

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, the Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on the Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, NY 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is the Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. The Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division of Small Business  
Albany, NY 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request, and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this agreement is a contract as defined by Tax Law § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, the Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

The Contractor further certifies that it will not utilize on this contract any subcontractor that is identified on the Prohibited Entities List. The Contractor agrees that should it seek to renew or extend this contract, it must provide the same certification at the time the contract is renewed or extended. The Contractor also agrees that any proposed Assignee of this contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

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## APPENDIX A SUPPLEMENT

### AGENCY SPECIFIC TERMS AND CONDITIONS

The parties to the attached Contract, Contract C0SCO0052, agree to be bound by the following, which are hereby made part of said Contract.

1. The Contractor shall not discriminate against any applicant for services for reasons based upon religion or religious belief. The Contractor shall not use any monies received from the State to benefit or inhibit a particular religion or religious belief.
2. The relationship of the Contractor to the State is that of an independent contractor and the officers and employees of the Contractor shall conduct themselves in a manner consistent with such status, shall neither hold themselves out as nor claim to be officers, employees, or agents of the State by reason thereof, and shall not make any claim, demand or application to or for any right of the State, including, but not limited to, Workers' Compensation coverage, unemployment insurance benefits, Social Security coverage or retirement membership credit.
3. The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons or property, including death, arising out of or related to the services to be rendered by the Contractor. It shall indemnify and hold harmless the State and its officers and employees from any and all claims, suits, actions, damages and costs of every nature and description arising out of or related to the services to be rendered by the Contractor or the violation by the Contractor, its employees, servants, agents, or contractors, of any law, ordinance, rule or regulation in connection therewith.
4. Neither party shall be liable for losses, defaults, or damages under this Contract which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Contract, due to or because of acts of God, the public enemy, earthquake, floods, typhoons, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
5. If any term or provision of the Contract shall be found to be illegal or unenforceable, then, notwithstanding, the Contract shall remain in full force and effect and such term or provision shall be deemed stricken from the Contract.
6. The Contractor shall comply with all statutory requirements relating to the confidentiality of information obtained during the performance of the Contract.
7. The Contractor shall certify that payment requests do not duplicate reimbursement of costs and services received from other sources.
8. Upon termination of the Contract, there shall be a reconciliation based upon the services provided by the Contractor and the payments made by the State. The Contractor shall refund to the State any overpayments made by the State pursuant to the Contract.
9. Unless otherwise provided, the Contract may be amended, modified, renewed, and/or renegotiated by written agreement of the parties which shall become effective upon approval by the Office of the State Comptroller.
10. Unless otherwise provided, the OPWDD may cancel the Contract without cause upon serving thirty (30) days' written notice on the Contractor. Cancellation by mutual agreement of all parties to the Contract will be allowed subject to documentation in writing.
11. No part of the Contractor's income or resources shall be used directly or indirectly for the benefit of, or payment to, any State employee for services provided under this Contract other than employees whose names are furnished to the OPWDD and no employee so identified shall receive any benefit or payment under this Contract without prior written approval by the OPWDD.
12. This Contract contains all the terms and conditions agreed upon by the parties and no statement or representation, oral or written, express or implied, shall be deemed to exist or to bind either party or to vary any of the terms and conditions of the Contract.



13. Where applicable, the Contractor shall maintain eligibility for reimbursement from any program that provides payment for services and shall apply for and obtain all funds available for the program from any public or private source. Upon request, the OPWDD shall assist in establishing the Contractor's eligibility for such funds.
14. The Contractor must comply with the provisions of Mental Hygiene Law Section 16.33 and Executive Law Section 845-b, the regulations related to criminal history record checks adopted by OPWDD in connection with the fingerprinting of certain individuals and the policies and procedures of OPWDD in connection therewith. In particular, any individual employed by or affiliated as a volunteer with a provider of services as defined in Section 1.03(5) of the Mental Hygiene Law who has regular and substantial unsupervised or unrestricted physical contact with people receiving services (such contact hereinafter referred to as "consumer contact") and who hereafter submits or who has submitted an application for employment or otherwise becomes or became affiliated with the Contractor on or after April 1, 2005 (such individual hereinafter referred to as "a subject party") shall be required to consent and submit to a criminal history record check. Upon the completion thereof, the Contractor shall deny or hold in abeyance employment or volunteer opportunities involving consumer contact to a subject party when directed to do so by OPWDD and in those instances the Contractor shall notify the subject party that his or her criminal history record information is the basis for such action taken by the Contractor.
15. Federal False Claims Act (31 USC Sections 3729-3733) and the New York State False Claims Act (State Finance Law Article XIII, Sections 187-194) – the Contractor is bound by all of the related laws. The law requires that OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste and abuse in federal health care programs. This information must include the whistleblower protections that are in these laws. OPWDD must also provide its contractors with information about OPWDD's own policies and procedures for detecting and preventing waste, fraud and abuse. You can find detailed descriptions of these laws, their whistleblower protections and OPWDD's policies on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov). At the home page, select Information for Providers on the left side of the page, then select False Claims Recoveries. You can also visit the New York State Medicaid Inspector General website at [www.omig.ny.gov](http://www.omig.ny.gov) to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud and abuse is available from the OPWDD Contract Management Unit, 4th Floor, 44 Holland Ave., Albany NY 12229-0001. As a contractor of OPWDD, you are required to participate in the reviews and audits described in OPWDD's policies, and to abide by these policies with respect to funding for OPWDD services. You are also required to make the information at the OPWDD website address listed above available to all your employees and to all of your contractors involved in performing work under your contract with OPWDD.
16. Both the United States Department of Health and Human Services and the Office of the Medicaid Inspector General (OMIG) can exclude persons and organizations from federal and State healthcare programs. If this Contract is funded through the New York State Medicaid program, the following applies:

**For Contractors**

The Contractor represents that:

- (1) The United States Secretary of Health and Human Services has not excluded the Contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7 or 1320a-7a, or excluded the Contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. §1320c-5;
- (2) The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the Contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§1320a-7(d) or 1320a-7a(a);
- (3) The New York State Medicaid Inspector General has not excluded the Contractor from participation in the New York Medicaid program under 18 NYCRR Part 515; and
- (4) No federal or State agency has otherwise excluded the Contractor from participation in the New York Medicaid program or excluded the Contractor from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis.

