of Insurance confirming renewals of insurance shall be submitted to the Corporation prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of this Agreement.

6.3.3.4 The Contractor shall provide the Corporation with a copy of any policy required under this Article upon the demand for such policy by the Corporation.

6.3.3.5 Acceptance by the Corporation of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

6.3.3.6 If the Contractor receives notice, from an insurance company or other person that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Corporation.

6.3.4 Miscellaneous Insurance Provisions.

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

6.3.4.2 The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the Corporation at any time.

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

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

6.3.4.5 If the Contractor requires a subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the

Corporation and the City, including their officials and employees, as additional insureds with coverage at least as broad as the most recently issued ISO form CG 20 26.

6.4 MINIMUM WAGES

Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the NYS Labor Law, 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. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

6.5 INDEPENDENT CONTRACTOR STATUS

The Contractor is an independent contractor and is not an employee of the Corporation or the City. Neither the Contractor nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Corporation or the City. They will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Corporation or the City including, but not limited to, Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

6.6 PROTECTION OF CORPORATION PROPERTY

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to the Corporation's property, including leased property, used in the performance of this Agreement, and caused directly or indirectly, by the acts or omissions of the Contractor, its officers, and employees, or any person, firm, company, agent or others engaged by the Contractor as to perform or assist with the performance of the Services.

6.7 RIGHTS OF CORPORATION

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

6.8 COMPLIANCE WITH LAW; HIPAA COMPLIANCE

The Contractor shall perform all Services in accordance with law, including having all legally required approvals and licenses, to the extent applicable. The parties shall take such actions as necessary to comply with the privacy standards and other requirements relating to protected health information as defined in the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) ("HIPAA") and amendments

thereto, and the rules and regulations promulgated thereunder, as well as guidance issued by the United States Department of Health and Human Services. A HIPAA-compliant business associate agreement is required to be executed by both parties to maintain such compliance and the Contractor agrees to comply with such requirement.

6.9 FEDERAL EMPLOYMENT PRACTICES

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

6.10 NON-DISCRIMINATION AGAINST THE HANDICAPPED

The Contractor shall comply with the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1994, and all regulations and guidelines issued pursuant thereto.

6.11 INVESTIGATIONS

The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Corporation, State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath. 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, State, any political subdivision thereof or local development corporation within the City, then the Corporation's President shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties shall attach for the failure of a person to testify. The penalties that may attach after a final determination may include but shall not exceed: (a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the Corporation or the City; and/or (b) the cancellation or termination of any and all such existing Corporation or City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted hereunder, 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 Corporation or City incurring any penalty or damages on account of such cancellation or termination. Any monies

lawfully due for goods delivered, work done, or fees accrued prior to the cancellation or termination shall be paid by the Corporation. As used herein, “license” or “permit” shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

6.12 ASSIGNMENT

The Contractor shall not assign or otherwise dispose of this Agreement, or of its rights, interests or duties herein without the prior written consent of the Corporation. Failure of the Contractor to obtain any required consent to any assignment shall be grounds for termination for cause, at the option of the Corporation whereupon the Corporation shall be relieved from any further liability to the Contractor, its assignees or transferees, and all monies that may thereafter become due under this Agreement shall be forfeited. The provisions of this clause shall not hinder an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State.

6.13 SUBCONTRACTING

6.13.1 The Contractor shall not to enter into any subcontracts for the performance of its obligations under this Agreement without the prior written approval of the Corporation. A copy of each such proposed subcontract shall be submitted to the Corporation with the Contractor's written request for approval.

6.13.2 All such subcontracts shall contain provisions specifying:

- a.** That the work performed by the subcontractor must be in accordance with the terms of this Agreement;
- b.** That nothing contained in such agreement shall impair the rights of the Corporation; and
- c.** That nothing contained herein, or under the agreement between the Contractor and its subcontractors, shall create any contractual relationship between the subcontractor and the Corporation.

6.13.3 The Contractor shall be fully responsible to the Corporation for the performance of the subcontractors and of persons either directly or indirectly employed by them.

6.14 PUBLICITY AND PUBLICATION

The prior written approval of the Corporation is required before the Contractor or any of its employees, agents, or independent contractors may, at any time, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Agreement. The foregoing restriction does not apply to or prohibit the Contractor from (i) using the Corporation's name in direct communications with customers or prospective customers (such as in a response to a solicitation or another direct communication), (ii) including the Corporation's name in marketing materials that contain a list of the Contractor's customers.

