FPHNYC RFP #2026-06

Request for Proposals

Doula Billing Solution and Services

Date Issued: November 6, 2026

Submission Due Date: November 25, 2026

RELEASED BY:

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RFP Part 1: Overview

1.1 Summary Information

Solicitation Title: Doula Billing Solution and Services
Application Deadline: November 25, 2026
Expected Number of Awards: 1
Maximum Funding Amount: $100,000

All necessary information regarding the project and application process may be found in this Request for Proposals (RFP). Respondents may pose individual questions to FPHNYC and the NYC Health Department by e-mailing procurement@fphnyc.org with the subject line "Doula Billing Solution and Services."

1.2 Purpose

The Fund for Public Health in New York City (FPHNYC), on behalf of the New York City Department of Health and Mental Hygiene (NYC Health Department), is seeking proposals for a web-based billing solution inclusive of revenue cycle management (RCM) and other related services to support the development of a NYC Doula Billing Hub (the Hub). The goal of the Hub is to reduce administrative barriers that prevent community-based doulas who operate independently from successfully participating in Medicaid. The solution must be capable of supporting doulas throughout the process of enrolling in Medicaid, contracting with managed care organizations, documenting services, submitting claims, resolving billing issues, and tracking reimbursement.

The Health Department will use a phased approach to pilot and scale the Hub's technology and services. The intent of this RFP is to identify a solution with the capacity to scale across all phases of implementation. The Year 1 base scope is expected to support set up, implementation and piloting of the platform and related services with approximately 30 doulas. Services beyond the Year 1 pilot are not guaranteed. Any continuation or expansion is contingent on program need, available funding, satisfactory contractor performance, and ongoing strategic alignment with the Health Department's priorities.

For purposes of this RFP, the terms "respondents", "vendors" and "contractors" are used interchangeably. The use of the terms "shall", "must" and "will" are used interchangeably when describing the Vendor's/Respondent's duties.

1.3 Background

Since 2024, New York State's Medicaid program has reimbursed enrolled doulas for covered services. However, independent doulas face substantial administrative challenges related to enrollment, managed-care contracting, documentation, claims submission, payer requirements, denials, and payment reconciliation. The Hub will provide shared technology infrastructure as well as Revenue Cycle Management (RCM) services so participating doulas can spend less time navigating administrative processes and more time providing services.

Currently, many doulas are using a patchwork of electronic and non-electronic systems to manage this process, including clearinghouse websites (e.g., Availity, TriZetto), ePACES, and paper claims. Using a single technology platform through the Hub will streamline this process.

1.4 Project Approach

The project will be implemented in three phases:

Phase 1 (Core Implementation and Piloting): Phase 1 will focus on successfully executing core implementation, encompassing full system configuration and setup, followed by a structured pilot to validate system functionality. The system will be piloted with a select cohort of at least 30 doulas to evaluate usability, operational viability, outcomes, and scalability prior to committing to a larger rollout.

Transition to Phase 2 is contingent upon successful completion of Phase 1 and explicit sign-off by NYC Health Department leadership.

Phase 2 (CDI Expansion): Following a "Go" decision, the Hub will scale over a 2-year period to serve up to 300 independent doulas partnering with the Citywide Doula Initiative (CDI). This expansion is expected to begin in fiscal year 2028 (July 2027 – June 2028) with a target enrollment of 150 doulas, doubling to 300 doulas for fiscal year 2029 (July 2028 – June 2029).

Phase 3 (Citywide Scale-Up): Starting in June 2029, the Hub will transition to an open-access model available to any interested doula in New York City. This citywide expansion is projected to rapidly scale the network to an estimated uptake of 500 or more total doulas.

Respondents should propose a solution capable of supporting all three phases and describe how their technology, staffing, operations, and pricing would scale up as participation and claim volume increase.

1.4 About the Partners

The Fund for Public Health in New York City was created in 2002 as an independent nonprofit organization with the purpose of connecting the NYC Health Department to private sector partners and the greater philanthropic community. These collaborations raise funds to develop, test, and launch innovative initiatives that would otherwise not be possible, and when successful, can be scaled and replicated across the city and around the country. FPHNYC also provides expert implementation support and the administrative infrastructure for the Health Department to act quickly and flexibly to meet the public health needs of individuals, families, and communities across New York City. Since its founding, they have raised more than $500 million in public and private funding for over 440 projects.

The NYC Department of Health and Mental Hygiene works every day to protect and promote the health of New York City’s 8 million residents. With an annual budget of $1.6 billion and more than 6,000 employees throughout the five boroughs, the Health Department is one of the largest public health agencies in the world. It is also one of the nation’s oldest public health agencies, with more than 200 years of leadership in the field.

This project is spearheaded by the Citywide Doula Initiative (CDI) and NYC REACH, two programs of the NYC Department of Health and Mental Hygiene. The Citywide Doula Initiative (CDI) is a Health Department program that expands access to no-cost, culturally responsive doula services for New Yorkers in communities disproportionately affected by poor maternal health outcomes. The CDI partners with community-based doula organizations to connect pregnant and postpartum New Yorkers with doula support and will serve as a key partner in the Hub's implementation and expansion.

NYC REACH is the Health Department's provider engagement and technical assistance program, supporting healthcare providers and community-based organizations in improving care quality,

strengthening operations, and advancing health equity. NYC REACH leads the Doula Billing Hub's development and implementation, building on its existing work helping doulas navigate Medicaid enrollment and billing.

1.4 Funding and Timeline

Funding Information

It is FPHNYC's intent to award one (1) contract pursuant to this RFP. Initial authorization and funding will be limited to Phase 1 of the project, which carries a maximum term of one (1) year and a maximum budget of $100,000.

The award of a contract does not guarantee or legally obligate FPHNYC to fund, authorize, or execute any phases beyond Phase 1. Subsequent phases will be awarded based on satisfactory performance in the preceding stage, the continued availability of project funding, and the ongoing strategic alignment with the Health Department's priorities.

Schedule of Key Dates

The following timeline outlines key events related to the RFP process. All times are listed in Eastern Time. FPHNYC reserves the right to revise the schedule as necessary, and any amendments to the RFP, including this timeline, will be posted on FPHNYC's website (https://fphnyc.org/get-involved/requests-proposals/).

RFP Issue Date	November 6, 2026
Deadline for Written Questions	**November 16, 2026, at 11:59 p.m.**
Response to Questions Posted	November 18, 2026
Deadline for Proposals	**November 25, 2026, at 11:59 p.m.**
Notification of Finalists	On or about December 9, 2026
Demonstrations by Finalists	12/14/26-12/16/26
Notification of Selection	On or about December 21, 2026
Implementation	January-April 2027
Go Live (System Launch)	**April 2027**

RFP Inquiries, Written Questions and Answers

Questions and requests for clarification about this RFP must be submitted via e-mail to procurement@fphnyc.org with the subject line " Doula Billing Solution and Services." All such questions and inquiries must be received by the deadline listed in the table above. Any questions received after the deadline may not be answered.

Only authorized FPHNYC employees may discuss this RFP with Respondents before the proposal submission deadline. Contact regarding this RFP with any NYC Health Department personnel could result in disqualification.

All questions received and responses thereto will be posted on FPHNYC's website (https://www.fphnyc.org/get-involved/rfps/) on or about November 18, 2026.

Addenda to the RFP

If necessary, FPHNYC will issue addenda to amend conditions or requirements relating to the RFP. Any addenda to the RFP will be posted on the FPHNYC website: https://www.fphnyc.org/get-involved/rfps/. Respondents are encouraged to check the website prior to submitting their final proposal.

1.6 Contract Terms

The selected vendor will enter into an agreement with FPHNYC using the standard contract terms and conditions attached as Appendix A below. The selected vendor will also be required to sign the City's Cloud Services Agreement [Appendix B], AI Rider [Appendix C], and Business Associate Agreement [Appendix D]. As part of the application process, Respondents are required to: (1) certify that they have reviewed the agreements listed above, and (2) submit any requested exceptions or deviations for consideration. The selected vendor will be expected to accept the majority of the terms and conditions contained within these agreements. It should be noted that significant changes to the standard contract may be cause for rejection of a proposal.

Prior to signing the awarded contract, the selected vendor will be required to complete the following requirements:

- Have an active registration in the City's Payee Information Portal (PIP);
- Be fully enrolled ("filed") in the City's Procurement and Source Solutions Portal (PASSPort); and
- Provide proof of insurance coverage.

RFP Part 2: Scope of Work and Project Specifications

2.1 Scope of Work

The selected vendor will provide a unified, end-to-end solution that seamlessly integrates software and services to support provider enrollment and credentialing and full-service Revenue Cycle Management (RCM). The proposed solution must:

- Be an off-the-shelf billing system, offered as a Software as a Service (SaaS), Cloud-based application.
- Be simple, intuitive, and mobile-friendly, with web-based accessibility suitable for independent, community-based doulas.
- Meet agreed accessibility and usability standards.
- Be flexible and easily scalable for future expansion without replacement.

To minimize administrative burden for participating doulas, the solution must provide the following core capabilities:

1. Integrated Service Delivery
   - Provide a seamless workflow connecting enrollment, credentialing, documentation, claims submission, denial management, payment reconciliation, and reporting.
   - Minimize duplicate data entry and administrative tasks for participating doulas.
   - Coordinate all components of the solution, including any subcontractors, clearinghouses, resellers, or other third parties.
   - Provide a single point of accountability for successful delivery of the full scope of services, regardless of whether specific functions are performed by a subcontractor or third party.

2. Medicaid Enrollment and Managed Care Credentialing
   - Support doulas enrolling as NYS Medicaid providers, including prerequisite steps such as obtaining an NPI, with doula participation as appropriate.
   - Support enrollment and contracting with NYC-area Medicaid managed care organizations, including through individual provider contracts or affiliation with the vendor's existing group contracts, as applicable.
   - Maintain Medicaid and MCO enrollment and credentialing, including periodic recertification and other ongoing requirements.
   - Track enrollment and credentialing status and address issues that may prevent doulas from submitting claims.

3. Documentation and Claims Management
   - Offer configurable documentation templates aligned with applicable Medicaid and managed care requirements.
   - Capture and validate information required for billing, including checks for missing or potentially invalid information.
   - Provide eligibility verification capabilities or integrations
   - Review doula documentation for completeness and billing readiness and use this documentation to populate claims with all required information.

- Generate and electronically submit claims to NYS Medicaid and applicable MCOs, with ability to expand to other payers (e.g., private insurance plans, etc.) in the future
- Provide doulas with access to their own documentation, claim status, and payment information through appropriate privacy controls.
- Provide administrator access to doulas' documentation and claim information, with ability to export this information for integration with other DOHMH systems.

4. Claims Follow-Up and Payment Reconciliation
- Monitor claims and identify rejected, denied, delayed, or unpaid claims.
- Correct and resubmit claims as appropriate, including investigating denials, supporting appeals, and following up directly with payers, within timely filing deadlines.
- Receive and process electronic remittance advice (ERA), track claim status, and reconcile remittances against submitted claims.
- Identify and address payment discrepancies and escalate unresolved issues as needed.
- Identify recurring payer-specific billing problems and escalate systemic issues to DOHMH.
- Maintain documentation necessary to support billing compliance and audits.
- Establish clear service levels, turnaround times, and escalation procedures for resolving billing issues, including those requiring doula input.

5. Support for Independent Billing Providers

The Hub will support independent doulas who operate as distinct, individual business entities. The Hub will manage operational workflows without acting as the billing provider. Each participating doula will have their own National Provider Identifier (NPI), Tax Identification Number (TIN), Medicaid enrollment, managed care contracts, payer IDs, and electronic remittance arrangements. Therefore the solution must:
- Establish and maintain separate billing profiles and provider-specific configurations for participating doulas.
- Generate and submit claims under the appropriate individual provider credentials.
- Manage provider-specific payer enrollment, electronic claims submission, and ERA/EFT arrangements.
- Maintain appropriate separation of provider data, claims, remittances, and reporting.
- Efficiently onboard additional independent providers as the Hub expands.
- Provide responsive customer service directly to participating doulas.

6. Reporting, Security, and Scalability
- Provide Hub-level administrative dashboards and reports across participating doulas, payers, service types, claims, denials, reimbursements, and other relevant measures.
- Report on claim volume, clean-claim rate, denial rate and reasons, payment rate, days to payment, reimbursement, and other mutually agreed metrics.
- Support role-based access, audit trails, backup/recovery, HIPAA-compliant hosting, Business Associate Agreements, and applicable privacy and security safeguards.
- Provide data export and/or API capabilities sufficient to support reporting, data portability, and future integration needs; this should be available to administrators (for all documentation/claims) as well as individual doulas (including for use case where doula discontinues participation with the Hub and needs to take this information)
- Sign Business Associate Agreements with DOHMH (described further in Section 1.6 of this document) and each participating doula.

- Comply with citywide cybersecurity requirements including but not limited to cloud security review, software security assurance program (SSAP), application security scanning, and performance testing.

Project Management

The selected vendor shall assign a Project Manager dedicated and available for the entire duration of the project. The Project Manager will serve as the primary point of contact and work with the Health Department project team to coordinate all project meetings and activities. The selected vendor will also be responsible for:

- Participating in regularly scheduled status meetings with the Health Department project team.
- Maintaining an updated delivery plan, risk register, issues log and decisions log.
- Demonstrating completed work at status meetings.
- Escalating material delays, dependencies, security risks or other concerns promptly.
- Coordinating with DOHMH to monitor performance, identify opportunities for improvement, and refine workflows over time.

2.2 Implementation Timeline

An anticipated project timeline is provided to provide a sense of the scope of work. However, the Health Department recognizes that once a vendor is selected, the desired milestone dates may shift and a detailed project schedule will be developed in tandem to meet the Agency's timeline as best as possible.

Phase	Desired Date(s)	Phase Description
Project Initiation	January 2027	Establish project team, governance, workplan, milestones, and communication protocols. Conduct kickoff with FPHNYC and DOHMH.
Requirements Gathering & Workflow Development	February 2027	Finalize technology configuration, documentation and billing workflows, enrollment/credentialing processes, and reporting requirements.
Testing & Training	March 2027	Configure and test the integrated solution, resolve identified issues, and train participating doulas and Hub staff.
Go-Live & Deployment	April 2027	Launch the Hub with an initial cohort of at least 30 doulas. Provide onboarding, technical support, and active billing/claims management.
Pilot Evaluation and Scale-Up Planning	June 2027	Evaluate pilot performance against agreed-upon measures, identify needed improvements, and develop a scale-up plan to inform FPHNYC's decision about continuing to Phase 2.

Phase	Desired Date(s)	Phase Description
Phase 2 (Citywide Doula Initiative)	July 2027-June 2029	Expand Hub services, targeting 150 total participating doulas by June 2028 and 300 by June 2029. Maintain and enhance technology, billing operations, and support services.
Phase 3 (Open to all NYC doulas)	July 2029 - tbd	Expand Hub services to all doulas in NYC, targeting 500+ total participating doulas. Maintain and enhance technology, billing operations, and support services.

RFP Part 3: Proposal Preparation and Submission Instructions

3.1 Application Deadline

All applications must be received by FPHNYC no later than 11:59 p.m. Eastern Time, on November 25, 2026.

Late applications will not be accepted. It is the Respondent's sole responsibility to allow sufficient time to
address all potential delays caused by any reason whatsoever. FPHNYC will not be responsible for delays caused by computer or technology problems.

Acknowledgement of proposal receipt. FPHNYC will "reply all" to the email address that submitted the proposal to acknowledge receipt of your proposal within one business day of the receipt of a proposal.

3.2 Proposal Submission Instructions

Completed applications must be submitted via email to procurement@fphnyc.org with the following subject line: "Doula Billing Solution and Services."

All application materials and instructions can be found on FPHNYC's Request for Proposals (https://fphnyc.org/get-involved/requests-proposals/) web page.

Proposal contents must be sent as attachments to the e-mail (Applicants may not provide a link to the documents). Do not provide any materials that are not requested in this RFP, as such materials will not be considered nor evaluated. FPHNYC reserves the right to reject any application that does not meet these requirements.

3.3 Proposal Content

Proposals must include responses to all sections below and address all questions in each section in the order listed.

1. **Proposal Submittal Form (Attachment A)**

2. **Technical and Functional Capabilities Matrix (Attachment B)**

3. **NYC Cloud Vendor Security Questionnaire and Assessment (Attachment C)**

4. **Technical Proposal that contains the following:**
   A. Vendor Qualifications and Relevant Experience
   Provide a brief overview of the Respondent's qualifications and experience, including:
   - Products/services and the industries/clients served;
   - Experience with Medicaid billing and managed care (New York Medicaid experience should be identified where applicable);
   - Experience supporting doulas, community health workers, independent providers, or other community-based/non-clinical workforces. Where applicable, include experience supporting doulas participating in NYC-funded programs including the Citywide Doula Initiative, Healthy Start Brooklyn, and Healthy Women, Healthy Futures.

- Provide three (3) client references. Include the agency/company name and the name, title, and email address for point of contact. Respondents with prior experience supporting NYC-funded doula programs are encouraged to include at least one such program among their references.

