



BERS TERMS AND CONDITONS

Board of Education Retirement System

of the City of New York

65 Court Street, 16th Floor

Brooklyn, New York 11201-4965

BERS TERMS AND CONDITIONS

1. Captions

The headings in this Agreement, the paragraphs, and subparagraphs of this Agreement, and of any attachments, are included solely for convenience and reference, and they shall not be used in any way to interpret this Agreement.

2. Compliance With Laws

In connection with the performance of this Agreement, the Contractor shall comply with all applicable laws, rules and regulations. The parties hereto agree that every provision of law required to be inserted herein be deemed a part hereof. It is further agreed that if any such provision is not inserted or is incorrectly inserted, through mistake or otherwise, this Agreement shall be deemed amended so as to comply strictly with the law.

3. Unlawful Provisions Void

If this Agreement contains any unlawful provision or portions thereof, they shall be deemed deleted from the Agreement and the remainder of the Agreement shall remain in full force and effect. If the deletion of such provision frustrates the purpose of this Agreement, either party may make application to the Evaluation Committee for relief.

4. Religious Activity Prohibited

There shall be no religious worship, instruction, proselytizing, or other religious activity in connection with the performance of this Agreement.

5. Political Activity Prohibited

No BERS property provided to the Contractor hereunder for the purpose of this Agreement shall be used for any political activity or to further the election or defeat of any candidate for public office. As used herein the term "BERS property" shall include, but not be limited to, supplies, work sites, funds advanced and services.

6. Publication And Publicity

The Contractor or anyone employed by the Contractor may not publish the results of its participation or findings in the performance of this Agreement without the prior written approval of the Chair of the BERS Board of Trustees or his/her designee. All approved publications shall acknowledge that the program is supported by funds from BERS. Ten (10) true copies of each approved publication shall be furnished to BERS without charge.

7. Copyright

If the Contractor or anyone employed by the Contractor shall write, record or otherwise produce copyrightable material within the scope or in furtherance of this Agreement, BERS shall be considered the author for purposes of copyright, renewal of copyright, and termination of copyright and, unless expressly waived in a written instrument signed by the Chair of the Board of Trustees or her designee, the owner of all of the rights comprised in the copyright.

8. Patents

Any invention or discovery arising out of or developed in furtherance of this Agreement shall be promptly and fully reported to BERS. BERS shall have the exclusive right to apply for patent protection on such invention or discovery and to determine how the rights in said invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered.

9. Accounting for Property

If any property is acquired by the Contractor with funds provided by BERS under this Agreement, the property shall be deemed purchased by BERS for the use of the Contractor during the term of the Agreement and shall be permanently embossed "Property of New York City Board of Education Retirement System" and shall be returned to BERS, at the Contractor's expense, within thirty (30) days after the end of said term, unless the Contractor is otherwise notified in writing by the Executive Director or his designee.

10. Non-Reimbursable Expenses

The following items may not be claimed as a direct or indirect cost of the services provided under this Agreement:

- A. rental expenses of apartments;
- B. interest on loans;
- C. penalties for delinquent filing of tax returns;
- D. political or charitable contributions;
- E. advertising and promotions;
- F. legal expenses;
- G. key-man life insurance premiums;
- H. federal, state and city income tax; state and city franchise taxes; and costs for the preparation of such tax returns;
- I. expenses incurred in preparing for operations;
- J. cost of employee meals and lodging except when traveling outside the city and pursuant to the specifications of the contract;
- K. entertainment, gratuities, and any other items of a personal nature;
- L. long distance telephone calls unless directly related to the services provided under the terms of this Agreement;
- M. any expense not ordinary, necessary or reasonable in the performance of the Agreement.

11. No Extra Compensation

The Contractor shall not seek, ask for, demand, sue for or recover, as extra compensation or otherwise, any sum for labor, materials or services other than the compensation agreed upon and fixed.