6.15 RESTRICTION ON OFFERS OF EMPLOYMENT

NON-SOLICITATION

Contractor acknowledges and agrees that because of the nature of the Corporation's business it would suffer substantial and irreparable damage if it were to lose the services of any of its employees or independent contractors who are employed or engaged by it to perform installation, implementation and training services in connection with the Corporation's new clinical information and electronic medical records system. Contractor accordingly agrees that during the term of this Agreement and for a period of two (2) years after the termination or expiration of this Agreement, Contractor shall not, on Contractor's own behalf or on behalf of any other person or entity, directly or indirectly solicit (except through a published general solicitation) the employment of, or seek to retain the services of, any employee or independent contractor of the Corporation who participates in any manner in the performance of such services. Contractor agree that, if Contractor breach this covenant of non-solicitation, damages will be impossible or unreasonably difficult to ascertain, and, in addition to any other remedies which the Corporation may have at law or in equity, Contractor shall pay to the Corporation as liquidated damages, and not as a penalty, an amount equal to the total cost to the Corporation of the annualized compensation at the time of the breach for the Corporation's employee or independent contractor, calculated on the basis of a 1,800-hour work-year. Contractor agrees that the provisions of this Section constitute a reasonable covenant under the circumstances, and Contractor further agrees that if any court of competent jurisdiction holds that the provisions of this Section are not enforceable in any respect, such court shall have the right, power and authority to excise or modify to the minimum extent necessary the provisions which such court holds unenforceable and to enforce the remaining provisions as so amended.

6.16 MACBRIDE FAIR EMPLOYMENT PRINCIPLES

In accordance with section 165(5) of the State Finance Law, the Contractor hereby stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent 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 in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

6.17 INVENTIONS, PATENTS AND COPYRIGHTS

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

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

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

6.17.4 If any copyrightable material is developed under, or in the course of performing this Agreement, the City of New York and the Corporation and any Federal agency providing Federal financial participation for the Agreement, shall have a royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, the work for governmental purposes.

6.18 CONFIDENTIALITY

The Contractor shall hold any reports, information, or data furnished or prepared, assembled or used by the Contractor under this Agreement confidential and the same shall not be made available to any individual or organization, or published without the prior written approval of the Corporation or as authorized or required by law. The Corporation shall hold any reports, information or data pertaining to the Contractor, its employees or customers that are disclosed to the Corporation or which are learned by the Corporation as a result of this Agreement confidential and the same shall not be made available to any individual or organization, or published without the prior written approval of the Contractor or as authorized or required by law. The provisions of this Section shall survive the termination or expiration of this Agreement.

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

6.19.1 The Corporation is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“M/WBE Regulations”) for all contracts with a

value in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

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

6.19.3 The Contractor shall achieve these goals:

[MBE Goal (18%)]

[WBE Goal (7%)]

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

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

ARTICLE 7

TERMINATION

7.1 CONDITIONS OF TERMINATION

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

- a. Upon thirty days' notice to the Contractor if the Contractor has breached this Agreement if such breach is not cured within such period.
- b. Upon notice to the Contractor, if the Contractor becomes insolvent, or in the event of the commencement under the Federal or State Bankruptcy Act of any proceeding by or against the Contractor, either voluntarily or involuntarily, or if a receiver has been appointed for the Contractor's assets.
- c. Without cause, upon thirty days notice to the Contractor, if the Corporation deems that termination would be in the best interest of the Corporation.

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

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

7.2 NOTICE OF TERMINATION/CAUSES BEYOND CONTRACTOR'S CONTROL

The Contractor may terminate this Agreement on notice to the Corporation by reason of any failure in the performance of this Agreement (including any failure by the Contractor to make progress in the prosecution of work hereunder which endangers such performance), if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor and such conditions have persisted for not less than 180 days. Such causes may include, but are not restricted to: Acts of God or of the public enemy; acts of the government in either its sovereign or contractual capacity, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, or any other cause beyond the reasonable control of the Contractor. Upon such termination, the Contractor shall comply with the Corporation's close-out procedures, including but not limited to:

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

If the Corporation should terminate this Agreement the Corporation may procure, on such terms and in such manner as it deems appropriate, services similar to those so terminated, and the Contractor shall continue the performance of this Agreement to the extent not so terminated.