B. Technical and Functional Capabilities

Provide an overview of the proposed solution's capabilities, including

- Key differentiating factors from other software solutions.
- Ways the software is aligned to meet the unique needs of doulas and reduce administrative burden for participating in Medicaid.
- Minimum hardware, network, and operating system requirements.
- Names and descriptions of any modules offered to meet the requirements, as well as any customization options and features available.
- End-to-end workflow from documentation through payment reconciliation, including how functions are divided among vendor/subcontractors/clearinghouses.
- Approach to supporting multiple independent NPIs/TINs and doula configurations.
- Statistics from your doula clients for the following:

	2025	2024	2023
Denial Rates			
Time-to-Payment			

C. Implementation Approach

Detail the vendor's approach to set-up and implementation, including all facets of the process. Information should include:

- Implementation plan; describe each phase, including major tasks and deliverables, timeline, and dependencies, including responsibilities of DOHMH/doulas/payers/other third parties. The NYC Health Department has a preferred go-live date of April 1, 2027, but if you cannot meet this deadline, please provide your proposed implementation timeline.
- Approach to project management, including general practices for communicating and coordinating with the Health Department's project team.
- Proposed staffing plan, including team leader and all key staff, areas of responsibility, and percentage of time to be dedicated to the project.
- Approach for scaling up in subsequent phases; include maximum supported provider/claim volume and any scalability limitations.

D. Training, Technical Support and Maintenance

Provide a detailed overview of the vendor's post-implementation support and maintenance services, including:

- Proposed training plan (technical, end-user, system administrator); include methodology, options, and resources;
- Process and timeframe for onboarding doulas;
- Support options (customer service/help desk model, hours of operation); response and resolution times; problem escalation procedures.

- Process for communicating and implementing software upgrades, patches, and other maintenance services.
- Any planned or in-process modifications or enhancements over the next 12 months, including the expected date of release.

5. Price Proposal (Attachment D)

RFP Part 4: Evaluation and Selection Process

4.1 Proposal Evaluation Criteria

Proposals will be reviewed and evaluated by a committee comprised of Health Department staff, as well as experienced New York City doulas. Below are the criteria that will be used by the review committee during the evaluation/review process. Please consider these criteria when preparing your proposal.

Vendor Qualifications and Relevant Experience	15%
Technical and Functional Capabilities	30%
Implementation Plan	10%
Training, Technical Support and Maintenance	10%
Price Proposal/Scalability	20%
Demonstration	15%

4.2 Review Process

All proposals shall undergo an initial administrative review to ensure compliance with basic eligibility criteria, documentation requirements, and submission deadlines. Failure to meet any minimum qualifications or submission requirements will result in a determination of non-responsiveness, and the proposal will be disqualified from further evaluation.

All responsive proposals will be evaluated and scored according to the criteria listed above. Each proposal will be scored by at least three reviewers utilizing a 100-point scale. The committee reserves the right, but is not obligated, to request clarifications, interviews, or oral presentations from any or all Respondents; consequently, proposals must be complete and reflect the most favorable terms at the time of submission. Upon completion of the evaluation, the committee will rank proposals according to their final weighted scores. The top-scoring vendors will be selected as short-listed finalists to advance to the final demonstration round.

A virtual demonstration will be required of the highest-ranking vendors based on the preliminary proposal evaluation. Each short-listed vendor will be provided with scripted scenarios to use to prepare for the demonstrations. Please note that demonstrations will be conducted from December 14 to December 16, 2026. Specific dates and times will be determined at a later date, but vendors should be prepared to conduct the demonstrations during this timeframe. It is expected that the proposed Project Manager will take part in the session.

4.3 Basis for Award

The final award decision shall be based upon the recommendations of the evaluation panel. Award will be made to the vendor whose proposal is determined to be the most advantageous to the Agency, taking into consideration the evaluation criteria listed above. Final award decisions may consider past contract performance (if Respondent has current contract(s) or had contracts within the last three years with FPHNYC and/or the City of New York) or reference/background checks for vendors without any prior or recent contracting relationship with FPHNYC and/or the City of New York.

4.4 Award Process

Each Respondent submitting a proposal will be notified in writing regarding the decision concerning their proposal. The contract resulting from this RFP will be held between the Fund for Public Health in

New York City, an independent 501(c) (3) not-for-profit organization, in its role as NYC Health Department's fiscal agent, and the selected Respondent(s). Any contract award will be subject to timely and successful completion of contract negotiations, demonstration of all required insurance coverage, and all other requirements of, and approvals by NYC Health Department and FPHNYC.

If FPHNYC is unable to negotiate a satisfactory contract with the highest-ranked respondent within a reasonable time, or if the highest ranked respondent deviates materially from the terms of the RFP, FPHNYC may terminate negotiations with the highest ranked respondent and begin contract negotiations with the next highest ranked respondent.

RFP Part 5: Disclaimers and General Provisions

The following are disclaimers and general provisions under the Fund for Public Health in New York City. The Respondent shall review each statement below to ensure capacity for compliance before submitting a proposal for consideration.

Right to Amend or Cancel this RFP, or Solicit a New RFP

FPHNYC may amend or cancel this RFP at any time, without any liability to FPHNYC and/or DOHMH. FPHNYC or DOHMH may solicit new requests for information and/or proposals regarding the services addressed in this RFP at any time.

Right to Reject Proposals

FPHNYC may reject any or all proposals received and may ask for further clarification or documentation. Submitted information that does not respond to all items in this RFP may be excluded from further consideration and alternative information packages may not be considered.

Insurance

Prior to the start of work, the selected Contractor shall procure and maintain in force at all times during the term of the agreement, insurance of the types and in the amounts set forth below:

I. Commercial General Liability: insurance to provide coverage for bodily injury and property damage, including damage to any facilities, equipment or vehicles, in limits of no less than $1,000,000 per occurrence $3,000,000 aggregate.
II. Professional Liability: if Contractor is providing professional services, Contractor shall obtain professional liability insurance, in limits of no less than $1,000,000 per occurrence and $2,000,000 aggregate;
III. Employers Liability: insurance to provide coverage for the acts and omissions of Contractor's employees in limits of no less than $1,000,000 per accident;
IV. Workers' Compensation: workers' compensation and disability insurance as required by the applicable New York State law.
V. Commercial Auto: if Contractor plans to use any vehicles in the performance of services under the agreement, Contractor shall obtain commercial auto coverage for all owned, non-owned, and hired vehicles, written on a form at least as broad as ISO form CA 00 01, with minimum limits of $1,000,000 per accident.
VI. Excess Umbrella Liability: in the event that Contractor's insurance policy(s) does not meet the limits stated above.

Contractor shall maintain on file with FPHNY current Certificates of Insurance for the above referenced policies, listing FPHNY and the City as Additional Insureds for General Liability policies and as Certificate Holders for all other required insurance.

NYC Vendor Registration

This project is being supported, in part, with funding from the NYC Health Department, which requires that vendors register in the City's Payee Information Portal (PIP) and enroll in the Procurement and Sourcing Solutions Portal (PASSPort), the City's end-to-end procurement platform. It is ***strongly*** recommended that vendors create a PIP account before enrolling in PASSPort. To get started, see the learning resources listed in the Getting Started in PIP section of the PIP homepage. To learn how to create a PASSPort account, please visit the PASSPort Resources Library.

Proposal Costs
The Respondent will be solely responsible for any costs incurred in preparing, delivering, or presenting responses to this RFP. Respondents will not be reimbursed for any costs incurred in preparing proposals.

Fulfillment of Requirements
By submitting an information package, the Respondent acknowledges that they have read and understands this RFP and can fulfill all requirements.

Submitted Information
Once submitted, responses will be the property of FPHNYC and will not be returned.

DEFINITION OF WORDS AND ACRONYMS APPLICABLE TO THE RFP

API: Application Programming Interface

CDI: Citywide Doula Initiative

EFT: Electronic Funds Transfer

ERA: Electronic Remittance Advice

HIPAA: Health Insurance Portability and Accountability Act

MCO: Managed Care Organization

NPI: National Provider Identifier

NYS: New York State

RCM: Revenue Cycle Management

TIN: Taxpayer Identification Number

APPENDIX A
FPHNYC Standard Service Agreement

FPHNYC STANDARD SERVICES AGREEMENT

TERMS AND CONDITIONS

I. DEFINITIONS

A. Advance: Funds paid in advance to the Contractor and before any work begins pursuant to the Agreement. An advance must be agreed to by the Parties before the execution of the Agreement.

B. City: The City of New York.

C. Contract Amount: The amount indicated on the Summary and Signature Page as the total value which will be paid to the Contractor under this Agreement.

D. Contractor: The Party to the Agreement who is providing services.

E. DOHMH: The New York City Department of Health and Mental Hygiene for whose benefit this Agreement is made and who is a third-party beneficiary under this Agreement.

F. DOHMH Special Projects Agreement: An agreement between the City, acting by and through DOHMH, pursuant to which, FPHNY has agreed to provide to DOHMH services, on a requirements basis, in connection with various health projects. To assist DOHMH, FPHNY is authorized to contract with certain contractors to support the projects of DOHMH.

G. Debarment: When a Contractor or Permitted Subcontractor is barred from being a government contractor, or subcontractor, by any unit of the federal, state, or local government program.

H. Early Termination: Termination before the End Date.

I. Effective Date: The date the Agreement starts and becomes effective as indicated on the Summary and Signature Page of the Agreement.

J. End Date: The date listed on the Summary and Signature Page as the date on which the Agreement ends.

K. Exclusion: A Contractor or Permitted Subcontractor is excluded from participation in, or otherwise sanctioned by Medicare, Medicaid, or any other federal, state, or local government program.

L. Fee Schedule: The Schedule of Deliverables and Compensation set forth in Appendix B to the Agreement outlining for what and when FPHNY will pay Contractor.

M. FPHNY: Fund for Public Health in New York, Inc. a non-profit corporation exempt from taxation under Section 501(C)(3) of the Internal Revenue Code, which was formed for the purpose of soliciting, administering, and receiving funds and using such funds to assist the DOHMH to fulfill its mission.

N. Permitted Subcontractor: A subcontractor who contracts with the Contractor to provide services or complete deliverables under this Agreement and has been approved by FPHNY and DOHMH.

O. Project: The project identified on the Summary and Signature Page of the Agreement.

P. **Services:** The services and/or deliverables, outlined in the Scope of Work, which the Contractor is to complete under this Agreement.

Q. **Suspension:** A Contractor or Permitted Subcontractor is suspended from participation in, or otherwise, sanctioned by Medicare, Medicaid or any other federal, state, or local government program.

II. TERM AND TERMINATION

A. **Term:** This Agreement shall commence on the Effective Date and shall continue in force until the End Date, except if terminated sooner in accordance with the terms of the Agreement. Notwithstanding the foregoing, FPHNY, may, in consultation with the Contractor, extend the term and appoint a new End Date for Contractor's performance of this Agreement.

B. **Termination for Convenience:** FPHNY has the right to terminate this Agreement, in whole, or in part, before the End Date, without cause, provided that it notifies the Contractor thirty (30) days before the effective date of the Termination.

C. **Right of Termination for Cause:** FPHNY may terminate this Agreement immediately if: (1) FPHNY has a good faith and reasonable belief that funds paid pursuant to this Agreement have been or will be misappropriated; (2) Contractor has failed to perform at all under the Agreement or has notified FPHNY that it will not fulfill any further obligations under the Agreement; (3) Contractor or a Permitted Subcontractor fail to maintain insurance coverage as required under this Agreement; and (4) in accordance with the procedure set forth in Section VII of the Agreement, the Contractor or Permitted Contractor are subject to Debarment, Exclusion and Suspension. If the Contractor breaches any other Section of the Agreement and such breach is not cured within ten (10) days of FPHNY's notice to the Contractor ("Notice Period"), the Agreement will be immediately terminated after the Notice Period.

D. **Effect of Early Termination:** Upon termination of the Agreement pursuant to paragraphs B and C of this Section, Contractor shall immediately cease the provision of the Services and shall, within ten (10) days of FPHNY's request, return to FPHNY all FPHNY equipment, materials, and supplies within the possession or control of Contractor as required by paragraph H of Section III of this Agreement. Additionally, Contractor shall not incur any further obligation pursuant to the Agreement beyond the Early Termination Date. Any obligation incurred by Contractor on account of this Agreement prior to receipt of the notice of termination and falling due after termination shall be paid in accordance with the terms of this Agreement.

E. **Close-out Procedures:** Upon the End Date, or the Early Termination of the Agreement, Contractor shall comply with FPHNY's close-out procedures, including, but not limited to:

1) submitting within thirty (30) days of the End Date a final invoice for all services that are completed under the Agreement terms and conditions;

2) accounting for and refunding to FPHNY, within thirty (30) days, any excess payments that were made to the Contractor pursuant to the Agreement;

3) furnishing to FPHNY, within thirty (30) days, an inventory of all equipment, appurtenances and property purchased through this Agreement on behalf of FPHNY or DOHMH as provided for herein;

4) turning over to FPHNY, upon request, within thirty (30) days all books, records, documents, and material specifically relating to this Agreement; and

5) confirming the completion of the processes set forth in 1 through 4 above.

III. CONSIDERATION AND PAYMENT

A. Total Compensation: The Contract Amount is $[CONTRACT AMOUNT]. Payments will be made in installments based on deliverables in accordance with the Fee Schedule.

B. Invoices

1. Submission of Invoices:
Contractor shall submit invoices to FPHNY no later than 30 days following completion of each milestone and/or all costs incurred as part of the Services rendered as specified in the Fee Schedule. Contractor shall submit a final invoice to FPHNY no later than the final day of the month following the End Date or Early Termination of the Agreement.

2. Form of Invoices: FPHNY shall approve the invoices in consultation with DOHMH and shall identify the type and quantity of each deliverable and/or item of cost and overall costs and fees claimed in accordance with the Fee Schedule. The invoices shall be accompanied by supporting documentation providing proof of performances of Services as specified in Appendices A and B and any other supporting documentation deemed necessary by FPHNY. FPHNY shall review the invoices and supporting documentation as required and may disallow for payment any costs or fees claimed which were for Services not rendered, documented and/or authorized in accordance with this Agreement, or for failure to deliver any required service, deliverable or work product.

3. Payments: FPHNY shall pay Contractor for costs and/or fees claimed on invoices submitted to it in accordance with the Fee Schedule, provided that the Contractor has submitted to FPHNY a duly executed Form W-9 and has complied with this paragraph B of Section III. All payments hereunder shall be made by Electronic Funds Transfer ("EFT"). Before any payment is made to Contractor, it shall provide FPHNY with the information necessary, including but not limited to, Contractor's banking information to make the EFT. If the Contractor's banking information should change during the term of the Agreement, it shall promptly notify FPHNY. Failure to provide the information or any change of information, will result in a delay of payment to the Contractor.

C. Subject to the Availability of Funds: This Agreement is subject to the availability of funds and all approvals required by DOHMH. FPHNY shall notify Contractor, in writing, of any modification, payments, delays, or cancellations of said funds and shall modify the Agreement accordingly.

D. Use of Payment(s): Reimbursement or payments made under this Agreement shall be deposited within (90) days of the issuance of the check.

E. No Duplicative Reimbursement: Contractor shall not seek nor be paid for services, deliverables or costs provided for under this Agreement if Contractor has received or is reasonably likely to receive payments for such services, deliverables or costs from another source, including, but not limited to client fees, private insurance, public donations, grants, legislative funding from units of government, or any other source.

SAMPLE

F. **Erroneous Payments**: Contractor shall immediately return to FPHNY any payments made to Contractor to which it is not entitled.

G. **Equipment**: All equipment with a purchase price of $5,000 or more, the cost of which is reimbursed in whole or in part from Agreement funds or which is provided by FPHNY to Contractor for use on the Project, shall be deemed to be property of the City of New York and shall be used as far as practicable by Contractor for the purpose of carrying out the intent of this Agreement and shall not be available for the general use of Contractor. Contractor shall properly maintain and keep in good repair all such equipment and shall maintain at all times a complete inventory of all such equipment, including a description of the item and a clear record of its location, serial number, date of purchase, and purchase price. Contractor shall submit a copy of said inventory to FPHNY promptly following a request by FPHNY. Upon termination of this Agreement, Contractor shall dispose of all such equipment in the manner directed by FPHNY and shall maintain detailed records concerning such disposition.

IV. RECORD KEEPING, INSPECTION AND INVESTIGATION

A. Maintenance of Books and Records.

1. Contractor shall maintain complete and accurate books and records supporting all payments made under this Agreement. Contractor shall keep such books and records in accordance with generally accepted accounting principles. Such records may include, but are not limited to, bank statements, canceled checks, bills, receipts, employee timecards, requests for payment and deposit slips relating to all financial accounts and transactions. The expenditures and receipts shall be segregated on the books of Contractor.

2. For six (6) years after the End Date, or sooner termination of this Agreement, Contractor shall maintain copies of all financial and work reports, evaluation surveys and audits which reflect all Services rendered hereunder and fiscal accountability for all monies appropriated and spent thereby, all training and curricula materials (if any) prepared or compiled in connection with Services provided under this Agreement, and all attendance sheets and training rosters collected and prepared in connection with all trainings and activities (if any) held pursuant to this Agreement.

3. Contractor shall make such books, financial documentation, records, reports, surveys, audits, materials, and other documents available at all reasonable times during the performance period of this Agreement and for six (6) years after the End Date or sooner termination of this Agreement or, in the case of an ongoing audit that encompasses the Services provided under this Agreements by federal, state or local authorities, for six (6) years after completion of the audit, for inspection and/or audit by FPHNY, DOHMH, the City or their agents, and other federal, state or local governmental agencies, as necessary. FPHNY, DOHMH, the City or their agents, and other federal, state, or local governmental agencies will determine the scope and protocol of all inspections and audits, based on a review of any materials they consider reasonably necessary, and Contractor shall assist and cooperate in relation to such inspections and audits.

B. **Evaluation:** Contractor shall cooperate fully with FPHNY and DOHMH regarding the evaluation of Services provided hereunder and will advise and consult with employees and office.