12. Invoices And Payments

The Contractor shall furnish proof with each invoice, and shall comply with all BERS requirements concerning the manner in which invoices are to be submitted. The Contractor shall not be entitled to demand or receive full or partial payment, until each and every one of the provisions of this Agreement is complied with, and the Executive Director or his designee shall have given written certification to that effect. Nothing contained herein shall be construed to affect the right hereby reserved by BERS to reject the whole or any portion of the performance, should said certification be inconsistent with the terms of this Agreement, or otherwise erroneously given.

13. No Estoppel

BERS shall not be precluded or estopped by a statement or document issued by or on behalf of BERS, from indicating the true value of services performed by the Contractor or by any other person pursuant to or as a result of this Agreement.

14. Acceptance of Final Payment

Receipt and negotiation by the Contractor, or by any person claiming under this Agreement, of the Final Payment hereunder, notwithstanding whether such payment be made pursuant to any judgment or order of any court, shall constitute a general release of BERS from any and all claims and liability for anything done, furnished, or relating to the labor, materials or services provided, or for any act of omission or commission of BERS or its agents and employees. Said release shall be against the Contractor, the Contractor's representative, heirs, executors, administrators, successors and assigns.

15. Claims -Limitation of Action

No action at law or equity shall be maintained by the Contractor, its successors, against BERS on any claim based upon or arising out of this Agreement, or out of anything done in connection with this Agreement, unless such action shall be commenced within six (6) months after the date of filing of the voucher for final payment hereunder, or within six (6) months of the required completion date for the services performed hereunder, whichever is sooner. None of the provisions of Article 2 of the Civil Practice Law and Rules shall apply to any action against BERS arising out of this Agreement.

16. Notices

The Contractor's address stated on Page 1 of this Agreement is hereby designated as the place where all notices, letters or other communications directed to the contractor shall be served, mailed or delivered. Any notice, letter or other communication directed to the Contractor and delivered to such address, or sealed in a post-paid wrapper and deposited in any post office box regularly maintained by the United States Postal Service, shall be deemed sufficient service thereof upon the Contractor. Said address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the Executive Director's designee. Nothing herein contained shall be deemed to preclude or render inoperative personal delivery of any notice, letter or other communication, written or oral, to the Contractor. Whenever it shall be necessary or required to prove the delivery of any notice, an affidavit describing such delivery shall be conclusive evidence of such delivery.

17. Amendments and Waivers

A. This Agreement may be amended by a written Instrument signed by an authorized officer for the Contractor, and by the Chair or his/her designee. No amendment materially affecting the substance hereof shall be effective unless approved by a Resolution of the BERS Board of Trustees, and a copy of said Resolution is attached to the amendment and incorporated herein.

B. No waiver by BERS of any terms or condition hereof shall be effective unless in writing and signed by the Chair or his/her designee. Any waiver shall be specifically limited to its terms, and shall not be deemed applicable to subsequent like circumstances.

C. Any purported oral amendment or waiver shall be void.

18. Suspension of Deliveries

The Executive Director or his designee, may postpone, delay, or suspend the delivery of the goods or services, or any part thereof, without additional compensation to the Contractor. In such event, (A) the time established for performance by the Contractor of any duty during the term of this Agreement may, at the Contractor's option, be extended for the number of days the Contractor was delayed by said suspension, postponement, or delay provided the term is not thereby extended; however, (B) the term may, at BERS' option, be extended for the number of days the contractor was delayed by said suspension, postponement or delay.

19. Cancellation

A. If the Contractor violates any provision of this Agreement, the Executive Director or his designee may pursue any legal or equitable remedies available to BERS. In addition, the Executive Director or his designee may seek to have the Contractor declared in default by the Evaluation Committee. In the event that the Contractor is declared in default, BERS may cancel this Agreement and shall thereafter be relieved of all liability hereunder. Upon a finding of default in violation of this contract, the Contractor shall be deemed not responsible and disqualified from bidding for a period of four years, unless in such finding of default, a lesser penalty is imposed by reason of mitigating circumstances.