7.4 REDUCTIONS IN FEDERAL, STATE AND/OR CITY FUNDING

The Contractor, acknowledging that this Agreement is funded in whole or in part by funds secured from the Federal, State and City Government, agrees that should there be a reduction or discontinuance of such funds by action of the Federal, State or City Government, the Corporation shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and level of service of this Agreement to eliminate any adverse impact of such action upon the Corporation. Any such termination due to discontinuance of the funds shall take effect immediately upon written notice thereof to the Contractor. In the case of reduction in funds, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) calendar days from the date of such notice. If the Corporation reduces funding pursuant to this Section, the Corporation 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 Corporation in accordance with the terms of this Agreement. The foregoing termination or reduction options of the Corporation are independent and separate rights in addition to any other rights of termination or modification provided by this Agreement, by law or by relevant regulations, and supersede any and all rights or actions the Contractor may have under any provisions of this Agreement to the contrary.

ARTICLE 8 **MISCELLANEOUS**

8.1 GOVERNING LAW; SEVERABILITY; WAIVER; VENUE

8.1.1 This Agreement shall be governed in all respects by the laws of the State of New York as applied to contracts entered into and wholly to be performed within the State of New York.

8.1.2 The invalidity or unenforceability of any term or condition hereof shall in no way affect

the validity or enforceability of any other terms or provisions.

8.1.3 The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.

8.1.4 Any litigation arising from this Agreement will be brought only before the appropriate New York State or Federal courts sitting in the County and State of New York.

8.2 CLAIMS AND ACTIONS THEREON

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

8.2.2 If any claim is brought relating to this Agreement, the Contractor shall diligently render to the Corporation and/or the City any assistance that they may reasonably require.

8.2.3 The Contractor shall report to the Corporation in writing within three business days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

8.3 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim for personal liability shall be made by the Contractor against any individual officer, agent or employee of the Corporation or the City related to anything done or omitted in connection with this Agreement and no claim shall be made by the Corporation against any individual, officer, agent or employee of the Contractor except in the case of fraud.

8.4 NOTICES

All notices or communications required or permitted to be given hereunder shall be in writing and if to the Corporation shall be sent to the attention of :George Davidson, Senior Director Clinical Information Systems, New York City Health and Hospitals Corporation, 33 Whitehall St, 29th Floor, New York, NY 10004, with a copy (which shall not constitute notice) to the attention of the General Counsel, 125 Worth Street, Room 527, New York, NY 10013. If the notice is to the Contractor, then it shall be sent to the address specified in this Agreement. Notices may be sent by hand delivery, the U.S. Postal Service certified mail return receipt requested or by nationally recognized courier next business day delivery. Notices shall be deemed given upon delivery if delivery is by hand, within three business days if sent by certified mail and on the next business day if sent by recognized courier with next business day delivery specified.

8.5 ALL LEGAL PROVISIONS DEEMED INCLUDED

Each and every provision of law required to be inserted in this Agreement shall be and is deemed to be inserted herein and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice from such omission to the rights of either party hereunder.

8.6 POLITICAL ACTIVITY

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

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

8.7 MODIFICATION; MERGER

This Agreement contains the entire understand of the parties with regard to the subject matter hereof and all prior or contemporaneous understandings or agreements are deemed to have been merged into this Agreement and may be modified by the parties only in writing. It may not be altered or modified orally.

8.8 SECTION HEADINGS

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

8.9 LIMITATION OF LIABILITY

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

8.10 SECTION 400.4: NEW YORK STATE HOSPITAL CODE

Pursuant to 10 NYCRR § 400.4 [a][1][4], notwithstanding any other provision in this Agreement, the Corporation remains responsible for ensuring that any service provided pursuant to

this Agreement complies with all pertinent provisions of federal, State and local statutes, rules, and regulations. This provision is limited by the requirements of the New York State Department of Health and is subject to 10 NYCRR § 405.2[i].

8.11 ACCESS TO RECORDS BY THE FEDERAL GOVERNMENT

Until the expiration of four years after the furnishing of the Services pursuant to this Agreement, the Contractor will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of this Agreement and any books, documents, records and other data of the Contractor that are necessary to certify the nature and extent of costs incurred by the Corporation for such services. The Contractor shall ensure that any subcontractor it uses in the performance of this Agreement similarly makes its books, records and other data available and will issue such a certification.

8.12 SURVIVAL

All representations, warranties, and indemnifications contained herein and all confidentiality provisions shall survive the termination of this Agreement.