C. **Inspections:** FPHNY, DOHMH or their designated agents, shall have the right at any time, given reasonable notice, to inspect the site(s) where Services are performed, to inspect the materials and curricula (if any) used by Contractor in connection with the provision of Services under this

Agreement, and to attend any and all trainings, drills, tests, and activities (if any) organized or sponsored by Contractor pursuant to this Agreement. Contractor shall render all assistance and cooperation to FPHNY, DOHMH, or their designated agents, in making such inspections and shall assure FPHNY, DOHMH, and their designated agents, ready access to such site(s), materials, curricula, trainings, drills, tests, and activities, and all medical, financial, or other records and reports relating to Services provided hereunder.

D. Investigations Clause: The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to this Agreement or the DOHMH Special Projects Agreement. By signing this Agreement, the Contractor agrees to be fully bound by the "Investigations Clause" contained in the DOHMH Special Projects Agreement, which is hereby made part of this Agreement and incorporated herein by reference, as if such Contractor were a party or any of the parties, persons or entities therein described.

V. CONFIDENTIALITY AND PRIVACY

A. General Compliance: Contractor shall comply with all federal, state, and local laws, rules and regulations pertaining to confidentiality, privacy, and security of information received, generated, used, or held by Contractor while performing under this Agreement.

B. Confidential Information: As used in this Agreement, "Confidential Information" shall mean information disclosed to, or known to, Contractor in connection with the Services provided pursuant to the Agreement, and the methods, business plans, databases, systems, technology, intellectual property, know-how management, development, operations, products, processes, and data relating to research, development, inventions, recommendations, programs, systems, systems analyses, finances, financial statements, financial projections, financing methods, fine collection, methods and strategies, sources, systems designs, personal information identifying any individual, or de-identified information which could lead to the identification of any individual and which was furnished as part of dataset provided to the Contractor in connection with this Agreement, terms and conditions of arrangements of any government system relating to secure information transfers, as well as reports, information lists, which Contractor knows or should have known to be confidential. All information disclosed to a party or to which a party has access to in connection with performing Services, for which there is a reasonable basis to be believed is, or which appears to be treated by the disclosing party as, Confidential Information, shall be presumed to be Confidential Information under this Agreement. The existence or occurrence of any meetings or discussions between the parties related to in any manner to the Confidential Information will also be considered Confidential Information and will not be disclosed to any third party, except as may be required by law or in any legal proceedings.

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Contractor agrees, at all times, to regard and preserve as confidential such Confidential Information, and to refrain from publishing or disclosing any part of such Confidential Information or from using it, except as provided pursuant to the terms and conditions of this Agreement, or with the express written consent of FPHNY or the person to whom such information pertains, or except as otherwise authorized by applicable Laws. Contractor shall require any person, including, but not limited to, all agents, employees, or volunteers, performing Services on behalf of Contractor under this Agreement to do the same. In the event that Contractor receives a request to produce Confidential Information pursuant to an order of a court of competent jurisdiction or a facially valid administrative, Congressional, state or local legislative or other subpoena, or believes Contractor is otherwise required by law to disclose Confidential Information, then Contractor shall promptly notify FPHNY prior to making such disclosure, and shall afford FPHNY, or other owner of the Confidential Information, the opportunity to challenge or otherwise lawfully seek limits upon such disclosure of Confidential Information.

C. **City/DOHMH Information**: All documents of any nature pertaining to the activities of the City and DOHMH that include any Confidential Information, in Contractor's possession now or at any time during DOHMH's evaluation of any services provided, or to be provided hereunder, including, without limitation, memoranda, notebooks, notes, data sheets, records, and DOHMH computers, software programs, are and shall be exclusively property of the City and that all copies thereof shall be surrendered to DOHMH, or its designee, upon such party's request.

D. **Patient Health Information**: All medical or mental health information identifiable to a person received by Contractor while performing Services under this Agreement shall be kept confidential and shall not be used or disclosed except as permitted by an applicable law and, where permitted by law, such use or disclosure shall be undertaken in strict compliance with Contractor's policies regarding the use or disclosure of such information. Contractor represents and warrants that its policies regarding use and disclosure of patient information are compliant with all applicable state, federal, and local laws, including, but not limited to, New York State Laws and the federal Health Insurance Portability and Accountability Act of 1996.

VI. LITERATURE

A. **Approvals:** Contractor shall submit to DOHMH the final draft copy of any written material, educational material, curricula, publication, report, manual, survey, test, brochure, flyer, pamphlet, questionnaire, or video developed by it under this Agreement, ("Material") as applicable, for review and approval prior to printing. DOHMH will respond in writing to Contractor within twenty (20) business days indicating approval or need for modification of the submitted material. Should this response indicate need for modification, specific written guidance will be given to Contractor. Contractor shall make the modifications as indicated by DOHMH and resubmit the material for DOHMH's final approval. The format and content of educational programs (if any) will also be subject to the approval provision of this paragraph.

B. **Copyright Ownership:** All Material shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C Section 101, and the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might subsist. To the extent that the Material does not qualify as "work-made-for-hire," Contractor hereby irrevocably transfers, assigns, and conveys exclusive copyright ownership in and to the Material to the City, free and clear of any liens, claims or other encumbrances.

C. Technology/Software Licensing: In the event that, for the provision of Services under this Agreement, Contractor requires the use of any technology, software or systems belonging to, or licensed to, FPHNY or the City, then such use is permitted only to the extent necessary for Contractor's performance under this Agreement, and only for so long as this Agreement is in force, and such permission shall immediately terminate on the expiration or sooner termination of this Agreement.

VII. INSURANCE

A. Types of Insurance: As applicable, during the term of this Agreement, Contractor, shall continuously maintain and cause its subcontractors to continuously maintain, the following types of insurance, as applicable:

1. Comprehensive General Liability: Insurance to provide coverage for bodily injury, property damage, including damage to any facilities, equipment or vehicles, and personal and advertising injury, in limits of no less than $1,000,000 per occurrence and $2,000,000 aggregate;
2. Professional Liability: Insurance to provide coverage for professional services, including, but not limited to, (1) medical malpractice for negligent acts or omissions of Contractor or Contractor's agents, representatives, employees in the performance of professional health care or nursing services; or (2) any other professional services in limits of no less than $1,000,000 per occurrence and $3,000,000 aggregate;
3. Employers Liability: Insurance to provide coverage for the acts and omissions of Contractor's employees in limits of no less than $1,000,000 per accident; and
4. Workers' Compensation: Workers' compensation and disability insurance as required by the applicable New York State law.
5. Excess Umbrella Liability: In the event that Contractor's insurance policy(s) does not meet the limits stated above, an excess liability policy must be purchased.

B. Certificates of Insurance: Contractor shall maintain on file with FPHNY current Certificates of Insurance for the above referenced policies, listing FPHNY and the City as Additional Insureds for General Liability policies and as Certificate Holders for all other required insurance. The limits for all types of coverage that shall be provided to FPHNY and the City as additional insureds shall be the greater of (i) the minimum limits set forth in Paragraph A of this Section or (ii) the limits provided to the Contractor as named insured under all primary, excess or umbrella policies for that type of coverage.

C. Material Breach: Failure to maintain the requisite insurance listed in paragraph A of this Section shall constitute a material breach of this Agreement subject to immediate termination in accordance with paragraph C of Section II of this Agreement.

D. Obligation to Indemnify: Contractor's insurance obligations, are in addition to and separate from, its obligations to defend and indemnify FPHNY and the City and their respective officials and employees as provided in Section VIII of this Agreement.

VIII. INDEMNIFICATION

A. General Indemnification: Contractor shall be solely responsible for all injuries or death to its agents, servants, or employees, or to any other person, or damage to any property sustained in connection

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with the rendering of Services pursuant to this Agreement, resulting from any act or omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors. To the fullest extent allowable by law, Contractor shall indemnify, defend, and hold harmless FPHNY and the City, including their respective officials and employees from claims (even if the allegations of the claims are without merit), judgments for damages on account of injuries or death to any person or damage to any property, and costs and expenses to which FPHNY, the City, or their respective officials and employees may suffer or incur allegedly arising out of any of the operations the Contractor to the extent arising from any negligent act of commission or omission, intentional tortious act, and/or failure to comply with the law or with the requirements of this Agreement. Insofar as the facts or law relating to any of the foregoing would preclude FPHNY, the City or their respective officials or employees from being completely indemnified by the Contractor, FPHNY, the City, and their respective officials and employees shall be indemnified to the fullest extent permitted by law.

B. Indemnification for Infringement: To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless FPHNY, the City of New York, and their respective officials and employees against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which FPHNY or the City or their respective officials and employees may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless FPHNY, the City, and their respective officials and employees regardless of whether or not the alleged infringement, violation or unauthorized use arises out of compliance with the Agreement's Scope of Work. Insofar as the facts or law relating to any of the foregoing would preclude FPHNY, the City, or their respective officials and employees from being completely indemnified by the Contractor, FPHNY, the City, and their respective officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by law.

IX. DOHMH RIGHTS AND REQUIREMENTS

A. DOHMH Special Projects Agreement: The Contractor acknowledges that FPHNY, pursuant to the Special Projects Agreement with the City, is authorized to contract with Contractor for the Services outlined in Appendix A. Contractor further acknowledges that DOHMH is a third-party beneficiary under this Agreement and has enforcement rights hereunder. The Contractor also acknowledges and agrees that the City has certain requirements to which the Contractor must adhere, and which are included in this Agreement and its Appendices.

B. Terms of DOHMH Special Projects Agreement: Contractor agrees that (i) nothing contained herein shall impair the rights of the City, (ii) nothing contained herein, shall create any contractual relationship between Contractor and the City, and (iii) Contractor specifically agrees to be bound by Section 4.05(D) ("E.O. 50- Equal Opportunity in Employment") and Article 5 of Appendix A of the DOHMH Special Projects Agreement ("Record Keeping, Investigations and Inspection"), included in Appendix D hereto, and agrees that the City may enforce such provisions directly against Contractor as if the City were a party to this Agreement. Some of these terms are included in Section IV and XI of this Agreement but are more fully set forth in Appendix D and are enforceable by the City and FPHNY.

X. CERTIFICATIONS OF ELIGIBILITY TO CONTRACT

A. No Exclusion:

1. At the time of the execution of this Agreement, Contractor certifies, that neither it, nor Contractor's employees or Permitted Subcontractors have been excluded from participation been subject to Debarment, Exclusion, or Suspension by any unit of the federal, state, or local government.

2. If during the term of this Agreement, the Contractor, its employees, or Permitted Subcontractors are subject to Exclusion, Debarment or Suspension, it will notify FPHNY immediately of such Exclusion, Debarment, or Suspension. All work being performed pursuant to this Agreement shall cease, and the Agreement shall terminate immediately. If FPHNY discovers the Exclusion, Debarment, or Suspension on its own, without notification from the Contractor, and Contractor believes that the Debarment, Exclusion, or Suspension is an error, the Contractor shall notify FPHNY immediately in writing. The Contractor will have thirty (30) days to provide evidence of the error. During this thirty (30) day period, all work being performed pursuant to this Agreement shall cease. If the Contractor provides evidence of the error, work performed under the Agreement may resume. If no such evidence is provided, the Agreement shall terminate at the end of the (30) day period.

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

C. **Lobbying Restrictions:** Contractor warrants and represents that funds paid under this Agreement will not be used, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State or local legislature, including city councils, or ballot initiatives or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government. The Contractor further warrants and represents that no part of the funds paid under this Agreement will be used to pay the salary or expenses related to any activity designed to influence legislation, appropriations, regulation, administrative action, or Executive order pending or proposed before the Congress or any State or local legislature or city council.

Any activity designed to influence action in regard to a particular piece of pending legislation would be considered "lobbying". That is lobbying for or against pending legislation, as well as indirect or "grass roots" lobbying efforts that are directed at inducing members of the public to contact their elected representatives at the federal, state or local levels to urge support of, or opposition to, pending legislative proposals is prohibited.

XI. NON-DISCRIMINATION IN EMPLOYMENT

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A. **General Compliance:** To the extent required by law, the Contractor shall not unlawfully discriminate against any employee, or applicant for employment because of actual or expression of gender, sexual orientation, height, weight, status as a victim of domestic violence, stalking and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy childbirth or related medical condition, disability, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by the City, State or federal laws, rules and regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or related to medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion. Most specifically, in accordance with this Section IX, paragraph B, Contractor must fully comply with City Executive Order No. 50 (E.O. 50), fully set forth in Appendix D to this Agreement.

B. **Whistleblower Protection Expansion Act:** The Contractor shall comply with the provisions of the Whistleblower Protection Expansion Act, in accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code and outlined in the Whistleblower Protection Expansion Rider annexed to this Agreement as Appendix C.

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XII. DISPUTE RESOLUTION

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

B. **Choice of Law:** This Agreement and all disputes arising out of this Agreement shall be interpreted and decided in accordance with the laws of the State of New York, without regard to conflict of law rules.

C. **Timing of Action:** No action shall be instituted or maintained on any such claim unless such action shall be commenced within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

D. **Injunctive Relief:** Contractor acknowledges and agrees that, in the event of Contractor's breach of any part of Section IV or Section V hereof, money damages will be difficult to quantify and will not appropriately compensate FPHNY and/or the City for Contractor's breach, and, therefore, FPHNY and/or the City (as applicable) may seek to enjoin any breach of the provisions of Section IV and Section V hereof in any court of competent jurisdiction.

E. **Resolution of Disputes:** Except as set forth in paragraph B of this Section, the Parties will attempt in good faith to negotiate a resolution of any dispute arising out of or relating to this Agreement. If applicable, resolutions of disputes hereunder shall be subject to the terms of the DOHMH Special Projects Agreement in respect of FPHNY's rights to resolve disputes with the City and/or DOHMH.

XIII. MISCELLANEOUS

A. No Publicity: Contractor shall not give any interviews, issue any press releases, or otherwise disclose any information whatsoever about this Project and this Agreement without the prior written consent of FPHNY. Contractor will cause its officers, employees, consultants, agents, and representatives to observe the no publicity requirements of the foregoing provision.

B. Licensure and Professional Qualifications: Contractor shall ensure that all persons, independent contractors, and staff performing Services pursuant to this Agreement are qualified to perform such Services and maintain any required licenses and certifications throughout the term of the Agreement.

C. Collaboration; Network: If, pursuant to this Agreement, Contractor is receiving funds on behalf of other corporate entities, whether affiliated within the same health system as Contractor or unaffiliated, and disbursing such funds to such other corporate entities to compensate them for their participation in the Project and/or for the rendering of Services, then Contractor will assure that each such corporate entity complies with and abides by the terms and conditions of this Agreement, to the extent that such corporate entity performs Services and receives funds under this Agreement. In addition, Contractor represents and warrants that each corporate entity that performs Services and receives funds under this Agreement is eligible to receive funds and shall obtain and maintain, continuously during the term of this Agreement, insurance coverage at the levels required by Section VII, as if they were a subcontractor of Contractor. The other corporate entities referred to in this paragraph shall not be entitled to initiate or maintain any legal claims against FPHNY or the City to enforce any terms of this Agreement. The failure of any such corporate entity to perform will be no defense for Contractor's failure to perform fully its own obligations, and Contractor remains fully responsible for all actions taken pursuant to the delivery of Services under, and the performance of, its obligations under this Agreement.

D. Independent Contractor Status: Contractor and FPHNY agree that Contractor is an independent contractor, and not an employee of FPHNY or the City, and that in accordance with such status as an independent contractor, Contractor covenants and agrees that neither it nor its employees nor its agents will hold themselves out as, nor claim to be, officers or employees of FPHNY or the City, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of FPHNY or the City, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee benefits, retirement membership or credit.

E. Employees of Contractor: Contractor represents and warrants that all experts or consultants or employees of Contractor who are employed or engaged by Contractor to perform Services under this Agreement will not be employees of FPHNY or the City and will not otherwise be under contract to FPHNY or the City. Contractor alone shall be responsible for the consultants' or employees' work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in this Agreement shall impose any liability or duty on FPHNY or the City for the acts, omissions, liabilities or obligations of Contractor, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of Contractor, or for taxes of any nature, including, but not limited to, worker's compensation, unemployment insurance, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.

F. Prohibition on Assignment/Subcontract: This Agreement shall neither be assigned nor subcontracted by Contractor in whole or in part without the prior, express, written consent of FPHNY. Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement or of Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest

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in it or any part thereof, or assign, by power of attorney or otherwise, any of the notices due or to become due under this Agreement, unless the prior, express, written consent of FPHNY shall be obtained. Any such assignment, transfer, conveyance, or other disposition without such consent shall be void. FPHNY may assign any corporation, agency or instrumentality having authority to accept such assignment without the consent of, or notice to, Contractor. In particular, but not limiting the foregoing, this Agreement may be assigned by FPHNY to the City at any time without the consent of, or notice to, Contractor.

G. **No Partnership, Agency, Association or Joint Venture:** The Parties agree that nothing contained herein shall create any partnership, agency, association, or joint venture relationship between the Parties. Except as expressly provided in this Agreement, neither Party shall have any right of authority to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party, or to bind the other Party contractually in any manner whatsoever.

H. **No Contractual Relationship:** Contractor agrees that nothing contained herein shall create any contractual relationship between Contractor and the City. The City is the sole and exclusive third-party beneficiary of this Agreement. Accordingly, this Agreement does not grant any third-party beneficiary rights with respect to the City to individuals or entities involved in the provision of Services under this Agreement.

I. **Legal Compliance:** Notwithstanding any other provision in this Agreement, Contractor remains responsible for ensuring that all Services provided pursuant to this Agreement comply with all pertinent provisions of federal, state and local law, and that all necessary approvals from federal, state and local governmental authorities have been obtained in order to perform the work provided for under this Agreement.

J. **Notices:** All notices and requests hereunder by either Party shall be emailed to the persons specified below at the email addresses below and shall be effective upon delivery.