B. In the event of breach of this Agreement by the Contractor, the Contractor shall have thirty (30) days time to cure the breach before being in default. BERS shall have the right to cancel and terminate said Agreement, and the Contractor shall be liable to BERS for any additional cost of completion of the within services, BERS' other cost in connection with the termination, reletting and completion of the services. All such costs, along with any liquidated damages for delay provided herein, may be assessed by BERS against the Contractor and deducted by BERS from payment to be made to the Contractor under this or any other Agreement at any time between the Contractor and BERS or the City. In the event that said cost exceed all sums owed at the termination date of the Agreement, the Contractor shall pay the amount of such excess to BERS upon notice from BERS of said amount, and in the event that said costs and liquidated damages are less than the sum payable under this Agreement, as if same had been completed by the Contractor, the Contractor shall forfeit all claims to the difference to BERS. If BERS undertakes to secure the services or any part thereof under this section of the Agreement, the certificate of the Executive Director or his designee indicating the amount of services secured, the cost and excess cost, if any, of completing this Agreement, and the amount of liquidated damages hereunder, shall be conclusive and binding upon the Contractor, its assigns and all other claimants.

20. BERS Determination

The Executive Director or his designee shall in all cases determine the acceptability of the labor, materials, or services which are delivered pursuant to this Agreement, including but not limited to their quality, delivery, and condition, and shall in all cases decide every question which may arise relative to the performance of this Agreement. The Contractor may not rely upon, and BERS shall not be bound by, any explanations, determinations or other statements by or from BERS which are not in writing and signed by the Executive Director or his designee.

21. Investigations

A. 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 governmental agency which is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B (a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, permit, contract, or license entered into with the City, the State, or any political subdivision thereof, or any local development corporation within the City, then;

C. (a) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license may convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(b) If any non governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination to paragraph E below without the City and BERS incurring any penalty or damages for delay or otherwise.

D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

I. The disqualification for a period not to exceed five (5) years from the date of the adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or obtaining any contract, lease, permit or license with or from the City or BERS; and /or

II. The cancellation or termination of any and all such existing City and BERS contracts, leases, permits or license that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City and BERS incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the Board.

E. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraph I and II below. He or she may also consider, if relevant and appropriate, the criteria established in paragraph III and IV below in addition to any other information which may be relevant and appropriate:

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

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

III. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with city and BERS.

IV. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in paragraph C, part I above gives notice and proves that such interest was previously acquired. Under either circumstance

the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

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

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

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

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

G. In addition to and notwithstanding any other provisions of this agreement, the commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of Investigations of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or BERS, or any other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Contractor or affecting the performance of this agreement.

22. Reports, Inspection and Records

A. The Contractor shall promptly provide all reports required by BERS, including without limitation, financial, program, statistical, analytical, narrative and progress reports. Unless otherwise provided herein, the final payment hereunder shall not be made until all reports have been submitted and approved by BERS.

B. The Contractor shall, until six (6) years after completion of its services hereunder or six years after date of termination of this Agreement, whichever is later, maintain and retain complete and correct books and records relating to all aspects of the Contractor's obligation hereunder. Records must be maintained separately, so as to identify clearly the hours charged to this Agreement and be distinguishable from all other hours charged which are not related to this Agreement.

C. The Contractor shall make its staff, and premises, books, records, operations, and services provided under this Agreement, and those of its subcontractors, available to BERS and to any person, agency or entity designated by BERS, at any time, for program audit, fiscal audit, inspection, observation, sampling, visitation and evaluation, and shall render all assistance and cooperation for said purposes. The Contractor agrees to attend, upon demand, any investigation conducted by BERS to produce any records and other documents required by BERS at that investigation, to cooperate with BERS, and to give sworn testimony pertaining to those documents or the subject of the investigation; provided only that the investigation, testimony, records and documents relate to the subject of the Contractor's relationship with BERS. If a corporation, partnership or government agency, the Contractor agrees to require its officers, employees and partners to comply with the forgoing.