ARTICLE 9 **EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE**

9.1 EXECUTIVE ORDER 50

9.1.1 The Contractor shall comply with Chapter 56 of the New York City Charter (formerly Mayor's Executive Order 50, dated April 25, 1980, as amended) ("E.E.O. 50") and the rules and regulations promulgated thereunder. This Agreement will not be effective unless the reporting requirements set forth below have been complied with in their entirety. The Contractor:

- a.** Will not engage in any unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, citizenship status, sexual orientation or affectional preference in all employment decisions including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, layoff and termination and all terms and conditions of employment except as provided by law;
- b.** When it subcontracts, it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status, citizenship status, sexual orientation, or affectional preference;

- c. Will state in all solicitations or advertisements for employees placed by or on behalf of the contract that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status, citizenship status, sexual orientation, or affectional preference or that it is an equal employment opportunity employer;
- 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
- e. Will furnish all information and reports, including an Employment Report, before the award of the contract which are required by E.O. 50 and the rules, regulations, and orders of the Director of the Corporation's Office of Equal Employment Opportunity (the "Director of the EEO Office"), and will permit access to its books, records and accounts by the EEO Office for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

- a. Disapproval of the Contractor;
- b. Suspension or termination of the contract;
- c. Declaring the Contractor in default; or
- d. An employment program.

9.1.3 The Director of the EEO Office may recommend to the Corporation that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 or the rules of the EEO Office to be non-responsible.

9.1.4 The Contractor shall include the provisions of the foregoing paragraphs in every subcontract or purchase order, in excess of \$50,000, using funds provided hereunder, to which it becomes a party unless exempted by E.O. 50 so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the EEO Office as a means of enforcing such provisions, including sanctions for non-compliance.

9.1.5 The Contractor shall refrain from entering into any contract or contract modifications subject to E.O. 50 and the rules and regulations promulgated thereunder with a

subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

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

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

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IN WITNESS WHEREOF, the parties have signed below as of the date first above written.

**NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION**

By: _____
Alan D. Aviles, Esq.
President

[CONTRACTOR'S NAME HERE]

By: _____
Name:
Title:
Contractor's Authorized Representative

Contractor's Federal Tax I.D. Number

APPROVED AS TO FINANCE:

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

APPROVED AS TO FORM:

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

APPROVED AS TO PROGRAM:

Senior Vice President/Chief Information Officer
New York City Health and Hospitals Corporation

APPENDIX A

CERTIFICATION BY BROKER

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

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized officer of broker]

BUSINESS ASSOCIATE AGREEMENT

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

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

The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

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

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

- a. **Disclosure for Management, Administration.** Business Associate may use or disclose PHI for proper management and administration of Business Associate as set forth in 45 C.F.R. § 164.504(e)(4). Business Associate shall take appropriate corrective action in the event any employee or workforce member uses or discloses PHI in contravention of this Agreement.
- b. **Disclosure to Third Parties for Performance of Agreement.** Business Associate may use or disclose the PHI in its possession to third parties for the purpose of performing its duties under the _____ Agreement and this Agreement. The third party shall provide written assurances of its confidential handling of such PHI, which shall include adherence to the

same restrictions and conditions on use and disclosure as apply to Business Associate herein.

- c. As Required by Law/Legal Process. Business Associate may use or disclose PHI to fulfill any present or future legal responsibilities of Business Associate, provided that the disclosures are (i) required by law, as defined in 45 C.F.R. § 164.103, or (ii) required to carry out the legal responsibilities of Business Associate, as provided in 45 C.F.R. § 164.504(e)(4). To the extent permitted by applicable law, prior to disclosing PHI as required by law to a law enforcement, regulatory, administrative, or oversight agency, or in response to a subpoena, court order, civil investigative demand, or other compulsory document or lawful process, Business Associate shall notify Covered Entity of such pending disclosure and provide reasonable time for Covered Entity to oppose such disclosure, should Covered Entity deem such opposition necessary.
- d. Aggregation of Data. Business Associate may aggregate the PHI in its possession with the PHI of other covered entities and provide Covered Entity with data analyses relating to the Health Care Operations of Covered Entity in accordance with 45 C.F.R. § 164.504 (e)(2)(i)(B). Under no circumstances may Business Associate disclose PHI of Covered Entity to any other party or covered entity pursuant to this section without the explicit authorization of Covered Entity.
- e. Use of De-identified Data. Business Associate may de-identify PHI and utilize de-identified PHI for purposes other than research, provided that Business Associate (i) de-identifies the PHI pursuant to the HIPAA requirements set out in 45 C.F.R. § 164.514(b) and (ii) provides Covered Entity with appropriate documentation if required by 45 C.F.R. § 164.514(b)(1)(ii). De-identified information does not constitute PHI and, with the exception of section 1.2(f) below, is not subject to the terms of this Agreement.
- f. Use of Data for Research Purposes. Business Associate agrees that it will obtain prior approval by Covered Entity for the use or disclosure of PHI or de-identified PHI for research purposes. Use or disclosure for research purposes that has not been approved by Covered Entity is strictly prohibited.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