If to FPHNY:
If to Contractor:

K. **No Waiver:** No delay or failure by any Party to exercise any right under this Agreement, nor any partial exercise of any such right, shall constitute a waiver of such right or any other right. The waiver by any Party of the breach of any terms and conditions of, or any right under this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition or of any similar right. No waiver shall be binding or effective unless expressed in writing and signed by an authorized representative of the Party giving such waiver.

L. **All Legal Provisions Deemed Included:** It is the intent and understanding of the Parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either Party be amended by such insertion so hereunder.

M. **Other Provisions Deemed Included:** It is the intent and understanding of the Parties to this Agreement that, to the extent that FPHNY's subcontractors are bound by or obligated under the terms and conditions of grants from and contracts with the federal government or other funders, then each

and every such obligation shall be and is inserted herein and imputed to Contractor, which shall comply with such terms and conditions as a subcontractor of FPHNY.

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

O. **Headings:** Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such a section or in any way affect this Agreement.

P. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute but one and the same instrument. This Agreement will become effective when duly executed by both parties.

Q. **Entire Agreement and Amendments:** This Agreement, including all exhibits and attachments hereto, constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations, writings, agreements and understanding between the parties, whether oral or written. No amendment or modification of this Agreement shall be binding or effective unless expressed in writing and signed by an authorized representative of each party.

R. **Survival:** Notwithstanding any other provision of this Agreement, the following Sections shall survive termination of this Agreement: Sections II B-E, III B, III D-G, IV, V, VI B, VIII, IX, XI, XII, XIII.

SAMPLE

APPENDIX A
Scope of Work

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APPENDIX B
Schedule of Deliverables and Payment

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SAMPLE

APPENDIX B
NYC Cloud Services Agreement

CLOUD AGREEMENT

TERMS AND CONDITIONS FOR CLOUD SERVICES

This Cloud Services Agreement ("**Agreement**"), made effective on date _____ ("Effective Date"), is by and between _____, as the Cloud Service provider ("**Provider**"), and the City of New York through its Department of Health and Mental Hygiene ("DOHMH"), and are applicable to hosted services from Provider, including, but not limited to, Software as a Service (SaaS), Platform as a Service (PaaS), Infrastructure as a Service (IaaS) and software sold, licensed, transferred or otherwise provided to DOHMH by Provider or through a third-party reseller ("**Reseller**"). As used in this Agreement, "**Party**" refers to DOHMH or Provider (i.e., does not include a Reseller, if any) individually, and "**Parties**" means DOHMH and Provider, collectively.

WHEREAS,

I. DEFINITIONS

1.1. "**City**" means the City of New York and/or a county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City of New York's treasury, or an entity created under New York law specifically for the benefit of the City or to serve persons present in the City of New York and that has one (1) or more members or directors of which are appointed by the mayor or City Council (e.g., the New York City Board of Elections).

1.2. "**Cyber Command**" means the Office of Cyber Command, established within the New York City Office of Technology and Innovation ("**OTI**"), that is empowered to ensure compliance with Policies and Standards, mitigate cyber threats, mandate deployment of technical and administrative controls, review cyber related spending, and collaborate with federal and state government agencies and private sector organizations.

1.3. "**DOHMH Data**" means information (including electronically stored information), databases, data compilations, reports, charts, graphs, diagrams, or other information created, generated or maintained by Provider or its subcontractors for the benefit of DOHMH under this Agreement, or made accessible by DOHMH to Provider under this Agreement or supplied, or derived from data supplied, to Provider or its subcontractors by or on behalf of DOHMH and any copies of such. For the avoidance of doubt, DOHMH Data includes but is not limited to data created solely by DOHMH's use of Provider's Cloud Services. DOHMH Data further includes all information that is considered Restricted or Sensitive Information as those categories are defined by DOHMH's Policies and Standards. All private information (as defined in Section 10-501 of the New York City Administrative Code or successor), Identifying Information (as defined in Section 23-1201 or successor), information protected from unauthorized use or disclosure by local, state or federal law and regulation, DOHMH's confidential information (including information disclosed or made available by DOHMH in the course of receiving maintenance, subscription and support and other services) and security information is DOHMH Data.

1.4. "**DOHMH Information Assets**" means all DOHMH Facilities, computer systems, electronic data stored, processed, transmitted, or printed by DOHMH computer systems, and such systems' peripheral equipment, networks, or magnetic data, as well as any cloud computing system utilized or

leveraged by DOHMH or any non-DOHMH entity for DOHMH's use, and any electronic data stored, processed, transmitted, or printed by such system.

1.5. "**Cloud Service" or "Cloud Services**" means the software-, platform-, infrastructure- or other "as a service" solution for which access is provided by Provider to DOHMH under this Agreement, including any client software provided to DOHMH by Provider for use with the Cloud Service. Any software to be installed on DOHMH's hardware for the purpose of facilitating DOHMH's use of the Cloud Services shall be deemed to be a part of the Cloud Services. Cloud Services further includes any IOT Device used by Provider to provide the Cloud Services.

1.6. "**DoITT**" means the Department of Information Technology and Telecommunications, designated as the New York City Office of Technology and Innovation ("OTI") pursuant to Mayoral Executive Order No. 3 of 2022**.**

1.7. "**Facility(ies)**" means a physical structure, such as a data center or other building.

1.8. "**Intellectual Property Rights**" or "**Intellectual Property**" means all proprietary information, patents, patent applications, trademarks, trade names, service marks, certification marks, collective marks, designs, processes, inventions, licenses, copyrights, and trade secrets of either Party, including, but not limited to, such rights relating to the origin, design, manufacture, programming, operations, function, configuration, or service of the licensed product.

1.9. "Internet of Things (IOT) Devices" mean interconnected devices that communicate and interact with each other, regardless of whether the devices connect directly to the internet or through other means such as local networks or private communication channels.

1.10. "**NYC3**" means the New York City Office of Cyber Command, which is part of the City.

1.11. "**Open Source Software**" or "**OSS**" means an open source or other license that requires, as a condition of use, modification, or distribution, that any resulting software must be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

1.12. "**Policies and Standards**" means the Citywide Information Security Policies and Standards, Cyber Command Policies and Standards, or any other policies and procedures by NYC3 and OTI, available at https://www.nyc.gov/content/oti/pages/vendor-resources/cybersecurity-requirements-for-vendors-contractors, as they may be amended or placed on a successor site by the City.

1.13. "**PPB Rules**" means the New York City Procurement Policy Board Rules.

1.14. "**Process**" means to perform any act, omission or operation on or with respect to data, such as collecting, recording, organizing, storing, adapting, altering, retrieving, accessing, deleting, blocking, erasing, destroying, combining, reviewing, using, transmitting, disseminating or otherwise making data available.

1.15. "**Provider Systems**" means the facilities, systems, networks and IT environments that are used to Process any DOHMH Data, deliver any Cloud Services or to otherwise meet any of Provider's obligations under this Agreement.

1.16. "**Security Incident**" means any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, availability or integrity of DOHMH Data, DOHMH Information Assets or Provider Systems, including by compromising the physical, technical, administrative or organizational safeguards implemented by Provider to protect the security, confidentiality, availability or integrity of DOHMH Data, DOHMH Information Assets or Provider Systems. Examples of a Security Incident include, but are not limited to, the unauthorized acquisition or use of unencrypted DOHMH Data (or encrypted DOHMH Data and the decryption key), network intrusions, ransomware infections, a breach of access credentials and DoS attacks.

II. LICENSE AND USE

2.1. License Grant. Subject to the terms and conditions of this Agreement, Provider grants DOHMH a worldwide, limited, non-exclusive right and license during the term of this Agreement: (a) to use the Cloud Services; (b) implement, configure and access the Cloud Services, including all actions and licenses necessary to fully effectuate the purposes of this Agreement and DOHMH's internal business and IT purposes; and (c) access and use Provider's documentation.

2.2. Authorized User. The authorized user of the Cloud Service is DOHMH, including its employees, authorized agents, consultants, auditors, other independent providers and any external users contemplated by the Parties. This paragraph does not modify the quantity of users permitted to use the Cloud Service.

III. DATA MANAGEMENT AND SECURITY

3.1. Safeguards to Protect DOHMH Data. Provider shall implement and maintain appropriate physical, technical, administrative, and organizational safeguards in accordance with industry best practices and applicable law to protect the security, confidentiality, availability, and integrity of DOHMH Data, including, but not limited to, the safeguards described in this Agreement.

3.2. Backup and Recovery of DOHMH Data. As a part of the Cloud Services provided under this Agreement, Provider is responsible for creating, maintaining, and testing backup copies of DOHMH Data. Provider is responsible for an orderly and timely recovery of the Cloud Services and DOHMH Data in the event that the Cloud Services are interrupted. Except when shorter time(s) are otherwise provided in a separate agreement, the recovery time objective ("**RTO**") for Cloud Services is six (6) hours and the recovery point objective ("**RPO**") for DOHMH Data is two (2) hours. For the purpose of calculating the RTO, recovery time is equal to the elapsed period of time between the commencement of an interruption and the time at which the Cloud Service is fully restored and available for use by DOHMH. RPO means the period of time during which changes made to data shall not be included in a replication or other backup copy. Provider shall replicate data to a disaster recovery site that meets the requirements in this Agreement. Provider shall maintain no less than thirty (30) days of backups. Any backups of DOHMH Data shall not be considered in calculating storage used by DOHMH.

3.3. Disaster Recovery Sites. Provider shall have a minimum of one (1) disaster recovery site at a distance

of at least five hundred (500) miles from the primary site. DOHMH Data must be replicated from the primary data center to the disaster recovery site in a time and manner sufficient to meet the RPO, and the Cloud Service must be configured to fail over from the primary data center to the disaster recovery site within the RTO. The disaster recovery site must be capable of supporting the Cloud Service at full load. DOHMH and City shall not incur any costs in relation to additional recovery site(s).

3.4. Disaster Recovery Plans. Provider shall implement, maintain, and test disaster recovery plans to minimize downtime resulting from all hazards, including system failure. Provider represents that these disaster recovery plans are documented, tested no less frequently than once every twelve (12) months, and updated as required. DOHMH has a right to review Provider's disaster recovery plans, and Provider must, upon DOHMH's request, provide DOHMH with a copy of such plans.

3.5. Data Availability, Storage, and Retention. Provider shall comply with the following:

3.5.1. Provider shall ensure that all DOHMH Data is available to DOHMH at all times (24/7/365) during the term of the Cloud Services and for a period of ninety (90) days after the term ends, including during any suspension of Cloud Services.

3.5.2. All DOHMH Data uploaded by DOHMH and stored by Provider shall be available to DOHMH to copy back to DOHMH's storage without alteration or loss and at no additional charge.

3.5.3. Provider may not use, access, or perform any analytical analyses of any kind on data derived from DOHMH's usage of the Cloud Service, whether anonymized or aggregated or both, except as agreed to in writing by DOHMH in its discretion, or as required for Provider to provide the Cloud Service.

3.5.4. DOHMH Data shall not be altered, moved, or deleted without DOHMH's consent;

3.5.5. If legal mandates for data retention apply specifically to DOHMH Data, Provider shall comply with all such mandates communicated to Provider in writing; and

3.5.6. Provider agrees that DOHMH Data shall remain in the United States.

3.6. Forensic and Investigative Response. Provider must document and maintain appropriate chain of custody throughout the duration of this Agreement for the purposes of potential forensic or legal investigation. Provider shall not remove metadata, except as directed by DOHMH.

3.7. Access to DOHMH Data. Provider shall implement identity and access control policies and procedures in accordance with applicable law and industry best practices, and as approved by DOHMH. Upon the request of DOHMH, Provider shall support federated identity and access management.

3.8. Occurrences Affecting DOHMH Data. Provider shall implement, maintain, test and update an incident response plan in accordance with applicable law and industry best practices. Provider represents that (a) prior to the execution of this Agreement, Provider has provided DOHMH with a copy of its current written incident response plan, and (b) on an annual basis thereafter, Provider shall provide DOHMH with its current written incident response plan. Except as required by applicable law without the possibility of contractual waiver, Provider shall not inform any third party

of any Security Incident in the absence of DOHMH and NYC3's prior written authorization to make the disclosure. DOHMH and NYC3 shall determine whether notice is required to be provided to individuals, regulatory and law enforcement agencies or any other third party and whether any remediation may be offered to individuals affected by the Security Incident.

3.9. Security Incident. In the event of any Security Incident, Provider shall:

3.9.1. notify DOHMH and NYC3 as soon as possible, but in no event later than twenty-four (24) hours after discovery of the Security Incident, informing DOHMH of the nature of the Security Incident, the harmful effects of which Provider is aware, and all actions Provider has taken and plans to take. For purposes of this section, a Security Incident is deemed to be discovered as of the first day on which it is known by Provider, its employees, subcontractors or other agents, or, by exercising reasonable diligence, should have been known by Provider, its employees, subcontractors or other agents;

3.9.2. provide DOHMH with physical access to the affected locations and operations;

3.9.3. provide DOHMH with access to Provider employees, subcontractors and other individuals with knowledge of the Security Incident;

3.9.4. fully cooperate with and assist DOHMH in investigating the occurrence, including, without limitation, by providing full access to information necessary to determine the scope of the Security Incident such as all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by DOHMH;

3.9.5. immediately remedy the Security Incident at Provider's expense in accordance with applicable privacy rights, laws, regulations, policies, standards, and industry best practices;

3.9.6. allow DOHMH to participate in the root cause analysis, or Provider shall provide to DOHMH a detailed written root cause analysis for any breach or compromise;

3.9.7. provide DOHMH with updates when requested by DOHMH;

3.9.8. in the case of Protected Health Information or Electronic PHI ("**PHI/e-PHI**"), as defined in 45 CFR §160.103, or in the case of private information, as defined in Section 10-501 or its successor of the Administrative Code of the City of New York ("**Private Information**"), at DOHMH's request and pursuant to DOHMH's express instructions as to form, content, scope, recipients, and timing, notify the affected individuals as soon as practicable but no later than required to comply with applicable law;

3.9.9. in the case of PHI/e-PHI or Private Information, provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law, or, in the absence of any legally required period for monitoring services, for no less than twelve (12) months following the date of notification to such individuals;

3.9.10. be responsible for recovering and/or recreating lost DOHMH Data in the manner and on the schedule approved by DOHMH without charge to DOHMH;

3.9.11. bear the responsibility and all related costs for any Security Incident to the extent that

DOHMH (or its employees, subcontractors or affiliates) is not at fault, including the cost of any associated remedial actions or mitigation steps, consumer notification and related responses, credit monitoring, notification, regulatory investigations, fines, penalties, enforcement actions and settlements;

3.9.12. provide DOHMH with documentation that Provider's incident response plan has been implemented; and

3.9.13. provide DOHMH with a detailed corrective action plan describing the measures Provider shall undertake to prevent future occurrences as expeditiously as possible under the circumstances.

3.10. Termination for Security Incident. In the event of a Security Incident that is caused by Provider's failure to comply with this Agreement, DOHMH may terminate the Cloud Services on no less than fifteen (15) days' prior written notice. The consequences under Section 15.4 shall apply.

3.11. Notice in Event of Provider Receipt of Warrant, Subpoena, or other Governmental Request. If Provider is served with a warrant, subpoena or any other order or request from a court or government body or any other person for any DOHMH Data, Provider shall, as soon as reasonably practical and not in violation of law, deliver a copy of such warrant, subpoena, order, or request to DOHMH.

3.12. Data Commingling. Provider shall not commingle DOHMH Data with non-DOHMH Data that is uploaded by Provider, its customers or other third parties and stored by Provider. Provider shall provide DOHMH with details of how it performs data segregation.

IV. DATA PRIVACY AND INFORMATION SECURITY PROGRAM

4.1. Provider Privacy and Security Program. Without limiting Provider's obligation of confidentiality, as further described in this Agreement, Provider shall be responsible for establishing and maintaining a data privacy and information security program ("**Privacy and Security Program**") that includes reasonable and appropriate physical, technical, administrative, and organizational safeguards, to: (a) ensure the security, confidentiality, availability, and integrity of DOHMH Data; (b) protect against any anticipated threats or hazards to the security, confidentiality, availability, or integrity of DOHMH Data; (c) protect against unauthorized or illegal or accidental disclosure, access to, destruction, alteration, modification, loss, acquisition or use of DOHMH Data; (d) ensure the proper disposal of DOHMH Data, if requested by DOHMH or required by applicable law; and, (e) ensure that all employees, agents, third party providers, and subcontractors of Provider comply with all of the foregoing. Provider shall submit its Privacy and Security Program to DOHMH, and in no case shall the safeguards of such Privacy and Security Program be less stringent than the safeguards used by DOHMH.

4.2. Security Controls. Provider's privacy and security controls must include, but not be limited to, physical, administrative, software, and network security measures, employee screening, employee training and supervision, and appropriate agreements with employees and subcontractors.

4.3. Requirements for Systems Providing Critical Functions. Provider shall provide DOHMH with reports verifying that all patches and configurations are up to date, as well as forecast all required changes

for the next twelve (12) months. Provider shall ensure that all necessary capabilities and equipment potentially required to service critical technology in the event of an incident is locally available.

4.4. Treatment of DOHMH Data. Provider understands and acknowledges that DOHMH may not be in compliance with nor subject to the General Data Protection Regulation (EU) 2016/279 and its implementing regulations.

4.5. Privacy and Security Audit

4.5.1. Privacy and Security Audit by Provider. No less than annually, Provider shall conduct a comprehensive audit of its Privacy and Security Program and provide such audit findings to DOHMH.