D. In its record keeping the Contractor shall also comply with all federal, state and local laws and regulations pertaining to such records, including, without limitation, the regulations of the Comptroller, and shall require its subordinates to do likewise.

E. In the event that any federal, state or local government agency, or other public or private agency conducts an audit of any of the Contractor's operations which pertains directly or indirectly to the

.goods and services provided pursuant to this Agreement, within five (5) working days after the receipt by the Contractor of notice of the commencement of such audit, the Contractor shall give notice of such commencement to BERS; and within five (5) working days after receipt by the Contractor of a copy of any resulting interim or financial audit report, the Contractor shall supply on copy thereof to BERS.

23. Non-Assignment Of Contract

The Contractor shall give its personal attention to the faithful performance of this Agreement. The Contractor covenants that it will not assign, transfer, convey, sublet or otherwise dispose of this Agreement or its right, title or interest therein or its power to execute such Agreement, to any other person or corporation without the previous written consent of the Executive Director or his designee. If the Contractor in any way violates the terms of this provision, BERS shall have the right to cancel and terminate this Agreement, and BERS shall thereon be relieved from all liability thereunder. Nothing contained herein shall be construed to effect an assignment by the Contractor for the benefit of its creditors made pursuant to the statutes of the State of New York. No right under this Agreement, or to any monies due to become due hereunder, shall be asserted against BERS or the City in law or in equity by reason of a purported assignment of this Agreement, or any part thereof, or any monies due or to become due hereunder, unless authorized as aforesaid.

24. Contractor's Staff

The Contractor shall employ or contract for the service of only competent workmen, consultants, independent contractors and other employees as are, or reasonably may be, necessary for the performance of the Services hereunder.

The Contractor warrants that it shall be solely responsible for its employees' work, direction, safety and compensation.

The Contractor agrees to replace immediately any employee, and not engage such employee in the performance of this Agreement, if the Contractor is notified in writing that, in the opinion of either the Executive Director, or his designee, such employee is incompetent or otherwise impedes the performance of the services hereunder.

25. Confidentiality Of Records

All personally identifiable member and staff information obtained by or furnished to the Contractor by BERS, and all reports and studies containing such information prepared or assembled by the Contractor, are to be kept strictly confidential by the Contractor and shall not be provided or disclosed to any third party without the express written permission of the Executive Director or his designee. The Contractor shall limit access to such material in its control to those of its employees performing services pursuant to this Agreement strictly on a need to know basis. The Contractor shall restrict its use of the information to its performance under this Agreement and shall return all such material to BERS upon the completion of the services herein.

26. Testimony

If the project which is the subject matter of this Agreement at any time becomes involved in a proceeding, to which BERS or the City is a party, before any court, board, tribunal, panel, arbitrator, referee or agency, the Contractor shall provide such knowledgeable witnesses as BERS shall require, free of additional compensation of any kind. Nothing herein shall require the Contractor to provide testimony in any proceeding in which it is a party with interests opposed to those of BERS.

27. No Personal Liability

Neither the members of BERS nor the Executive Director nor any officer, employee, agent or representative of BERS or of the City shall be personally liable, based upon any theory of law or equity, to the Contractor or to any party claiming on behalf of or through the Contractor, under this Agreement, or by

reason of any individual's actions or failure to act in any way connected with this Agreement, whether or not the action shall have been within or without an individual's scope of authority. The scope of this provision includes personal injury to any personal interest (commercial or otherwise), physical injury (including death), property damages, and any pecuniary damages where such injuries or damages result from or arise out of negligence. The Contractor further waives any and all rights to make a claim or commence an action or special proceeding, in law or equity, against any of the aforementioned individuals, and the Contractor hereby assigns its complete right, title, and interest in any such claim, action, or special proceeding to BERS.

28. Conflict Of Interest

A. Except in accordance with applicable provisions of law and regulations governing such conduct, the Contractor may not have on its Board of Directors (or comparable body), employ, or contract for the services of I) any present employee of BERS, or II) any person who is presently on leave from employment with BERS, or III) any former employee of BERS.