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

PROTECTION OF PHI

- a. Report Unauthorized Use. Business Associate agrees to report to Covered Entity any use or disclosure of PHI by Business Associate or its third party agents in violation of this Agreement of which Business Associate becomes aware, and any remedial action to be taken by Business Associate with respect to such unauthorized use or disclosure. Business Associate shall make said report to the designated Privacy Officer of Covered Entity, in writing, within 5 days of having been made aware of the unauthorized use or disclosure.
- b. Safeguard PHI. Business Associate agrees to use commercially reasonable efforts to maintain the confidentiality and security of PHI regardless of media (including written, oral, and electronic) and to prevent unauthorized use or disclosure of such PHI by implementing and maintaining appropriate protection policies and procedures.

- c. Mitigate. Business Associate agrees to mitigate, to the extent possible and commercially reasonable, any deleterious effects from any unauthorized use or disclosure of PHI by Business Associate or its third party agents.
- d. Bind Subcontractors and Agents. Business Associate agrees to require all of its subcontractors and agents that receive, use, or have access to PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use or disclosure of PHI that apply to Business Associate pursuant to this Agreement.
- e. Minimum Necessary Disclosure. Prior to the Secretary's issuance of guidance on what constitutes "minimum necessary" for purposes of the HIPAA Regulations pursuant to 42 U.S.C. § 17935(b)(1), Business Associate agrees to disclose to its subcontractors, agents, or other third parties, and request from Covered Entity, only that PHI included in a Limited Data Set as that term is described in 45 C.F.R. § 164.514(e)(2), or, in the alternative if additional PHI is required, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder. Upon the effective date of the Secretary's guidance, Business Associate agrees to comply with said guidance in disclosing, and requesting from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- f. Return or Destroy. Subject to Section 3.4 below, within 30 days of the termination of this Agreement, Business Associate agrees to return to Covered Entity or destroy the PHI in its possession and retain no copies (which for purposes of this Agreement shall mean destruction of all backup tapes or other media).
- g. Breach Notification. In accordance with 42 U.S.C. § 17932(b)&(d) and 45 C.F.R. § 164.410, and subject to the possibility of delay afforded by 42 U.S.C. § 17932(g) and 45 C.F.R. § 164.412, Business Associate shall without unreasonable delay, and in no case later than 60 days after discovery by Business Associate thereof, notify Covered Entity of any breach of Covered Entity's unsecured PHI. If Business Associate is functioning as agent of Covered Entity within the federal common law of agency, Business Associate shall notify Covered Entity of any breach no later than 5 business days after discovery thereof by Business Associate. "Breach" as used in this paragraph shall have the meanings provided in 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402. If Business Associate determines that a breach has occurred, Business Associate shall provide Covered Entity with the rationale, and all documentation in support thereof, for its assessment of "significant risk of financial, reputational, or other harm to the individual," as provided in 45 C.F.R. § 164.402(1)(i). If Business Associate determines that a breach has **not** occurred, in that an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Regulations **has taken place**, and has been reported to Covered Entity as required by paragraph 2.1(a) of this Agreement, but has been determined by Business Associate **not to compromise the security or privacy of the PHI**, Business Associate shall nevertheless provide Covered Entity, within the applicable notification time period specified above, with the rationale, and all documentation in support thereof, for its assessment resulting in a finding of less than "significant risk of financial, reputational, or other harm to the individual," as provided in 45 C.F.R. § 164.402(1)(i). In the event of disagreement between the Parties as to whether or not a breach has occurred, the determination made by Covered Entity shall control.
- h. Business Associate to Bear Costs Related to Breach. Business Associate shall bear all costs related to its assessment of risk to determine whether Business Associate has had a breach of