4.5.2. Independent Audit. In addition to the audit required by Section 4.5.1 above, Provider shall engage a third-party internationally recognized auditor (the "**Auditor**"), at Provider's own cost, to perform periodic audits, scans, and tests as follows at least once per year and after any Security Incident that occurs during the term and at the request of DOHMH:

4.5.2.1. a SSAE 18/SSAE 16/SOC-1, Type II audit and a SOC-2, Type II audit of Provider's controls and practices relevant to security, availability, integrity, confidentiality and privacy of DOHMH Data;

4.5.2.2. a network-level vulnerability assessment of all Provider systems used to deliver Cloud Services; and

4.5.2.3. risk assessment, which may include but is not limited to a formal penetration test of all systems used to deliver Cloud Services; and

4.5.2.4. ISO 27001 audit (most current version) and Provider's controls and practices relevant to security, availability, integrity, confidentiality and privacy of DOHMH Data.

4.5.3. Privacy and Security Audit by DOHMH. Without limiting any other audit rights of DOHMH, DOHMH shall have the right to review and audit Provider's Privacy and Security Program and/or IT infrastructure and information security controls and processes prior to the commencement of this Agreement and from time to time during the term of this Agreement. DOHMH reserves the right to also perform relevant tests to ensure Provider is compliant with required security policies and standards. Provider shall permit DOHMH to perform such audit, including an audit of the physical security of any of Provider's premises applicable to the Cloud Services provided to DOHMH and shall fully cooperate and furnish all requested materials in a timely manner. The review and audit may be conducted remotely or onsite by DOHMH or a DOHMH provider and at DOHMH's expense. DOHMH shall conduct on-site audits in a manner so as not to unreasonably interfere with Provider's business operations. In lieu of an on-site audit, upon request by DOHMH, Provider shall complete, within forty-five (45) calendar days of receipt, an audit questionnaire provided by DOHMH regarding Provider's Privacy and Security Program. Provider shall not be entitled to compensation from DOHMH for the time it spends cooperating with any of the audits, scans, or tests provided for in this Section 4.5.3, or in completing any audit questionnaire(s).

4.5.4. The audit rights of DOHMH set forth in this Agreement will apply to IOT Devices and new devices used by Provider to provide the Services.

4.5.5. Usage Audit. In the event of a usage audit by Provider, Provider may conduct such audit by itself at its own cost, or engage the services of an Auditor at Provider's own cost. Provider or Auditor shall be bound by confidentiality terms no less stringent than those set forth in this Agreement. In conducting an audit pursuant to this Section 4.5.4, Provider or Auditor may request DOHMH for an analysis of the software DOHMH is running and Provider or Auditor may make copies of any such software logs to the extent necessary to verify the DOHMH's compliance with this Agreement. Provider or Auditor shall not run any software on the DOHMH's systems, nor shall Provider or Auditor conduct the audit at any of the City's premises. Provider or Auditor shall provide sixty (60) calendar days' notice prior to an audit. Any audit shall be performed during DOHMH's normal business hours and in a manner that minimizes disruption to its business.

4.5.6. Findings. Provider shall provide DOHMH with a copy of all reports generated for each audit, scan, and test within ten (10) days after its completion. Each report must: (a) indicate whether any material vulnerabilities, weaknesses, gaps, deficiencies, or breaches were discovered; and (b) if so, describe the nature of each vulnerability, weakness, gap, deficiency, or breach. Provider shall, at its own cost and expense, promptly remediate each vulnerability, weakness, gap, deficiency, or breach that is identified in a report and provide DOHMH with documentation of the remedial efforts within ten (10) days after their completion.

4.5.7. Performance Testing. Performance testing is required for all public-facing applications. Provider must demonstrate the ability to conduct performance testing and establish terms for testing and cost.

4.5.8. IOT Devices. Provider represents and warrants the IOT Device is NEMA certified and has a rating of 45 or better. During DOHMH's security review process (or earlier), Provider will provide DOHMH with the applicable NEMA rating and datasheet for the IOT Device. Provider will provide a five (5) year warranty, which (a) starts from the later of the date of purchase or the date of installation, and (b) includes replacement if the IOT Device is damaged within the warranty period. Provider will ensure that the IOT Device includes all hardware required to securely mount the IOT Device, including but not limited to appropriate locking mechanisms.

4.5.9. If Provider provides any other customer with an automated remote update mechanism, Provider will provide DOHMH with the automated remote update mechanism (that will allow for updates of all of the same IOT Devices) at no additional cost.

4.6. Logs. Provider must generate, maintain, constantly monitor, and analyze security audit logs that contain the information as specified in NIST Special Publication 800-92. If requested by DOHMH, Provider shall provide the audit logs to DOHMH in a format agreed upon by both parties.

4.7. Vulnerabilities. Provider's software applications and any third party software applications embedded in Provider's software applications must be free from vulnerabilities and defects. Provider must conduct vulnerability scanning for critical systems or systems hosting sensitive

data as often as required by law, relevant policy, to maintain certification(s), and in response to the Department of Homeland Security's critical vulnerability/patch publication(s). Provider must provide attestation by an objective third party, stating that the application has been tested for known security vulnerabilities, including, without limitation, those listed in the "OWASP Top-10" as published by the Open Web Application Security Project (see www.owasp.org for current list of the top 10), NIST 800-53 and the NIST Cybersecurity Framework (CSF). If requested by DOHMH, Provider shall also provide DOHMH with information about whether it patched critical vulnerabilities and the remediation steps it took.

4.8. Vulnerability Reporting and Notification Requirement. Provider shall inform DOHMH and NYC3 of any identified vulnerabilities in information systems no later than ten (10) business days after receiving notification. Provider shall provide a report to DOHMH and NYC3 that includes a detailed description of the identified vulnerabilities and a remedial plan with associated timelines informing DOHMH and NYC3 of all actions Provider has taken or plans to take to rectify the vulnerabilities.

4.9. Authorization and Access. Provider's access controls must enforce the following information technology security best practices with respect to its services:

4.9.1. Least Privilege. Provider shall authorize access only to the minimum amount of resources required for a function;

4.9.2. Separation of Duties. Provider shall divide functions among its staff members to reduce the risk of one person committing fraud undetected; and

4.9.3. Role-Based Security. Provider shall restrict access to its services to only authorized users. Provider shall base access control on the role a user plays in an organization.

4.9.4. If not utilizing single sign on and Provider's previously authorized resource should no longer have authorization/ access, Provider shall immediately revoke authorization. Provider shall periodically scan for dormant accounts and expeditiously remove/deactivate.

4.10. Change in Service. Provider shall notify DOHMH of any enhancement, upgrade, or other change in the Cloud Service that may impact the security, availability, or performance of the Cloud Services.

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

Provider shall not include any vendor induced inhibiting code ("**VIIC**") or any other inhibitor in the Cloud Services or on reports and data submitted and provided to DOHMH. VIIC means any deliberately included application or system code that shall degrade performance, result in inaccurate data, deny accessibility, or adversely affect, in any way, programs or data or use of the Cloud Services. Provider warrants that (a) the Cloud Services contain no destructive programming that is designed to permit Provider or third parties unauthorized access to, or use of, DOHMH's systems or networks, or would have the effect of disabling or otherwise shutting down all or any portion of the Cloud Services, and (b) the Cloud Services shall contain no viruses, Trojan Horses, worms, spyware, malware, or any other form of

malicious code.

VI. ENCRYPTION AND AUTHENTICATION

6.1. Provider shall encrypt all DOHMH Data, including backups, while at rest and in transit from end to end using encryption standards and methods that are approved and recommended by NIST and, is applicable, FIPS 140-1 and FIPS 140-2 or their successors.

6.2. The use of proprietary encryption algorithms is not allowed for any purpose, unless reviewed by qualified experts outside of Provider and approved in writing by the Chief Information Security Officer for City of New York / Head of Cyber Command. Proven algorithms such as AES-128, AES-256, ECDH, Blowfish, PGP, RSA, WAP2 or WPA3 for Wi-Fi encryption and SSH v 2 for remote login must be used as the basis for encryption technologies. At a minimum, the hash algorithm must be 256bit SHA-2 and symmetric key encryption algorithm is AES-128. SSL/TLS implementations must use, at a minimum, version number 1.2 with cipher suite implementing Cipher Block Chain (CBC) or Galois/Counter modes (GCM) as modes of operation for the cipher component and 256bit SHA-2 for the digest component. A minimum of 2048 bit RSA key modulus must be used for key establishment and digital signatures. A minimum of P-256 curve must be used for elliptical curve key establishment and digital signatures.

6.3. For password hashing, PBKDF2, Scrypt and Bcrypt or better must be used. Approved encryption algorithms must be of a minimum key length of 128 bits.

6.4. Shared keys used for IPSec tunnels must be complex, randomly generated pursuant to Section 6.5, and not be stored for later reference. During initial setup of an IPSec tunnel, the shared key must be transmitted out of band to the other party involved. Provider must utilize cryptographic algorithms that are acceptable to DOHMH.

6.5. Random number generation shall be compliant with NIST SP 800-90A and FIPS 140-2. Furthermore, it shall meet the requirements of the draft NIST SP 800 90B and C. NIST resources are available at https://csrc.nist.gov/.

6.6. Digital Certificates that validate and secure communications used by the general public must be generated by trusted third-party providers. Certificates that validate communications used by internal City of New York employees or business partners and/or web applications can be generated by the Citywide CITYNET Certificate Authority (internal PKI) or third-party providers. OTI is responsible for managing and operating Citywide CITYNET Certificate Authority. For internal City of New York namespaces OTI must generate digital certificates through the Citywide Certificate Authority (internal PKI), whereas for external namespaces trusted third party providers must be used.

VII. DOHMH SECURITY REVIEW OF PROVIDER'S CLOUD SERVICES / SOFTWARE SECURITY ASSURANCE (SSA) APPROVAL

7.1. The Cloud Services may be subject to a security review by DOHMH. If such a security review has been completed and DOHMH's written disposition requires Provider to comply with DOHMH's prescribed security measures ("**DOHMH Security Measures**"), then, in addition to complying with this Agreement, Provider shall comply with DOHMH Security Measures.

7.2. Any written disposition of a security review by DOHMH shall not be deemed to constitute an endorsement of the Cloud Services or a certification that the Cloud Services meet DOHMH Security Measures or the requirements under this Agreement. Provider remains fully responsible for ensuring compliance with DOHMH Security Measures and this Agreement. At all times during the term of the Cloud Services, Provider agrees to cooperate with DOHMH to ensure that Provider is in compliance with all DOHMH Security Measures and the provisions of this Agreement.

7.3. Following the review and written disposition described in Sections 7.1 and 7.2 above, Provider agrees to (a) if required by NYC3, submit information into the SSA tool, and (b) submit all devices, applications, systems, software and infrastructure used to support DOHMH systems to DOHMH's applicable security testing process. DOHMH's security testing process may include a formal application scan (in staging) and/or a penetration test of Provider's Cloud Services and any required remediation. Provider understands and acknowledges that failure to meet DOHMH's security requirements is a material breach of this Agreement.

7.4. Prior to any application scan or penetration test, Provider shall execute any waiver that may be required by DOHMH.

VIII. DATA OWNERSHIP

8.1. DOHMH retains sole ownership and Intellectual Property Rights in and to all DOHMH Data. Provider shall not use DOHMH Data for any purpose other than as required to provide the Cloud Services to DOHMH.

8.2. Except as provided in Section 10.4, Provider shall not retain any DOHMH Data after a ninety (90) day period following the expiration or termination of the term or following DOHMH's request pursuant to Section 10.1.1.

8.3. DOHMH hereby retains all right, title, and interest in and to any suggestion, enhancement request, recommendation, correction or other feedback provided to Provider relating to Provider's Cloud Services, except that Provider may use such information in connection with its provision of Cloud Services to DOHMH. Any feedback from DOHMH is provided "as is", and DOHMH disclaims any and all warranties whatsoever.

8.4. Except as expressly provided in this Agreement, no ownership right or license to use, sell, exploit, copy or further develop DOHMH Data, any confidential information or Intellectual Property of DOHMH is conveyed to Provider.

IX. NO SUPPLEMENTARY AGREEMENTS OR TERMS; NO UNILATERAL CHANGES; APPLICABILITY.

9.1. All click-through, click-wrap, or shrink-wrap agreements or other end user terms and conditions that are embedded in or provided with any of Provider's Cloud Services or presented to users in the course of DOHMH's use of the Cloud Services are not applicable to DOHMH, even if use of Provider's Cloud Services require an affirmative acceptance of those terms. The terms and conditions of this Agreement are in static form, and no online terms and conditions that are incorporated by reference in this Agreement or set forth in hyperlinked websites are binding on DOHMH, including any other privacy policies of Provider and third party providers.

9.2. To be valid, any amendment to this Agreement must be in writing and signed by the Parties.

X. SEPARATION ASSISTANCE

10.1. In the event of impending or actual separation (due to impending or actual expiration or earlier termination of this Agreement whenever that may occur) and for up to ninety (90) days following such expiration or termination, DOHMH may request in writing that Provider do or permit DOHMH to do any of the following, or any combination of the following:

10.1.1. Export and/or copy DOHMH Data, subject to any applicable charges as provided in this Agreement. If DOHMH requests an export of DOHMH Data, such exported data shall be in a format approved by DOHMH in writing.

10.1.2. Destroy any DOHMH Data. Any written request by DOHMH directing Provider to destroy DOHMH Data shall specify what data DOHMH is requesting to be destroyed. Except for actions required by this Agreement, Provider shall not destroy any DOHMH Data in the absence of a specific written request from DOHMH. If Provider destroys any DOHMH Data, it shall verify such destruction in writing. Destruction of DOHMH Data shall be performed by Provider in a manner that complies with NIST and precludes recovery or reconstruction of such data by all currently known methods and technology. Unless otherwise specified by DOHMH, a request to destroy DOHMH Data includes destruction of live/production data as well as data housed as/in backup(s).

10.1.3. When applicable, upon DOHMH's request, Provider shall verify it has turned off DOHMH's access to the Cloud Services.

10.2. At no cost to DOHMH, Provider must provide separation assistance to DOHMH to perform or support the exporting, copying, and/or destruction of DOHMH Data in accordance with DOHMH's written request.

10.3. Additionally, in the event of a termination by DOHMH due to a breach by Provider of this Agreement, Provider shall provide transition assistance at no cost to DOHMH.

10.4. In the event the parties are negotiating a renewal contract, Provider will not withhold the Cloud Services due to a lapse in the subscription term and the ninety (90) day provision in Section 8.2 of this Agreement shall not apply during the negotiations. Provider shall continue to retain DOHMH Data unless otherwise instructed by DOHMH.

XI. CONFIDENTIALITY

11.1. Provider agrees to hold confidential, both during and after the completion or termination of this Agreement, all DOHMH Data. Provider shall use DOHMH Data for no purpose other than providing the Cloud Services in accordance with this Agreement.

11.2. Provider agrees to maintain the confidentiality of DOHMH Data by using a reasonable degree of care, and at least the same degree of care that Provider uses to preserve the confidentiality of its own confidential information.

11.3. Provider agrees that DOHMH Data shall not be made available to any person or entity without the prior written approval of DOHMH, except that Provider may disclose DOHMH Data to its employees, officers, agents and consultants ("**Representatives**") on a need to know basis to provide

the Cloud Services to DOHMH. Provider shall ensure that its Representatives are bound by confidentiality obligations no less stringent than those in this Agreement, and shall be liable for a breach by its Representatives of the foregoing confidentiality obligations.

11.4. Provider shall not disclose DOHMH Data, or any information it receives pursuant to this Agreement, that is Personal Identifying Information (as defined in Section 10-501 of the New York City Administrative Code or successor) or Identifying Information (as defined in Section 23-1201 or successor), or information, which combined with publicly-available information, may reasonably be used to identify an individual.

11.5. The obligation under this section not to disclose shall not apply where Provider is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise ("**disclosure demand**"), provided that Provider complies with the following unless prohibited by law: (a) Provider shall provide advance notice to DOHMH, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data, (b) if requested by DOHMH, Provider shall not disclose DOHMH Data until DOHMH has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such Data, and (c) Provider shall reasonably cooperate with DOHMH in minimizing the DOHMH Data disclosed.

XII. ORDERS AND PAYMENT

12.1. Expenditures. Expenditures under this Agreement shall be determined by available funding levels. There is no guarantee of any expenditure level under this Agreement and DOHMH shall procure only the specific Cloud Services that it requires.

12.2. PPB Rules Applicability. All payment terms, fees and taxes are subject to the PPB Rules. In the event of a conflict between this Agreement and the PPB Rules, the PPB Rules shall take precedence.

XIII. RECORDS AND AUDIT

13.1 Records. Provider agrees to maintain separate and accurate books, records, documents and other evidence ("**books and records**"), and to utilize appropriate accounting procedures and practices in the performance of this Agreement. Provider agrees to retain all books and records, relevant to this Agreement, including those required pursuant to the foregoing sentence for six (6) years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six (6)-year period, the records must be retained until the completion of such litigation, claim, or audit.

13.2 Audit by DOHMH. This Agreement and all books and records required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books and records upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit under applicable law by (a) the City, including the New York City Comptroller (the "**Comptroller**"), DOHMH, and the DOHMH's Office of the Inspector General, (b) the State, (c) the federal government, and (d) other persons duly authorized by DOHMH. Provider shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by DOHMH and by the

Comptroller in the exercise of his or her powers under law.

XIV. ADDITIONAL SECURITY REQUIREMENTS

14.1. Citywide Information Security Policy. Provider shall comply with the Policies and Standards. In addition, Provider shall ensure that all subcontractor(s) approved by DOHMH in writing (each an "**Authorized Subcontractor**") and any employee of Provider or an Authorized Subcontractor who needs to know DOHMH Data in order to perform Provider's obligations (each an "**Authorized Person**") who may have access to any DOHMH Data or DOHMH Information Assets in the course of carrying out their responsibilities or job functions comply with this Section 14.1. Provider shall be liable for the breach by an Authorized Subcontractor or Authorized Person or any of its subcontractors or persons who are not considered Authorized Subcontractors or Authorized Persons.