B. The Contractor warrants that, other than a bona fide employee or contractor regularly working as a sales representative for the Contractor, no person, selling agency, or other entity has solicited or secured this Agreement, or has been employed or retained to do so, for a commission, percentage, brokerage fee or contingent fee.

C. The Contractor shall not give, and warrants that it has not given or promised to give, any gift or thing of value to any officer, employee or other person whose salary is payable in whole or part from BERS or City funds, or other funds under this Agreement. The phrase "gift or thing of value" shall include, without limitation, money, tangible goods, services, loans, promises or negotiable instruments.

D. If the Contractor violates any provision of this paragraph, BERS may, at its option, I) cancel and terminate this Agreement and be relieved of all liability hereunder, II) deduct all amounts paid by the Contractor or other value given by the Contractor in violation of this paragraph, from payments made or to be made to the Contractor under this or any other Agreement at any time, III) require the refund of any funds paid hereunder, or IV) any combination of the foregoing. Any breach of the warranties or violation of the provisions of this paragraph shall be grounds to preclude the Contractor or its principals as a responsible bidder on other BERS or City contractors.

29. Antitrust

The Contractor assigns to BERS its right, title and interest in and to any claim or cause of action arising under the antitrust laws of New York State or the United States relating to the goods or Services purchased or procured by BERS pursuant to this Agreement.

30. Merger and Choice Of Law

This written Agreement constitutes the entire agreement of the parties, and not other prior or contemporaneous agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto, or to vary any of the terms contained herein. This agreement shall be governed and construed in accordance with the laws of the State of New York without regard to its conflict of law rules.

31. Participation In An International Boycott

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

B. Upon the final determination by the Commerce Department or any other agency of the United States that the Contractor or a substantially-owned affiliated company thereof, participated, or is participating, in an international boycotting violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Executive Director or his designee may, at his option, render forfeit and void this contract.

32. No Discrimination

A. The Contractor will strictly comply with all applicable Federal, State and Local laws pertaining to the subject of discrimination on any ground, as they may now read or as they may hereafter be amended.

B. The Contractor is, and will remain, an Equal Opportunity Employer. In addition to the other requirements of this paragraph 32, the Contractor shall provide equal opportunity for all qualified persons, and shall not discriminate in employment because of race, creed, gender, color, age, sexual orientation, national origin, handicapping condition, marital status, or religion and shall promote the full realization of equal opportunity.

C. Pursuant to the provisions of the New York State Labor Law, the Contractor agrees, in its operations performed within the State of New York:

I. That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, not any person acting on behalf of such contractor or subcontractor, shall by origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

II. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin;

III. That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

IV. That this contract may be canceled or terminated by the state or municipality, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract;

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

VI. That BERS is, for purposes of this subparagraph C., a "state or municipality."

33. Equal Employment Opportunity Requirements For Professional Contractors

A. Definition of Terms for the Implementation of a Program of Affirmative Action.

The following terms, when used in this paragraph, shall have the meanings given for them

I. "Employee": Any person employed full or part-time in any capacity by the Contractor or sub-contractor.

II. "Minority Groups and Affected Classes": Blacks, Hispanics (Non-European), Asian Americans, American Indians, females and individuals with handicapping conditions.

III. "Program of Affirmative Action": A detailed, result-oriented set of written procedures submitted by a Contractor or sub-contractor which when implemented with conscious effort results in compliance with the Equal Opportunity Policy herein, through full utilization and equal treatment of minorities, women and individuals with handicapping conditions at all levels and in all segments of the Contractor's or sub-contractor's work force. An effective Program of Affirmative Action shall include but not necessarily be limited to, the following elements:

- a. Development or reaffirmation of the Contractor's or sub-contractor's Equal Opportunity Policy;
- b. Dissemination of the Policy;
- c. Responsibility for implementation;
- d. A survey and analysis of employment at all levels and in all categories and aspects of the Contractor's or sub-contractor's work force, which determines if and at which levels, categories, and aspects there is an under-utilization of minority and female employees;
- e. Establishment of goals and timetables toward the attainment of which the Contractor's or subcontractor's good faith effort must be directed to remedy any identifiable underutilization of minorities and women;
- f. An analysis of employment policies and practices, including but not limited to seniority system, recruitment, training, promotion, insurance and job benefits and their effects upon minorities, women and individuals with handicapping conditions;
- g. Corrective actions taken, or to be taken, toward the elimination of any employment policy or practice having a discriminatory effect on minority group members and women; and
- h. Description of the Contractor's efforts to engage, as sub-contractors, bona fide minority business enterprises and female enterprises.

IV "Goals and Timetables": Projected levels of achievement resulting from an analysis by the Contractor or sub-contractor of its deficiencies, and of what it can reasonably do to remedy them within a specified time period.

V. "Underutilization": Having fewer minorities, women and individuals with handicapping conditions in a particular job classification than would reasonably be expected by their availability in the appropriate labor force.

VI. "The Office": The Office of Equal Opportunity of BERS.

B. Required Program of Affirmative Action

I. The Contractor is required to identify and eliminate overt and covert discriminatory practices and implement the Program of Affirmative Action. Upon demand of the Office the Contractor shall submit to the Office a detailed written Program of Affirmative Action (hereinafter referred to as a "P.A.A."). In the event the Contractor submits a P.A.A. not acceptable to the Office, the Office will require the correction or revision of the P.A.A. to its satisfaction.

II. In the event the Contractor fails to submit such an acceptable P.A.A. within the time specified in the demand, the Contractor may be declared in default. The Director shall be the sole judge of the P.A.A.'s acceptability.

The P.A.A. shall:

- a. Apply to all Board of Education professional services contracts with the Contractor;
- b. Encompass all phases of the employment process, including evaluation of job classification to ensure job relatedness, recruitment, selection, validity of examinations, retention, layoffs, seniority, assignments, training, promotion, salary and benefits;
- c. Fulfill the following requirements:
 - i. Include measurable goals, reasonable timetables and specific programs to be implemented by the contractor to identify and eliminate deficiencies

in employment practices with respect to the manifest underutilization of members of minority groups and members of affected classes;

ii. Include a statement of the present utilization of minority group members and women in the Contractor's work force and a projection of the minority utilization in the Contractor's work force for the life of the Contract and for at least a one-year period succeeding its completion. This statement and projection shall include present and project 1) rates or hiring and promotion or minority group members and women in specific job categories at each wage rate within each level of employment and according to major organizational unit, and (2) percentages of minority group and women utilization in specific job categories at each wage rate within each level of employment, and according to major organizational work force;

iii. Include all of the Contractor's facilities within New York City as well as those facilities located elsewhere within the continental limits of the United States;

iv. Specify the union(s) or other employee organizations to which the Contractor's employees belong, and shall include commitments to good faith efforts to effect Equal Opportunity changes directly or indirectly, in programs by such unions or organizations to recruit, train, qualify or otherwise select members, if such changes are deemed necessary. The P.A.A. shall also include a copy of any agreement with an employee association which affects employment policies and practices;

v. Be submitted in such format as shall be specified by the Director of the Office; vi. Include a commitment to submit to the Director a separate P.A.A., of the form (i) to (v) hereof, for each subcontractor prior to approval of the subcontractor by BERS;

vii. Include a written evidence or proof which shows that minority entrepreneurs have been solicited and given an equal opportunity to submit proposals and that such proposals have been given equal consideration for award;

viii. Contain commitments as to goals for minority and affected classes employment and adoption of equal employment practices not less strict than the commitments contained in the Contractor's most recent P.A.A. which was approved by the Office.

C. Compliance Inspection Report

Upon demand of the Office, the Contractor shall, within the specified time, submit to the Office a Compliance Inspection Report. The completed Compliance Inspection Report must be returned to the Office within such time as is specified in the requisition for information accompanying the report form.