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

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

SECURITY REQUIREMENTS

- j. Implement Safeguards. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- k. Bind Subcontractors and Agents. Business Associate agrees to require all of its subcontractors and agents to which it provides electronic PHI to agree, in writing, to implement reasonable and appropriate safeguards to protect such PHI.
- l. Report Security Incident. Business Associate agrees to report to Covered Entity any security incident involving PHI experienced by Business Associate or its subcontractors and agents of which Business Associate becomes aware, and any remedial or other action to be taken by Business Associate with respect to such incident. Business Associate shall make said report to the designated Privacy Officer of Covered Entity, in writing, within 5 days of having been made aware of the security incident.
- m. Application of HITECH Security Provisions. Pursuant to 42 U.S.C. § 17931, sections 164.308, 164.310, 164.312, and 164.316 of title 45 of the Code of Federal Regulations shall apply to Business Associate. Civil and criminal penalties may also apply to Business Associate in the case of any violation by Business Associate of the applicable security provisions of the Social Security Act, 42 U.S.C. §§ 1320d-5 & 1320d-6, and their implementing regulations.

ACCESS AND AVAILABILITY OF PHI

- n. Access for Viewing, Inspection, and Copying by Individual Subject of PHI. Business Associate agrees to make PHI maintained by Business Associate in a Designated Record Set available to Covered Entity for subsequent inspection and copying by the Individual subject thereof in accordance with applicable law (including, but not limited to, the HIPAA Regulations, 45 C.F.R. § 164.524).
- o. Amendment by Subject of PHI. Upon 10 days' written notice by Covered Entity, Business Associate agrees to make PHI maintained by Business Associate in a Designated Record Set available to Covered Entity for subsequent amendment by the Individual subject thereof and

incorporate any amendments to PHI in accordance with applicable law (including, but not limited to, the HIPAA Regulations, 45 C.F.R. § 164.526). Business Associate shall create a process to permit and document such amendments.

- p. Access by the U.S. Department of Health and Human Services (HHS). Subject to attorney-client and any other applicable legal privileges, and pursuant to 45 C.F.R. § 164.504 (e)(2)(ii)(H), Business Associate agrees to make available to the Secretary of HHS all records, books, agreements, policies, and procedures relating to the use or disclosure of PHI so that HHS may determine Covered Entity's compliance with the HIPAA Regulations. Subject to the legal privileges referred to above and as otherwise permitted by law, Business Associate shall, within 5 days of receipt of such request, notify Covered Entity of any request for access by HHS and shall provide Covered Entity with a copy of the HHS request for access and all materials to be disclosed pursuant thereto.
- q. Access for Accounting Purposes. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI. Business Associate agrees to provide to Covered Entity, within 10 days of receiving a request in writing therefrom, such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an Individual for an accounting of the disclosures of the Individual's PHI in accordance with 45 C.F.R. § 164.528.

QUALIFIED SERVICE ORGANIZATIONS PROVISIONS

- r. Business Associate Bound by 42 C.F.R. Part 2. Business Associate acknowledges that in receiving, storing, processing, or otherwise dealing with any "patient identifying information" or "records" as defined in 42 C.F.R. § 2.11, from an alcohol/drug abuse "program," as defined in 42 C.F.R. § 2.11, that is federally assisted in a manner described in 42 C.F.R. § 2.12(b), and that is operated by Covered Entity, Business Associate is fully bound by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.
- s. Judicial Proceedings to Obtain Records Covered by 42 C.F.R. Part 2. Business Associate agrees that it will resist in judicial proceedings any efforts to obtain access to "patient identifying information" or "records" as defined in 42 C.F.R. § 2.11 and as maintained by Business Associate, other than as permitted by the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

APPLICABILITY OF CERTAIN STATE CONFIDENTIALITY LAWS & REGULATIONS

- t. New York State Confidentiality Laws and Regulations. Business Associate agrees to comply with all applicable federal and state laws and regulations governing the confidentiality of information provided by Covered Entity including, without limitation, New York Public Health Law §§ 18 (Access to Patient Information) & 2780 *et seq.*; New York Mental Hygiene Law §§ 22.05 & 33.13; New York Civil Rights Law § 79-l; New York General Business Law §§ 399-dd (Confidentiality of Social Security Account Number), 399-h, & 899-aa; and chapter 5 of title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York.
- u. Breach Notification Under New York Law. Pursuant to New York General Business Law §