14.2. OTI User Responsibility Policy ("**URP**"). Provider shall require each Authorized Person who may have access to any DOHMH Information Assets to sign a written acknowledgement and agreement to comply with its terms prior to his or her assignment to perform any Services pursuant to this Agreement. Provider shall provide a signed copy of the URP acknowledgement for each Authorized Person to DOHMH project manager, or a person designated by DOHMH, within fifteen days (15) days after the Authorized Person is assigned to perform Services pursuant to this Agreement.

14.3. Non-Disclosure Agreement. If requested by DOHMH, Provider shall require its Authorized Subcontractors and Authorized Persons who either work in direct support of the Cloud Services or who may reasonably be anticipated to receive DOHMH Data to execute a Non-Disclosure Agreement in a form acceptable to DOHMH.

14.4. Cooperation with Accreditation. Provider shall cooperate with and facilitate the successful completion of any security accreditation tasks and processes relevant to the Cloud Services it provides. Provider shall complete said security accreditation tasks and processes within thirty (30) business days unless granted an extension by DOHMH.

14.5. Provider Security Questionnaire. Provider shall complete and respond to all security questionnaires from DOHMH within thirty (30) business days.

14.6. Noncompliance Self Reporting Requirement. Provider shall notify DOHMH and NYC3 of any changes to the infrastructure of all information systems that would affect DOHMH Data or result in noncompliance with any federal or state law, Policies and Standards, of terms of this Agreement. Notification of each change shall be made to DOHMH and NYC3 no later than three (3) business days after the change has occurred. For noncompliance, Provider shall submit to NYC3 a document that includes the following: (a) date of discovery; (b) how the noncompliance was identified; (c) nature of the noncompliance; (d) scope of noncompliance; and (e) corrective actions with associated timelines.

14.7. Remote Access Methods. Provider must obtain written permission from DOHMH for each instance of remote access it wishes to use and access DOHMH Information Assets.

XV. TERM AND TERMINATION

15. Term. This Agreement shall commence on the Effective Date and shall expire at the time that DOHMH no longer has a license to use the Cloud Services, unless terminated earlier pursuant to this

Section XV.

DOHMH may terminate this Agreement as follows:

15.1. Termination for Cause. Immediately, if Provider commits any material breach of this Agreement and fails to cure such breach within thirty (30) days after DOHMH notifies Provider in writing of such breach; or

15.2. Termination for Convenience. With or without cause by giving Provider fifteen (15) days prior written notice of termination.

15.3. Termination Consequences.

15.4. In the event of a termination for cause under Section 15.1 or a termination for Security Incident under Section 3.1, all fees for Cloud Services provided after the date of the breach will be deemed to be waived by Provider, and Provider shall within the following thirty (30) days refund any waived fees that have been paid. This provision is in addition to any rights that DOHMH may have to recover damages under this Agreement or pursuant to applicable law.

15.5. In the event of a termination for convenience under Section 15.2, DOHMH shall, upon termination, pay to Provider the total undisputed amounts due and which accrued under this Agreement as of the termination date.

XVI. GENERAL

16.1. Order of Precedence. This Agreement takes precedence over any provision in any other separate agreement between DOHMH and Provider, and DOHMH and Reseller. In the event of a conflict between this Agreement and any other separate agreement, this Agreement shall prevail.

16.2. Survival. All terms of this Agreement that should by their nature survive termination shall survive, including, Section III (Data Management and Security), Section IV (Data Privacy and Information Security Program), Section 16.3 (Limitation of Liability), Section 16.4.2 (Intellectual Property), Section 16.5 (Publicity), Section 16.6 (Indemnification), and Section 16.8 (Source Code Escrow).

16.3. Limitation of Liability

16.3.1. Subject to the provisions of Section 16.3.2 below, each Party's aggregate liability for all claims arising out of the Cloud Services, whether in contract, tort or otherwise, shall not exceed the greater of: (a) forty-eight (48) times the average monthly charges paid by DOHMH to Provider (or Reseller, if any), calculated over the prior twelve (12) month period immediately preceding the date on which liability for the claim first arose; (b) three times (3x) the contract value; or (c) one million dollars ($1,000,000).

16.3.2. The limitation of liability set forth in Section 16.3.1 above shall not apply to Provider's liability arising out of any of the following: (a) Provider's indemnification obligations

under this Agreement; (b) Provider's breach of the confidentiality provisions in this Agreement; (c) Provider's breach of Section III (Data Management and Security) or Section IV (Data Privacy and Information Security Program) of this Agreement, (d) the infringement by Provider, or any of its Affiliates or subcontractors, of the Intellectual Property of DOHMH or of a third party; and (e) to the extent prohibited by law.

16.3.3. To the extent that Provider may be liable to the City (which includes DOHMH) for any action, inaction or operation of Provider under this Agreement, or under statutory or common law, for which a Reseller may also be liable, Provider's and the Reseller's (if any) liabilities are joint and several, and DOHMH is not limited in its ability to seek recourse from one or the other.

16.3.4. The City (which includes DOHMH) shall not be liable to Provider for indirect, incidental, consequential, exemplary, reliance, special or similar damages, including damages for lost profits, regardless of the form of action, with regard to or arising out of the use or provision of the Cloud Services or any other conduct under this Agreement.

16.3.5. Any provision in the any other agreement limiting or disclaiming Provider's liability is hereby deemed to be void and unenforceable.

16.4. Warranties and Representations.

16.4.1. Uptime and Service Credits. Provider represents and warrants that the Cloud Service shall function in accordance with the service level agreement ("**SLA**") annexed hereto as Attachment A. In the event Provider fails to meet agreed-upon service levels in Attachment A, Provider shall provide the City (which includes DOHMH) with service credits pursuant to Attachment A.

16.4.2. Intellectual Property. Provider represents and warrants that it has the rights necessary to provide the Cloud Services to the City (which includes DOHMH) in accordance with this Agreement.

16.4.3. Additional Warranties and Representations. Provider further represents and warrants that: (a) the Cloud Services shall be provided in a professional, competent, and timely manner by appropriately qualified personnel in accordance with this Agreement and consistent with Provider's best practices; (b) Provider shall provide adequate training, as needed, to DOHMH on the use of the services; (c) the Cloud Services shall comply with all applicable international, federal, state, and local laws, rules, and regulations, including but not limited to laws relating to privacy, security, and anti-corruption; (d) the Cloud Services does not and shall not infringe the Intellectual Property Rights of any third party; (e) the Cloud Services are compatible and shall maintain compatibility with third party software, including any OSS; (f) there is no pending or threatened litigation involving Provider that may impair or interfere with the City's (which includes DOHMH's) right to use the services; and (g) Provider has sufficient authority to enter into this Agreement and grant the rights provided in such Agreement to the City (which includes DOHMH).

16.5. Publicity. Provider shall notify DOHMH, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of

any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. Provider may not issue any statement or submit any material for publication that includes DOHMH Data. Provider shall not use the City's or DOHMH's name and trademarks without DOHMH's prior written consent.

16.6. Indemnification

16.6.1. Provider's Indemnity. Provider shall defend, indemnify and hold the City and its employees, officers, and agents (collectively, "**Indemnitees**") harmless from any and all judgments, damages, liabilities, amounts paid in settlement, awards, fines, penalties, disbursements , costs and expenses (including witness fees, expert fees, investigation fees, travel expenses, bonds, the cost of establishing the right to indemnification under this Section 16.6.1, court or arbitration costs and reasonable attorney's fees) to which the Indemnitees may be subjected, become liable to pay, suffer or incur in connection with any claim, allegation, suit, subpoena, action or proceeding (whether completed, actual, pending, threatened, civil, criminal, investigative, administrative, meritorious or without merit) that arises from or relates to (a) breach of confidentiality; (b) costs and expenses to which the Indemnitees may suffer in connection with any operations of Provider and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act; (c) failure to comply with the provisions of this Agreement (including but not limited to a breach of representations and warranties) or of the law; and (d) the infringement of any copyright, trade secret, trademark, patent or other tangible or intangible property or personal right of any third party by Provider or its subcontractors. Provider shall defend, indemnify and hold the Indemnitees harmless regardless of whether or not the alleged infringement arises out of the use of the Cloud Service in a manner not expressly contemplated in this Agreement, or in combination with any hardware, equipment or other software not provided or authorized by Provider. Insofar as the facts or the law relating to any claim would preclude the Indemnitees from being completely indemnified by Provider, the Indemnitees shall be partially indemnified by Provider to the fullest extent permitted by law.

16.6.2. Indemnification for Security Incidents. Provider shall defend, indemnify and hold Indemnitees harmless from any and all costs and expenses arising out of a Security Incident.

16.6.3. No Indemnification by the City. Any provision in any separate agreement requiring the City (which includes DOHMH) to provide indemnification is hereby deemed to be void and unenforceable.

16.7. Use of Third Party Providers

16.7.1. Provider must identify any third party entities involved in the provision of the Cloud Service and provide DOHMH with a copy of Provider's agreement with the third-party provider. The agreement must be approved in writing by DOHMH. Provider shall notify DOHMH in the event that Provider makes any change in the list of third-party providers that it uses prior to making any change along with a copy of any applicable terms. Notwithstanding DOHMH's

approval of such third party provider agreements, (a) Provider shall remain responsible for any and all performance required under this Agreement, including, but not limited to, the obligation to properly supervise, coordinate, and perform, all work required hereunder, and no third party provider agreement shall bind DOHMH; and (b) Provider shall ensure that any third party provider complies with the requirements in this Agreement, including the minimum service levels set forth in the SLA**.** If Provider proceeds with an unapproved third party provider, it shall be deemed liable to DOHMH for any third party claims to the same extent as the third party provider would have been liable had it agreed to the terms set forth in this Agreement.

16.7.2. Any subcontractor or Affiliate (as defined below) of Provider that provides any software or services in connection with the Cloud Services is deemed to be a subcontractor whose subcontracts must be approved in writing by DOHMH. As used in this paragraph, "**Affiliate**" means any parent, subsidiary or other entity that is (directly or indirectly) controlled by, or controls, Provider. Any provision in this Agreement to the contrary is deemed to conflict with this Agreement.

16.8. Source Code Escrow. The Parties agree that in the event Provider becomes: (a) insolvent or bankrupt, (b) makes an assignment for the benefit of creditors, or (c) voluntarily or involuntarily initiates bankruptcy, insolvency, or reorganization proceedings, then DOHMH and Provider shall negotiate in good faith to enter into a source code escrow agreement with a mutually agreed-upon source code escrow company setting forth source code escrow deposit procedures and source code release procedures, which include testing and review of such escrow.

16.9. Governing Law; Jurisdiction and Venue; Jury Waiver; No Arbitration. The laws of the State of New York, without reference to its choice of law principles, govern this Agreement, and any claims arising out of or relating to this Agreement, or their negotiation, execution, performance, or breach. All disputes and controversies arising out of or relating to the negotiation, execution, performance or breach of this Agreement must be resolved in accordance with the PPB Rules and in the New York State or federal courts in the City, County and State of New York, and each party irrevocably consents to the exclusive venue and personal jurisdiction of those courts for the resolution of disputes and waives all objections thereto. To the fullest extent permitted by law, each party irrevocably waives its right to a jury in any litigation arising out of or relating to this Agreement, their negotiation, execution, performance or breach. No dispute, controversy or claim arising out of or relating to this Agreement or the enforcement, breach, termination or validity thereof shall be submitted to arbitration or similar dispute resolution method.

16.10. Fees.

16.10.1. DOHMH is not responsible for an early termination fee.

16.10.2. Upon any termination of a Cloud Service, Provider shall within the following thirty (30) days promptly refund all unused prepaid fees.

16.10.3. Rates and fees may only be increased pursuant to a written amendment to this Agreement that has been signed by both parties. Overage and excess usage fees are not permitted in the absence of DOHMH's prior written agreement.

16.10.4. DOHMH shall not be liable for any unauthorized use, including fees and charges that may become due to Provider as a result of that use.

16.10.5. DOHMH's payment of an invoice without objection or failure to raise an objection to an invoice shall not constitute a waiver of any objections to that invoice.

16.11. Insurance

16.11.1. Data Breach and Privacy Cyber Liability. Provider shall maintain at all times during the provision of Cloud Services, and as otherwise required herein, data breach and privacy cyber liability insurance with limits of no less than $10,000,000 per claim and $20,000,000 in the aggregate. This policy must include coverage for:

16.11.1.1. failure to protect confidential information, including identifying information;

16.11.1.2. failure of the security of Provider's computer systems;

16.11.1.3. failure of the security of City's systems or DOHMH Data due to the actions or omissions of Provider;

16.11.1.4. Data breach expenses, including forensic services, the cost of complying with privacy laws and regulations, cost of undergoing regulatory examinations and defending regulatory actions, including legal representation, cost of internal investigation to determine the cause of the breach, notification costs, public relations and crisis management costs, credit monitoring, fraud consultation, credit freezing, fraud alert, and identity restoration services;

16.11.1.5. Costs arising from cyber extortion threats, including the payment of ransom demands;

16.11.1.6. The alteration, loss, corruption of data, including costs to recover, correct, reconstruct, and reload lost, stolen, or corrupted data;

16.11.1.7. The cost of replacing, repairing, or restoring computer systems, including hardware (including laptops and mobile devices), software, networking equipment, and storage;

16.11.1.8. Costs arising from an attack on a network or computer system, including denial of service attacks, malware, and virus infections;

16.11.1.9. Dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons;

16.11.1.10. Media liability; and

16.11.1.11. Cyber theft of customer's property, including but not limited to money and securities.

16.11.2. Technology Errors and Omissions. Provider shall maintain at all times during the provision of Cloud Services, and as otherwise required herein, technology errors and omissions insurance covering Provider in the amount of at least $10,000,000 per occurrence and $20,000,000 in the aggregate for damages arising from computer related services, including, but not limited to, one or any combination of the following: (a) consulting, (b) data processing, (c) programming, (d) system integration, (e) hardware development, (f) software development, (g) installation, (h) distribution or maintenance, (i) systems analysis or design, (j) training, (k) staffing or other support services, (l) cloud computing services, and (m) any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. This policy must include coverage for third-party fidelity, including cyber theft.

16.11.3. General Insurance Requirements

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

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

16.11.3.3. All insurance policies shall cover the City, together with its respective officials and employees, as additional insured.

16.11.3.4. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (a) the minimum limits required in this Agreement, or (b) the limits provided to Provider as named insured under all primary, excess, and umbrella policies of that type of coverage.

16.11.3.5. Policies of insurance provided pursuant to this Agreement must be primary and non-contributing to any insurance or self-insurance maintained by the City.

16.11.3.6. If Provider receives notice from an insurance company or other person that any insurance policy required under this Agreement shall expire or be cancelled or terminated for any reason, Provider shall immediately forward a copy of such notice to DOHMH, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

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

16.11.3.8. Provider waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Agreement (whether or not such insurance is actually procured or claims are paid

thereunder) or any other insurance applicable to the operations of Provider or its subcontractors in the performance of Cloud Services.

16.11.3.9. All claims-made policies must have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, Provider shall purchase extended reporting period coverage effective on cancellation or termination of the claims-made insurance unless a new policy is secured with the same retroactive date as the expired policy.

16.12. Open Source Software. If the Cloud Services consist of any Open Source Software, Provider shall, upon request, furnish DOHMH with the applicable OSS licensing terms (the "**Licensing Terms**"). Provider shall be responsible for all third party software and OSS incorporated in the Cloud Services. If the Cloud Services do not utilize any OSS, Provider shall affirm such in writing to DOHMH in advance of its processing of any order for such Cloud Services.

16.13. Assignment. Provider may not assign or delegate its rights and/or obligations, or any part thereof under this Agreement to any or all of its Affiliates without DOHMH's prior written consent. Any attempted assignment or transfer by Provider of this Agreement is null and void.

16.14. Severability. All rights and remedies whether conferred in this Agreement, or by any other instrument or law shall be cumulative and may be exercised singularly or concurrently. The failure of any Party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such Party thereafter to enforce such provisions. The terms and conditions stated herein are declared to be severable. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

16.16 Notices. Provider shall submit notices as required in this Agreement as follows:

To DOHMH:

New York City Department of Health and Mental Hygiene
42-09 28th Street
Long Island City, New York 11101
Attn: _____

To DOHMH regarding Security Incidents: Chief Information Security Officer, ciso@health.nyc.gov, 347-396-2240, and Chief Privacy Officer, PrivacyOfficer@health.nyc.gov, 917.654.1279

To DOHMH regarding anything other than Security Incidents: _____

To NYC3 regarding Security Incidents: soc@cyber.nyc.gov, vuln@cyber.nyc.gov and 718-403-6761

To NYC3 regarding anything other than Security Incidents: CISO@cyber.nyc.gov

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURES FOLLOW]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have executed this Agreement as of the Effective Date.

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE	PROVIDER
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT A
SERVICE LEVEL AGREEMENT

1. INTRODUCTION

This attachment Service Level Agreement ("**SLA**") to the Agreement describes the performance standards and service levels to be achieved by Provider in providing the Cloud Services. This is subject to the provisions of the Agreement which are incorporated herein by reference. In the event of a conflict between the provisions of the Agreement and any provision of this SLA, the Agreement will govern.

2. DEFINITIONS

Unless otherwise set forth in this SLA, capitalized terms not separately defined will have the respective meanings ascribed in the Agreement. As used in this SLA, the following terms shall have the following meaning:

2.1 "**Available**" or "**Availability**" means the Cloud Services shall: (a) be available for access and use over the Internet; (b) provide the functionality and content required under the Agreement and any applicable work order; and (c) operate without any Severity 1 or Severity 2 Defect, other than a minor malfunction that does not impact an Authorized User's ability to use the Cloud Services to achieve an intended goal.