D. Conferences

The Contractor shall attend such conferences as shall be required by the Office for the purpose of acquainting it with the statutory and contractual requirements and what specific measures shall constitute an acceptable P.A.A..

E. Implementation of P.A.A.

During the Term of the Contractor, the Contractor shall successfully implement the P.A.A. approved by the Office. F. Board of Review

If, in the opinion of the Office, the Contractor has breached any of the requirements of paragraphs 31 or 32 hereof, it may seek to have the Contractor declared in default by the Evaluation Committee as provided elsewhere herein.

For further information concerning these rules, regulations or procedures, contractors may consult with the Office of Equal Opportunity of BERS.

34. MacBride Principles Provisions for Board of Education Contractors

ARTICLE I. MACBRIDE PRINCIPLES PART A

In accordance with section 6-115.1 of the Administrative Code of the City of New York, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contract either 1) have no business operations in Northern Ireland, or 2) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

PART B

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

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

- a. increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- b. take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- c. ban provocative religious or political emblems from the workplace;
- d. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- e. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- f. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- g. develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- h. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

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

ARTICLE II. ENFORCEMENT OF ARTICLE I.

The Contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the Contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the Contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

35. Non-Collusive Bidding

If this Agreement was awarded by BERS based upon the submission of bids or proposals, Contractor warrants under penalty of perjury, that its bid or price quotation was arrived at independently and without collusion aimed at restricting competition.

36. Set-Off Rights

The BERS shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Board's option to withhold for the purposes of set-off any moneys due and owing to the BERS with regard to this agreement, any other agreement with the BERS, including any agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the Board for any other reason. The BERS shall exercise its set-off rights in accordance with normal BERS practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the BERS, its representatives, or the State or City Comptroller.

37. Fair and Ethical Business Practices

Fair and Ethical Business Practices shall be strictly adhered to during the term of this Agreement. During the term of this Agreement, Contractor shall not:

- A. File with a government office or employee, a written instrument which intentionally contains a false statement or false information;
- B. Intentionally falsify business records;
- C. Give, or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with

respect to any of his or her official acts, duties or decisions as a labor official or public servant;

D. Give or offer to give, money, gifts or anything of value or any other benefit to a labor official or public servant for any reason;

E. Give, or offer to give, money, gifts or other benefit(s) to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices;

F. Knowingly participate in the criminal activities of any organized crime group, syndicate or "family," nor shall any person employed by or associated with any such organized crime "family," syndicate or group participate through criminal means in any of the business affairs of Contractor.

38. Indemnification

The Contractor shall defend, indemnify and hold BERS and the City harmless from and against any and all claims, suits, damages, judgments, liabilities, costs, and expenses, including reasonable attorneys' fees, to which they may be subject because of or related to any claim that the Copyrightable Materials or their use constitutes an infringement by the Contractor or a violation by the Contractor of the copyright, patent, trademark, or any other property or personal right of any third party. For the purposes of this provision, "Copyrightable Materials" shall include any reports, documents, data, photographs, software, and/or other materials provided pursuant to this agreement, regardless of whether the copyright in such materials is or shall be owned by BERS, the Contractor, or third parties. This indemnification shall survive the termination or expiration of this Agreement. This indemnification provision shall not be limited in any way by the Contractor's obligations to obtain insurance as provided under this Agreement. Furthermore, Contractor shall defend and settle at its sole expense all suits or proceedings brought against Contractor arising out of the foregoing. However, in cases involving software, no such settlement shall be made that prevents BERS from continuing to use the software without BERS' prior written consent, which consent shall not be withheld unreasonably.

39. Notice to Bidders, Proposers, Contractors, and Contract Renewers

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of \$100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act ("WPEA"), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local Law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

40. Paid Sick Leave Law Contract Rider

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.¹ Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and Rules:

Applicability, Accrual and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

- such employee's mental illness, physical illness, injury, or health condition or the care of such illness, or condition or such employee's need for medical diagnosis or preventive medical care;
- such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;

- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSSL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSSL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSSL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

Records

An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PCA has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement

for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.