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

- v. Business Associate to Bear Costs Related to Breach. Notwithstanding any other provision of this Agreement to the contrary, Business Associate shall bear all costs related to its breach of private information under New York General Business Law § 899-aa, including any and all applicable damages or losses identified in New York General Business Law § 899-aa(6). In the event such breach has occurred, Business Associate shall reimburse Covered Entity for all costs incurred by Covered Entity directly related to providing the notice required by New York General Business Law § 899-aa(5), including if applicable, but not limited to: written notice, electronic notice, telephone notification, substitute notice, and notification to major statewide media.
- w. HIV Confidentiality Education and Training: Pursuant to New York State regulations, 10 NYCRR § 63.9(c), and to the extent that Business Associate has access to, uses, or creates confidential HIV-related information, as defined by New York Public Health Law § 2780(7), from or for Covered Entity, Business Associate agrees that only its employees, subcontractors, and agents who have received education and training on the confidentiality and disclosure requirements for confidential HIV related information shall have access to such information. Business Associate shall maintain documentation of such training and shall provide such documentation to Covered Entity upon request.
- x. Disposal of PHI Under New York Law. In the event Business Associate chooses to destroy the PHI in its possession in compliance with Section 2.1(f) of this Agreement, and PHI contains “personal identifying information” as defined in New York General Business Law § 399-h(1)(d), Business Associate shall dispose of such information in conformity with New York General Business Law § 399-h(2).

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

- a. Inform Business Associate of Changes in Privacy Notice. Upon request, Covered Entity agrees to furnish Business Associate with a copy of the Notice of Privacy Practices that Covered Entity provides to Individuals pursuant to 45 C.F.R. § 164.520 and to inform Business Associate of any subsequent changes thereto, if such changes affect Business Associate’s permitted or required uses and disclosures of PHI.
- b. Inform Business Associate of Changes in Authorizations. Covered Entity agrees to inform Business Associate of any changes in, or withdrawal of, any authorizations provided to Covered Entity by Individuals in accordance with 45 C.F.R. § 164.508 and pursuant to which Covered Entity has disclosed PHI to Business Associate, if such changes affect Business Associate’s permitted or required uses and disclosures of PHI.
- c. Inform Business Associate of Opt-out Election. Covered Entity agrees to inform Business Associate of any opt-outs exercised by any Individual from marketing or fundraising activities of Covered Entity pursuant to 45 C.F.R. § 164.514(f), if such opt-outs affect Business Associate’s permitted or required uses or disclosures of PHI.

- d. Notify Business Associate of Additional Limitations. Covered Entity agrees to notify Business Associate, in writing and in a timely manner, of any arrangements permitted or required of Covered Entity under 45 C.F.R. parts 160 and 164 that may affect in any manner the use or disclosure of PHI by Business Associate under this Agreement, including, but not limited to, restrictions on use or disclosure of PHI agreed to by Covered Entity as provided for in 45 C.F.R. § 164.522.
- e. Miscellaneous HITECH Provisions. Covered Entity acknowledges applicability of the additional privacy and security requirements imposed by the HITECH Act upon Covered Entity pursuant to 42 U.S.C. §§ 17921 *et seq.*

3. **TERM AND TERMINATION**

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

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

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

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

contained in this Agreement to subcontractors' or agents' use or disclosure of any PHI retained after termination of this Agreement, and to limit any further uses or disclosures to the purposes that make return or destruction of the PHI infeasible.

4. INDEMNIFICATION

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

5. MISCELLANEOUS

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

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

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

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

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

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

If to *Business Associate*, to:

Phone: Fax:

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

Phone: Fax:

If to *Covered Entity*, to:

Phone: Fax:

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

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

Each Party named above may change its address and that of its representative for notice by the giving

of notice thereof in the manner hereinabove provided.

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

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

5.9 **Governing Law.**

- a. Any action, claim, dispute, or litigation (each hereafter referred to as "action") regarding performance, non-performance, breach, or interpretation of this Agreement or otherwise arising out of or relating to this Agreement shall be governed by the laws of the State of New York.
- b. Any action of whatever nature commenced by or asserted against Covered Entity arising out of or relating to this Agreement shall be brought, heard, and determined exclusively in the City of New York, in the county within the City of New York in which the cause of action arose or, if the cause of action arose outside the City of New York, in the County of New York.
- c. If for any reason any action arising out of or related to this Agreement is removed from a court, the venue of which is described in paragraph 5.9 (b), to the jurisdiction of a court of the United States, such action shall be heard and determined exclusively in a court of the United States located in the State of New York and the County of New York.

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

**NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION**

By: _____

By: _____

Date:

ATTACHMENT “C”: IT SERVICE CATEGORY STAFF INFORMATION FORM

(All responses MUST use the format provided). One form must be completed and submitted for each category or sub-category proposed.