2.2 "**Days and Hours of Coverage**" means the days of coverage as set out in Section 4.1 of this SLA.

2.3 **"Defect"** means a malfunction of the Cloud Service resulting in functionality differing from expected functionality as designed or a failure of the Cloud Services to operate in accordance with its documentation, the Agreement and this SLA.

2.4 "**Force Majeure**" means an act or event beyond the control and without any fault or negligence of Provider. Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Provider.

2.5 **"Software Patch"** means a fix to one or more Defects.

2.6 **"Severity Level"** means the level assigned to a reported Defect by DOHMH based on the description of the Defect under this SLA.

2.7 "**Problem**" means an unknown underlying cause of one or more Defects.

2.8 "**Response Time**" means the response time linked to the relevant Severity Level as set forth in this SLA.

2.9 "**Resolution Time**" means the resolution time linked to the relevant Severity Level as set forth in this SLA.

2.10 "**Service Credits**" means the support services fees credited to DOHMH following claim approval as set forth in this SLA.

2.11 "**Severity 1**" means a Defect that _____.

2.12 "**Severity 2**" means a Defect that _____.

2.13 "**Severity 3**" means a Defect that _____.

2.14 "**Severity 4**" means a Defect that _____.

2.15 **"Subscription Fee"** means the amount paid by DOHMH to Provider for the procurement of the license/s to the Cloud Services.

2.16 "**Ticket**" means any registration in the Provider's helpdesk system for an identified Problem.

3. AVAILABILITY REQUIREMENT

3.1 Provider shall ensure that Cloud Services shall be Available 99.9% of the time, excluding the time the Cloud Services are not Available as a result of one or more of the exceptions in Section 3.2.

3.2 No period of Service downtime will be included in calculating Availability to the extent that such downtime is caused by any of the following:

3.2.1 Any planned downtime of which Provider gives at least one (1) week advance notice to DOHMH;

3.2.2 Any delay, act or omission by DOHMH, access to or use of the Cloud Services by DOHMH, or using DOHMH's user identification and password, that does not comply with this Agreement; or

3.2.3 A Force Majeure event.

3.3 For any partial calendar month during which DOHMH subscribes to the Cloud Services, Availability will be calculated based on the entire calendar month, not just the portion for which DOHMH subscribed. This includes when the system may be Available but there are outstanding Severity 1 and Severity 2 issues that are critical or significant business impact.

3.4 Should the Availability of Covered Services fall below the threshold set forth in Section 3.1 hereto in a calendar month, Provider shall provide a credit as set forth in the table below:

Availability	Service Credit
99.5% to 99.8%	one percent (1%) of monthly Subscription Fee
98% to < 99.5%	two percent (2%) of monthly Subscription Fee
95% to <98.0%	five percent (5%) of monthly Subscription Fee
< 95%	one hundred percent (100%) of the monthly

	Subscription Fee.

3.5 Any service credits duly claimed by DOHMH under Section 3.4 and Section 6.7 shall be promptly remitted to DOHMH either by direct payment, or withheld as a set-off against pending invoices submitted by Provider pursuant to a work order or this Agreement, at DOHMH's election.

4. SUPPORT

4.1 The Provider shall perform its support obligations during the following Days and Hours of Coverage:

4.1.1. Twenty-four (24) hours a day, seven (7) days a week for Severity 1 and 2 Defects; and
4.1.2. Business Days, 8:00 AM to 12:00 AM EST for all other Severity Levels.

4.2. All support (including remote support) must be provided by Provider from the United States.

4.3. During the Days and Hours of Coverage, Provider shall provide the following support services:

4.3.1. Technical support, which shall include assisting DOHMH in its use of the Cloud Services, resolving technical Defects, and communicating relevant information regarding the Cloud Services;
4.3.2. Communication support, which shall include help desk support, unlimited telephone and email consultation and resolution communication support;
4.3.3. Administrative support, which shall include user maintenance (administrative provisioning, password resets), troubleshooting assistance and responses to general inquiries; and
4.3.4. Provision of documentation, which shall include incident reports and reports on Provider's compliance with Response Time and Resolution Time requirements under this SLA.

5. SUPPORT REQUESTS

5.1. Provider will grant access to a system where DOHMH can communicate potential Defects to the Provider.

5.2. If DOHMH encounters a problem Defect in the usage of the Cloud Services, DOHMH shall (a) diagnose and reasonably assign a Severity Level to the noted Defect; and (b) send a support request to Provider by opening a Ticket.

6. INCIDENT MANAGEMENT

6.1. Provider shall promptly conduct a root cause analysis of the Defect upon notification. If Provider discovers the Defect before DOHMH does, Provider shall diagnose and reasonably assign a Severity Level to the noted Defect. DOHMH may require that the Defect be assigned a different Severity Level. Provider may advise DOHMH and dispute DOHMH's determination.

6.2. The Provider shall investigate and rectify a Defect in accordance with the applicable Severity Levels, Response, and Resolution Times.

6.3. In the event a Defect is determined to be caused (in whole or in part) by the Cloud Services, the Provider will be liable for all failures to meet the Response and Resolution times listed in Section 6.4 which may then result in Service Credits.

6.4. Severity Level, Response and Resolution Times during Days and Hours of Coverage are defined in the following table:

Severity Level	Response Times	Resolution Times
Critical (1)		
Major (2)		
Medium (3)		
Minor (4)		

[1] 'Correction available' means that a Software Patch is ready to be implemented by DOHMH with support from the Provider.

[2] Note that Parties can mutually agree in writing to increase the Resolution Times inside Hours of Coverage.

6.5. The Response Time shall be calculated from the moment a Ticket is initiated until the moment a repair commences.

6.6. Resolution Time shall be calculated as the time between the initiation of the Ticket by DOHMH according to the mutually agreed upon procedures and the time the Provider's Service Desk declares the actions to resolve the Defect in the Ticket completed as verified by DOHMH.

6.7. If the Provider fails to provide the incident management services within the agreed timelines as set forth in 6.4, DOHMH is entitled to claim Service Credits as follows:

Severity Level	Qualification Period	Service Credit
(1) Critical	Each day or part of a day that the applicable response and resolution time in Section 6.6 has been	$___ per day or partial day.

	missed.	
(2) Major	Each day or part of a day that the applicable response and resolution time in Section 6.6 has been missed.	$__ per day or partial day.
(3) Medium	Each day or part of a day that the applicable response and resolution time in Section 6.6 has been missed.	$__ per day or partial day.
(4) Minor	N/A	N/A

6.8. Failure on the part of the Provider to provide a correction or a workaround for a Severity 1 or Severity 2 Defect within seven (7) consecutive days provides DOHMH with the option to engage a third-party to fix the issue, while preserving DOHMH's right to terminate in accordance with the Agreement.

Version	**Date**
1.0	March 2022
2.0	August 2023
2.1	July 2024

APPENDIX C
NYC AI Rider

AI RIDER

1. DEFINITIONS

a. "**Agreement**" means the Agreement between Provider and the City, annexed hereto, and all riders and appendixes thereof.

b. "**AI Inputs**" means any and all Data that is entered into or captured by an AI Product, including but not limited to prompts, training data, and APIs, repositories, or City Data incorporated into an AI Product or made available for an AI Product to access.

c. "**AI Outputs**" means any and all Data produced by an AI Product or training process thereof, including but not limited to responses to prompts, revised or fine-tuned models, and analytics.

d. "**AI Policies**" means City-issued policies and standards relating to the use of AI Products, as may be amended from time to time.

e. An "**AI Product**" means any and all trained, self-improving, or machine learning software, models, algorithms, features, hardware, or tools or aids of any kind.

f. "**Authorized User**" means the City, including its duly authorized employees, agents, consultants, auditors, other independent providers, and any external users, including members of the public for public-facing products, contemplated by the Parties.

g. The "**City**" means the City of New York and/or a county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution, or agency of government, the expenses of which are paid in whole or in part from the City of New York's treasury, or an entity created under New York law specifically for the benefit of the City or to serve persons present in the City of New York and that has one (1) or more members or directors of which are appointed by the mayor or City Council (e.g., the New York City Board of Elections).

h. "**City Data**" means (1) Data characterizing the City or its behavior; (2) Data created, generated, stored, or maintained by, at the direction of, or for the benefit of the City; and (3) any copies or derivatives of such Data, including metadata.

i. "**Cyber Command**" means the Office of Cyber Command, established within the New York City Office of Technology and Innovation ("**OTI**"), that is empowered to ensure compliance with Policies and Standards, mitigate cyber threats, mandate deployment of technical and administrative controls, review cyber related spending, and collaborate with federal and state government agencies and private sector organizations.

j. "**Data**" means any information, representation(s) of information, knowledge, facts, ideas, concepts or similar including any texts, instructions, documents, databases, diagrams, graphics, drawings, images, sounds, model parameters, hyperparameters, or biometrics that are accessed, communicated, created, generated, stored (in temporary or permanent form), filed, produced, or reproduced, processed, referenced, or transmitted, in any form or media.

k. "**Department**" means the City component or entity that has entered into this Agreement.

l. "**Identifying Information**" means any information provided by the City to Provider or obtained by Provider in connection with the Agreement in that may be used on its own or with other information to identify or locate an individual, including information based on, inferred, created, or derived from, or otherwise incorporating Identifying Information. Identifying Information includes, but is not limited to, trained or fine-tuned model parameters and other AI Outputs informed by Identifying Information.

m. "**Intellectual Property**" means all proprietary information, patents, patent applications, trademarks, trade names, service marks, certification marks, collective marks, designs,

processes, inventions, licenses, copyrights, and trade secrets of either Party, including, but not limited to, such rights relating to the origin, design, manufacture, programming, operations, function, configuration, or service of the licensed product.

n. "**Provider**" means a person or entity engaged by the City of New York to provide product(s) under the Agreement, whether directly or through a third-party reseller.

2. INTELLECTUAL PROPERTY

a. Provider acknowledges that, to the fullest extent provided by law, all right, title, and interest in City Data and data derived therefrom, including but not limited to City Data which is used as AI Input or which is itself AI Output, shall remain, or upon creation become, the exclusive property of the City. Provider has no Intellectual Property interest in, right to, or other claim to City Data, including but not limited to City Data which is used as AI Input, or which is itself AI Output.

b. The City hereby retains all right, title, and interest in and to any suggestion, enhancement request, recommendation, correction, or other feedback ("Feedback") provided to Provider relating to an AI Product. Provider may use such Feedback solely in connection with its provision of an AI Product to the City. Any feedback from the City is provided "as is," and the City disclaims any and all warranties.

c. Provider will cooperate with the City and the Department to protect the City's Intellectual Property and City Data and will promptly notify the Department and the New York City Law Department if Provider becomes aware of any potential infringements of those rights in connection with its AI Product or the Agreement.

d. Provider represents and warrants that Provider has obtained all Intellectual Property Rights and licenses necessary to provide any AI Product it offers to the City.

3. SECURITY

a. The City reserves the right to inspect security and technical safeguards which may include training, tuning, testing and maintenance data relating to AI Products and/or compliance with industry security practices and certifications, by giving Provider reasonable notice.

b. As applicable, Provider shall maintain logs of user and AI Product activity in a manner that would enable the investigation of abuse or misuse of an AI Product.

c. Provider shall notify the Department and Cyber Command within 24 hours of any incident or suspected incident that may impact the safety, security, or reliability of an AI Product, AI Inputs, AI Outputs, or City Data.

4. DATA USE

a. Provider shall not commingle City Data with non-City Data that is uploaded by Provider, its customers, or other third parties and stored by Provider. Provider shall provide the City with details of how it performs data segregation.

b. Provider shall not use or permit the use of City Data for the purpose of developing or training any AI Product without the City's prior written consent.

c. Provider shall not export City Data, including any AI Product or products that contain or were created with the involvement of City Data, outside the United States except with the express written permission of the City, and then only for the City Data specified in that permission.

d. Provider warrants that its AI Product will not access, modify, or delete City Data except as specifically directed by an Authorized User and only to the extent such Authorized User has permissions to access, modify, or delete such City Data.

e. Provider shall ensure that any City Data that an Authorized User inputs into an AI Product accessed via the Provider shall be kept confidential, and neither the AI Inputs nor AI Outputs will be disseminated beyond the Provider and any other third party that is necessary for the AI Product to function.

5. PRIVACY

a. If Provider provides an AI Product to collect, disclose, use, or access Identifying Information on behalf of the City, the Department may determine that the City's Identifying Information Rider (IIR) shall also apply.

6. AI PERFORMANCE WARRANTY

a. Provider hereby warrants that any AI Product it provides to the City will perform in accordance with its specifications and will be subject to ongoing bias mitigation as applicable.

b. Provider shall make available to the City defined functionality and performance scope and metrics including product specifications, model cards, and bias audits for any AI Product it provides.

7. COMPLIANCE

a. Provider represents and warrants that its AI Product and any associated services are and shall remain in compliance with all federal, state, and local laws, standards, frameworks, and regulations.

b. Provider shall promptly notify the City of any change in its compliance status that could reasonably be expected to affect the delivery of services under this Agreement or the security, confidentiality, or integrity of City Data.

c. Provider shall notify the City at least 90 days prior to the release of new AI Products made available to the City under the Agreement. The City makes a determination to use AI Products on a case-by-case basis. The City reserves the right to reject or discontinue use of the AI Products consistent with the City's rights under the Agreement.

8. POLICIES

a. In the event that the City issues AI Policies that would materially impact Provider's obligations under the Agreement, the City will notify Provider of such AI Policies, and the Parties will discuss the impact of such AI Policies in good faith, with a goal of cooperation and compliance.

9. CITY RISK ASSESSMENT

a. AI Products may be subject to a risk assessment by the City. If such a risk assessment has been completed, and the City's written disposition requires Provider to comply with the City's prescribed measures ("**City AI Measures**"), then, in addition to complying with this Agreement, Provider shall work with the City in good faith to comply with the City AI Measures.

b. Any written disposition of a risk assessment by the City shall not be deemed to constitute an

endorsement of the AI Product or a certification that the AI Product satisfies the City AI Measures or the requirements under this Agreement. Provider remains fully responsible for ensuring compliance with the City AI Measures and this Agreement. At all times during the term of this Agreement, Provider agrees to cooperate with the City to ensure that Provider is in compliance with all City AI Measures and the provisions of this Agreement.

10. INDEMNIFICATION

a. Without limiting Provider's indemnification obligations under the Agreement to defend, indemnify or hold harmless the City, with regard to AI Products, Provider shall defend, indemnify, and hold the City, including its employees, officials, and Authorized Users (each an "**Indemnitee**") harmless from any and all judgments, damages, liabilities, amounts paid in settlement, awards, fines, penalties, disbursements, costs, and expenses (including witness fees, expert fees, investigation fees, travel expenses, bonds, the cost of establishing the right to indemnification under this Section 10(a), court or arbitration costs and reasonable attorney's fees) to which an Indemnitee may be subjected, become liable to pay, suffer or incur in connection with any claim, allegation, suit, subpoena, action or proceeding (whether completed, actual, pending, threatened, civil, criminal, investigative, administrative, meritorious or without merit) that arises from or relates to (a) breach of confidentiality; (b) costs and expenses to which an Indemnitee may be subject in connection with any operations of Provider and/or its subcontractors to the extent resulting from any negligent act of commission or omission, or any intentional tortious act; (c) failure to comply with the provisions of this Agreement (including but not limited to a breach of representations and warranties) or of the law; (d) the infringement of any copyright, trade secret, trademark, patent or other tangible or intangible property or personal right of any third party by Provider or its subcontractors; or (e) actions taken by an AI Product supplied by Provider, except where those actions were specifically requested in all particulars by an Authorized User. Provider shall defend, indemnify, and hold the Indemnitees harmless regardless of whether the alleged infringement arises out of the use of an AI Product in a manner not expressly contemplated in this Agreement, or in combination with any hardware, equipment or other software not provided or authorized by Provider. Insofar as the facts or the law relating to any claim would preclude an Indemnitee from being completely indemnified by Provider, such Indemnitee shall be partially indemnified by Provider to the fullest extent permitted by law.

11. MATERIAL BREACH

a. Violation of any part of this Rider shall constitute a material breach of the Agreement.

12. HEADINGS

a. Headings are inserted only as a matter of convenience and for reference and in no way define, limit, augment, or describe the scope or intent of this Attachment.

APPENDIX D
NYC Business Associate Agreement

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT BUSINESS ASSOCIATE AGREEMENT

Between

The New York City Department of Health and Mental Hygiene
And
_____

This **Health Insurance Portability And Accountability Act Business Associate Agreement** ("Agreement") made as of _____ ("Effective Date") by and between the City of New York through its Department of Health and Mental Hygiene ("DOHMH" or "Covered Entity"), Division of _____, having its primary offices at Gotham Center, 42-09 28th Street, Queens, NY 11101-4132, and _____ ("Business Associate"), having its primary offices_____, (each a "Party" and, collectively, the "Parties").

WHEREAS, DOHMH has contracted with Business Associate for the delivery of services which require Business Associate to have access to Protected Health Information maintained by DOHMH pursuant to the Health Insurance Portability and Accountability Act of 1996;

WHEREAS, the specific services provided by Business Associate to DOHMH include _____ pursuant to contract _____which is attached to this Agreement as Attachment A.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other valuable and good consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

I. DEFINITIONS

Except as otherwise defined herein, any and all terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules (as defined below). As used in this Agreement, the following terms shall have the following meanings:

(a) **"Breach"** shall have the same meaning as the term "breach" in 45 CFR §164.402.

(b) **"Business Associate"** shall have the same meaning as the term "business associate" in 45 CFR §160.103, and for this Agreement shall be _____.

(c) **"Covered Entity"** shall have the same meaning as the term "covered entity" in 45 CFR §160.103, and for this Agreement shall be DOHMH.

(d) **"Designated Record Set"** shall have the same meaning as the term "designated record set" in 45 CFR §164.501.

(e) **"Electronic Protected Health Information"** or **"Electronic PHI"** shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103, except that Electronic PHI shall be limited to the information created, received, maintained, transmitted, or accessed by Business Associate or its Subcontractors or agents on behalf of Covered Entity.

(f) **"HIPAA"** shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, and the regulations promulgated thereunder, as the law and regulations may be amended.

(g) **"HIPAA Rules"** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as they may be amended.

(h) **"Individual"** shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

(i) **"Protected Health Information"** or **"PHI"** shall have the same meaning as the term "protected health information" in 45 CFR §160.103, except that PHI shall be limited to the information created, received, maintained, transmitted, or accessed by Business Associate or its Subcontractors or agents on behalf of Covered Entity.

(j) **"Required by Law"** shall have the same meaning as the term "required by law" in 45 CFR §164.103.

(k) **"Secretary"** shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

(*l*) **"Security Incident"** shall have the same meaning as the term "security incident" in 45 CFR §164.304.

(m) **"Subcontractor"** shall have the same meaning as the term "subcontractor" in 45 CFR §160.103, and for this Agreement shall be a subcontractor of Business Associate.

(n) **"Unsecured Protected Health Information"** or **"Unsecured PHI"** shall have the same meaning as the term "unsecured protected health information" in 45 CFR §164.402.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

(a) **Permitted or Required Uses.** Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement and Attachment A to this Agreement, or as Required By Law.

(b) **Appropriate Safeguards.** Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement, and with respect to Electronic Protected Health Information to comply with Subpart C of 45 CFR Part 164 (45 CFR §164.302 et seq.).

(c) **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effects of which Business Associate becomes aware that have resulted from any unauthorized acquisition, access, use or disclosure of Protected Health Information by Business Associate, its Subcontractors or agents.

(d) **Reporting Unauthorized Use or Disclosure.** Business Associate agrees to report to Covered Entity, in writing, any unauthorized acquisition, access, use or disclosure of Protected Health Information by Business Associate, its Subcontractors or agents in violation of this Agreement of which Business Associate becomes aware. Business Associate shall make such report to the designated representative of Covered Entity, in writing, within five (5) business days of having been made aware of such unauthorized acquisition, access, use or disclosure. Business Associate agrees to fully cooperate with any investigation conducted by Covered Entity or its designated agents of any such unauthorized acquisition, access, use or disclosure.

(e) **Breach Notification Under HIPAA Rules.**

(1) Business Associate agrees to comply with the requirements of Subpart D of 45 CFR Part 164 (45 CFR §164.400 et seq.), including but not limited to the requirement that, following the discovery of any Breach of Unsecured PHI, Business Associate shall, without unreasonable delay, and in no event later than sixty (60) days after discovery of any Breach of Unsecured PHI, notify Covered Entity in writing of any such Breach, unless a delay in such notification is required by 45 CFR §164.412. Business Associate shall provide Covered Entity with an explanation in writing of the basis for its determination that a Breach of Unsecured PHI has occurred and any risk assessment conducted under 45 CFR §164.402 (see paragraph (2) in definition of "Breach"), and all documentation in support of such determination.

(2) If Business Associate finds that an unauthorized acquisition, access, use or disclosure of PHI has occurred and has been reported to Covered Entity as required by Section II(d) or Section IV(c), but has been determined not to constitute a Breach of Unsecured PHI, Business Associate shall provide Covered Entity with an explanation in writing of the basis for such determination and any risk assessment conducted under 45 CFR §164.402 (see paragraph (2) in definition of "Breach"), and all documentation in support of such determination. Such explanation in writing shall be provided without unreasonable delay, and in no event later than sixty (60) days after the discovery of the unauthorized acquisition, access, use or disclosure of PHI.

(3) Business Associate shall fully cooperate with any investigation conducted by Covered Entity or its designated agents of whether a Breach of Unsecured PHI has occurred. In the event of a disagreement between Business Associate and Covered Entity as to whether or not such a Breach has occurred, the determination made by Covered Entity shall control.

(4) Business Associate shall bear all costs related to its determination whether Business Associate has had a Breach of Unsecured PHI. In the event a Breach of Unsecured PHI has

occurred, Business Associate shall reimburse Covered Entity for all costs incurred by Covered Entity related to: (i) providing the notice required by 45 CFR §§ 164.404 and 164.406, including if applicable, but not limited to, written notice, substitute notice, additional notice in urgent situations, and notification to media; and (ii) all measures in mitigation of the harmful effects of any acquisition, access, use, or disclosure of PHI that are commercially reasonable, including but not limited to, credit monitoring services for individuals affected by such Breach, and any other commercially reasonable preventive measure. The determination of whether a measure in mitigation of the harmful effects of any acquisition, access, use, or disclosure of PHI is commercially reasonable shall be in the sole discretion of the Covered Entity.

(f) **Subcontractors and Agents.** In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), as applicable, Business Associate agrees to ensure that all of its Subcontractors and agents that create, receive, maintain, transmit, or access Protected Health Information on behalf of Business Associate, agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information. Business Associate is not in compliance with this Agreement if Business Associate knew of a pattern of activity or practice of a Subcontractor that constituted a material breach or violation of the Subcontractor's obligations under its subcontract, unless Business Associate took reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the subcontract, if feasible.

(g) **Access by Individual.** Business Associate agrees to provide access, at the request of Covered Entity, and in the reasonable time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual or Individual's designee in order to satisfy Covered Entity's obligations under 45 CFR §164.524, provided that Business Associate has Protected Health Information in a Designated Record Set.

(h) **Amendment to PHI.** Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the reasonable time and manner designated by the Covered Entity, and to take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.526, provided that Business Associate has Protected Health Information in a Designated Record Set.

(i) **Request for an Accounting.** Business Associate agrees to document such disclosures of Protected Health Information, 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 Protected Health Information in accordance with 45 CFR §164.528. Business Associate agrees to make available to Covered Entity or an Individual, in the reasonable time and manner designated by the Covered Entity, information collected pursuant to this Section II(i) in order to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.528.

(j) **Additional Restrictions on PHI.** If Covered Entity notifies Business Associate that it has agreed to be bound by additional restrictions on the uses or disclosures of certain Protected Health Information pursuant to the HIPAA Rules, Business Associate agrees to be bound by

such additional restrictions and shall not disclose such PHI in violation of such additional restrictions.

(k) **Carrying Out Covered Entity Obligation(s).** To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164 (45 CFR §164.500 et seq.), Business Associate shall comply with the requirements of such Subpart E that apply to the Covered Entity in the performance of such obligation(s).

(*l*) **Access by Secretary to Determine Compliance.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information created, received, maintained, transmitted, or accessed by Business Associate on behalf of Covered Entity, available to the Covered Entity and to the Secretary, in the reasonable time and manner designated by the Covered Entity, or in the time and manner designated by the Secretary, as applicable, for purposes of determining compliance with the HIPAA Rules. Business Associate shall immediately notify Covered Entity upon receipt of any request by the Secretary for access and of all materials to be disclosed pursuant to such request.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

(a) **Use and Disclosure for Performance.** Except as otherwise provided in this Agreement, Business Associate may only use or disclose Protected Health Information as necessary to perform services, functions, activities, and/or duties for, or on behalf of, Covered Entity as specified in **Attachment A** to this Agreement, or as necessary to perform its duties under this Agreement, or as Required by Law, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.

(b) **Disclosure to Third Parties.** Subject to Section II(f) and Section IV(b) of this Agreement, Business Associate may disclose Protected Health Information to third parties as necessary to perform services, functions, activities, and/or duties for, or on behalf of, Covered Entity as specified in **Attachment A** to this Agreement, or as necessary to perform its duties under this Agreement. The third parties shall provide written assurances of their 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) **Minimum Necessary Use and Disclosure.** In accordance with the HIPAA Rules, when using or disclosing Protected Health Information, or when requesting PHI from Covered Entity or another covered entity or business associate, Business Associate agrees to make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

(d) **Use for Management, Administration and Legal Responsibilities.** Business Associate may use Protected Health Information if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(e) **Disclosure for Management, Administration and Legal Responsibilities.** Business Associate may disclose Protected Health Information if necessary for the proper management

and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that (1) the disclosure is Required By Law, or (2) (A) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (B) the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. 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; provided, however, that if Covered Entity does not respond to Business Associate regarding such opposition prior to the date on which such disclosure must be timely made, Business Associate may, in its own discretion, disclose PHI as Required by Law or such lawful process.

(f) **Data Aggregation Services.** Business Associate may use or disclose Protected Health Information to provide data aggregation services relating to the health care operations of the Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B). Under no circumstances may Business Associate disclose PHI to any other person or entity pursuant to this Section III(f) without the express authorization of Covered Entity.

(g) **De-identified PHI.** Business Associate agrees that it will obtain the prior approval of Covered Entity before de-identifying Protected Health Information in accordance with 45 CFR §164.514(a)–(c) and utilizing such de-identified PHI.

(h) **Use of PHI or De-identified PHI for Research Purposes.** Business Associate agrees that it will obtain the prior approval of Covered Entity for the use or disclosure of Protected Health Information or de-identified PHI for research purposes.

IV. SECURITY REQUIREMENTS

(a) **Safeguards to Protect Electronic PHI.** Business Associate agrees to comply with the applicable requirements of Subpart C of 45 CFR Part 164 (45 CFR §164.302 et seq.), which include but are not limited to, implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains, transmits, or accesses on behalf of Covered Entity. Business Associate shall additionally comply with the City of New York Information Security Policies and Standards, Cyber Command Policies and Standards, or any other policies and procedures by the City of New York Office of Technology and Innovation, available at https://www.nyc.gov/content/oti/pages/vendor-resources/cybersecurity-requirements-for-vendors-contractors, as they may be amended or placed on a successor site by the City of New York.

(b) **Subcontractors and Agents.** In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), as applicable, Business Associate agrees to ensure that all of its Subcontractors and agents that create, receive, maintain, transmit, or access Electronic Protected Health Information on behalf of Business Associate agree in writing to comply with the applicable

requirements of Subpart C of 45 CFR Part 164 (45 CFR §164.302 et seq.), which include but are not limited to, implementing reasonable and appropriate safeguards to protect such information.

(c) **Reporting Security Incident.** Business Associate agrees to report to Covered Entity, in writing, any Security Incident involving Protected Health Information experienced by Business Associate, its Subcontractors or agents, of which Business Associate becomes aware. Business Associate shall make such report to the designated representative of Covered Entity, in writing, within five (5) business days of having been made aware of such Security Incident. Business Associate agrees to fully cooperate with any investigation conducted by Covered Entity or its designated agents of any such Security Incident.

V. COMPLIANCE WITH CERTAIN NEW YORK STATE LAWS AND 42 CFR PART 2

(a) **Confidentiality Under New York Law.** Business Associate agrees to comply with all applicable New York State laws and any regulations promulgated thereunder governing the confidentiality of information created, received, maintained, transmitted, or accessed by Business Associate, its Subcontractors or agents on behalf of Covered Entity, including but not limited to the following provisions, as applicable: New York Public Health Law §18 (Access to Patient Information) and Article 27-F (HIV and AIDS Related Information); New York Mental Hygiene Law §§22.05 and 33.13; New York Civil Rights Law §79-*l*; New York General Business Law §399-ddd (Confidentiality of Social Security Account Numbers), §399-h and §899-aa; and chapter 5 of title 10 of the Official Compilation of Codes, Rules, and Regulations of the State of New York.

(b) **Breach Notification Under New York Law.** Pursuant to New York General Business Law ("GBL") §899-aa(2) and (3) and in conformity with Section II(d) and Section IV(c) of this Agreement, Business Associate shall, within five (5) business days of discovery thereof, notify Covered Entity of any "breach of the security of the system," as defined in GBL §899-aa(1)(c), that involves Protected Health Information containing individuals' "private information," as defined in GBL §899-aa(1)(b), that was, or was reasonably believed to be, acquired from Business Associate, its Subcontractors or agents by a person without valid authorization. Business Associate shall bear all costs related to its "breach of the security of the system" under GBL §899-aa. 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 GBL §899-aa(5), including if applicable, but not limited to: written notice; electronic notice; telephone notification; substitute notice; email notice; posting of notice on web site; and notification to major statewide media.

(c) **Confidentiality of substance use disorder information under federal law**. Business Associate acknowledges that it may receive, store, or process patient identifying information related to substance use disorder diagnosis, treatment, or referral for treatment ("substance use disorder information") and that such information is protected by Part 2 of Title 42 of the Code of Federal Regulations ("Part 2 regulations"). For the purposes of this Agreement, Business Associate is a qualified service organization as defined in the Part 2 regulations. Business Associate shall comply with the applicable Part 2 regulations and shall resist in judicial proceedings any efforts to obtain access to substance use disorder information except as permitted by the Part 2 regulations.

VI. OBLIGATIONS OF COVERED ENTITY

(a) **Notify of Limitation(s) in Privacy Notice.** Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices utilized by Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) **Notify of Changes in Individual's Permission.** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) **Notify of Restriction on Use or Disclosure.** Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(d) **Impermissible Request by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity.

VII. TERM AND TERMINATION

(a) **Term**. This Agreement shall be effective until_____ or the expiration date of the contract (if any) in Attachment A whichever is earlier, or until earlier termination of this Agreement. This Agreement may be extended upon agreement by the Parties.

(b) **Termination for Violation of Material Term.** In the event that Covered Entity reasonably believes that Business Associate may have violated a material term of this Agreement, Covered Entity shall have the right to investigate such violation, and Business Associate shall fully cooperate with any such investigation. If Covered Entity determines that Business Associate has violated a material term of this Agreement, Covered Entity may immediately terminate this Agreement without penalty or recourse to Covered Entity. Alternatively, Covered Entity may provide written notice to Business Associate of the existence of a violation of a material term of this Agreement, and afford Business Associate an opportunity to cure such violation to the satisfaction of Covered Entity within thirty (30) days of receiving notice of the violation or such other period of time as the parties may agree to. Failure to cure such violation within the applicable time period is grounds for immediate termination of this Agreement. If Covered Entity determines that neither cure of such violation nor termination is feasible, Covered Entity may report such violation to the Secretary and/or to any other governmental agency as may be required by applicable law, and Business Associate agrees that it shall not have or make any claim(s), whether at law or in equity, with respect to such report(s). Termination pursuant to this Section VII(b) shall be effectuated by a written notice to Business

Associate that specifies the violation upon which the termination is based and the effective date of the termination.

(c) **Effect of Termination.**

(1) Except as provided in paragraph (2) of this Section VII(c), upon termination or expiration of this Agreement, Business Associate shall return or destroy, and ensure that its Subcontractors and agents return or destroy, all Protected Health Information received from Covered Entity, or created, maintained, received, or accessed by or on behalf of Business Associate or Covered Entity, that the Business Associate, its Subcontractors or agents still maintain in any form. Business Associate shall not retain, and shall ensure that its Subcontractors and agents not retain, copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon receipt by Covered Entity of such notification that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement, and shall ensure that its Subcontractors and agents in writing extend the same protections, to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate, its Subcontractors or agents, as applicable, maintain such Protected Health Information.

(d) **Non-exclusive Provisions.** The termination provisions of this Section VII are in addition to, and not in lieu of, the termination provisions provided in the contract (if any) in Attachment A to this Agreement and any other rights and remedies of the Covered Entity that are provided by law or by the contract (if any) in Attachment A to this Agreement.

VIII. INDEMNIFICATION

(a) **Indemnification.** Business Associate agrees to defend, indemnify and hold harmless Covered Entity, the City of New York, and their respective employees, officers, subcontractors, agents, and other members of their 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: (1) any violation or breach of the provisions of this Agreement by Business Associate or its employees, directors, officers, Subcontractors, agents, or other members of its workforce; or (2) any negligent act or omission or intentional tortious act by Business Associate, its employees, directors, officers, Subcontractors, agents, or other members of its workforce that result in a violation of the HIPAA Rules. Accordingly, on demand, the Business Associate shall reimburse the indemnified party for any and all losses, liabilities, fines, penalties, costs, or expenses (including reasonable attorneys' fees) which 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 the conduct described in (1) or (2) above.

IX. MISCELLANEOUS

(a) **Agency.** For purposes of this Agreement, it is the understanding and intention of the parties that Business Associate is acting as an independent contractor, and not an agent, of Covered Entity.

(b) **References to Law and Rules.** A reference in this Agreement to any section of law or rules (including but not limited to the HIPAA Rules), means the section of law or rules as in effect or as amended.

(c) **Amendment.** In order to ensure that this Agreement at all times remains consistent with applicable law and rules regarding use and disclosure of Protected Health Information (including but not limited to the HIPAA Rules), Business Associate agrees that this Agreement may be amended from time to time upon written notice from Covered Entity to Business Associate as to the revisions required to make this Agreement consistent with applicable law and rules.

(d) **Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of this Agreement shall survive the expiration or termination of this Agreement.

(e) **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Rules and the applicable State laws cited in Section V of this Agreement.

(f) **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.

(g) **Merger Clause**. This Agreement and the Attachments hereto constitute the entire understanding of the Parties and merges all prior discussions, agreements or understandings into it. No prior agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties.

[end of page]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have executed this Agreement as of the day and date first written above.

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

By: _____

Deputy Commissioner

Division of _____

BUSINESS ASSOCIATE

By: _____

NAME AND TITLE

ATTACHMENT A

Version	Date
1.0	Pre 2023
2.0	July 2023