IT SERVICE CAT# _____

IT SERVICE CATEGORY NAME: _____

RFP#:

VENDOR: _____

STAFF #1:

Proposed Staff person's name: _____

1. Staff Experience

Offeror's description shall describe the breadth of the total years of experience for each individual staff for the subject IT Service Category to include any industry recognized tools, techniques, processes; or program languages; or software; database platform, operating system used that is **RELEVANT FOR THE CATEGORY** proposed.

DESCRIPTION:			
TOTAL YEARS OF EXPERIENCE:			
TOOLS, TECHNIQUES & PROCESSES:			
PROGRAM LANGUAGES	DATABASE PLATFORM	SOFTWARE	OPERATING SYSTEM

2. Education and Certification

Vendor shall indicate compliance with this requirement by listing the appropriate degrees, and certifications, granting authority, and completion dates on each of the proposed staff members.

Degree/Certification	Granting Authority	Completion Date (mm/yy)

ATTACHMENT “D”: VENDOR RESPONSE COST FORM

(The form may be printed in landscape format, on 8.5 x 11 paper, to allow additional room. All responses MUST use the format provided. If necessary, add additional rows).

RFP#:

VENDOR:_____

No. of IT Service Category	IT Service Category	Fixed Maximum Hourly <u>Rate</u> for the IT Service Category (Year One)	Fixed Maximum Hourly <u>Rate</u> for the IT Service Category (Year Two)
1	Computer Programming Services – Mainframe		
2	Computer Programming Services – Client Server		
3	Computer Programming Services – Web Applications		
4	IT Planning & Analysis Services		
5	IT Architect Services		
6	Database Management Services – SQL SERVER		
7	Database Management Services – DB2		
8	Database Management Services – ORACLE		
9	Database Management Services – CACHE		
10	Electronic Content Management Services (ECM) Systems		
11	Document Conversion Services – ECM Systems		
12	Technical Analyst - Lab		
13	Technical Analyst - PACS		
14	Help Desk Services		

No. of IT Service Category	IT Service Category	Fixed Maximum Hourly <u>Rate</u> for the IT Service Category (Year One)	Fixed Maximum Hourly <u>Rate</u> for the IT Service Category (Year Two)
15	System Administration Services		
16	IT Training Services		
17	Network Services		
18	IT Security Services		
19	Project Management Services		
20	Integration and Implementation Services		
21	Technical Writer/Documentation Services		
22	Server Engineers – AIX, VM, SAN, CISCO, VMX, UNIX, Linux		
23	Implementation Specialists		
24	Clinical Analysts		
25	**Other IT System Services		

** Must add a row for each proposed service for category “Other IT System Services” and provide the name of the service being proposed.

Vendor representative signature

Date signed

RFP#:

VENDOR:_____

No. of IT Service Category	IT Service Category	Fixed Maximum Hourly Rate for the IT Service Category (Renewal Option Year One)	Fixed Maximum Hourly Rate for the IT Service Category (Renewal Option Year Two)	Fixed Maximum Hourly Rate for the IT Service Category (Renewal Option Year Three)
1	Computer Programming Services – Mainframe			
2	Computer Programming Services – Client Server			
3	Computer Programming Services – Web Applications			
4	IT Planning & Analysis Services			
5	IT Architect Services			
6	Database Management Services – SQL SERVER			
7	Database Management Services – DB2			
8	Database Management Services – ORACLE			
9	Database Management Services – CACHE			
10	Electronic Content Management Services (ECM) Systems			
11	Document Conversion Services – ECM Systems			
12	Technical Analyst - Lab			
13	Technical Analyst - PACS			

No. of IT Service Category	IT Service Category	Fixed Maximum Hourly Rate for the IT Service Category (Renewal Option Year One)	Fixed Maximum Hourly Rate for the IT Service Category (Renewal Option Year Two)	Fixed Maximum Hourly Rate for the IT Service Category (Renewal Option Year Three)
14	Help Desk Services			
15	System Administration Services			
16	IT Training Services			
17	Network Services			
18	IT Security Services			
19	Project Management Services			
20	Integration and Implementation Services			
21	Technical Writer/Documentation Services			
22	Server Engineers – AIX, VM, SAN, CISCO, VMX, UNIX, Linux			
23	Implementation Specialists			
24	Clinical Analysts			
25	**Other IT System Services			

** Must add a row for each proposed service for category “Other IT System Services” and provide the name of the service being proposed.

Vendor representative signature

Date signed