If, during the term of this Contract, the Contractor is excluded from participation in a federal health care program or the New York Medicaid program, or is excluded from eligibility to provide services under the

Social Security Act or the New York Medicaid program on a reimbursable basis, under the authorities stated above, this Contract shall be immediately terminated.

17. On February 12, 2007 the Diesel Emissions Reduction Act took effect as law. Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL"), it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra low sulfur diesel fuel ("ULSD"). The requirements of the law apply to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. As a contract vendor, the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and State or regional public authorities. Therefore, the Bidder/Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this Contract will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the Bidder/Contractor.

18. Notices:

(1) All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

**State of New York, Office for People with Developmental Disabilities (OPWDD)**

Name: Connie Blais  
 Title: Contract Management Specialist 3  
 Address: 44 Holland Ave., Albany, NY 12229  
 Telephone Number: (518) 473-9300  
 E-Mail Address: connie.x.blais@opwdd.ny.gov

**Contractor Name**

Name: Enter Here  
 Title: Enter Here  
 Address: Enter Here  
 Telephone Number: Enter Here  
 E-Mail Address: Enter Here

(2) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(3) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

19. 14 NYCRR Sec. 624.5(u)(2) An agency shall not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD. This extends to NY State contractors; associated

language can be found at <https://opwdd.ny.gov/system/files/documents/2020/01/final-part-624-hanbook-updated-9-2019.pdf>.

20. General conditions relating to Article 15-A and Article 17B of the Executive Law are set forth in the following pages.

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## **ADDENDUM TO APPENDIX A SUPPLEMENT**

### **PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**

#### **I. General Provisions**

- A. The Office for People with Developmental Disabilities (OPWDD) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject Contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OPWDD, to fully comply and cooperate with OPWDD in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to OPWDD pursuant to the Contract and applicable law.
- D. OPWDD’s agency MWBE goals are: an overall goal of 30 percent for MWBE participation, 17 percent for New York State-certified minority-owned business enterprise (“MBE”) participation and 13 percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”).

#### **II. Contract Goals**

- A. For purposes of this Contract, OPWDD hereby establishes an overall goal of zero (0) percent for MWBE participation, zero (0) percent for New York State-certified minority-owned business enterprise (“MBE”) participation and zero (0) percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

OPWDD encourages contractors to make every effort to include the participation of MWBE firms whenever practical in the performance of this Contract to meet OPWDD’s agency goals.

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a

contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.]

- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
  2. Any responses by MWBEs to the Contractor’s outreach;
  3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OPWDD with MWBEs; and,
  5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

### III. Equal Employment Opportunity (“EEO”)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement to OPWDD within seventy-two (72) hours after the date of the notice by OPWDD to award the Contract to the Contractor.
  3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, OPWDD may require the Contractor or subcontractor to adopt a model statement (see Equal Employment Opportunity Policy Statement).
  4. The Contractor’s EEO policy statement shall include the following language:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
    - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor’s obligations herein.
    - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph “E” of this Section III, which provides for relevant provisions of the Human

Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Staffing Plan (is required for state contracts with a total expenditure in excess of \$250,000)

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by OPWDD.

D. Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by OPWDD on a monthly basis for construction contracts or a quarterly basis for all other contracts during the term of the Contract.

2. Separate forms shall be completed by the Contractor and any subcontractors.

E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### IV. MWBE Utilization Plan

A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by OPWDD, through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to OPWDD either prior to, or at the time of, the execution of the Contract.

B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.

C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

#### V. Waivers

A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by OPWDD. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, OPWDD shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

B. If OPWDD, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, OPWDD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to OPWDD by the 5<sup>th</sup> day following the end of each quarter during the term of the Contract.

**VII. Liquidated Damages - MWBE Participation**

- A. Where OPWDD determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to OPWDD liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by OPWDD the Contractor shall pay such liquidated damages to OPWDD within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

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**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE) –  
EQUAL EMPLOYMENT OPPORTUNITY (EEO)  
POLICY STATEMENT**

By signing this Contract, the Awardee/Contractor/Organization agrees to adopt the following policies with respect to the project/program/product being developed or services rendered at the New York State Office for People With Developmental Disabilities.

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from OPWDD and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of OPWDD, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.



**STAFFING PLAN**

Submit with Bid or Proposal – Instructions on page 2

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
<b>Offeror's Name:</b>		<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor
<b>Offeror's Address:</b>		
		<b>Subcontractor Name:</b> _____

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification										Disabled		Veteran		
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		(M)	(F)	(M)	(F)	
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary/Apprentices																		
Totals																		
<b>PREPARED BY (Signature):</b>								<b>TELEPHONE NO.:</b>						<b>DATE:</b>				
								<b>EMAIL ADDRESS:</b>										
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>										Submit completed with bid or proposal MWBE 101 (Rev 03/11)								

## STAFFING PLAN INSTRUCTIONS

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (MWBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

### Instructions for completing:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OMWBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

### RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN / ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

### OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies);
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female

**PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED  
SERVICE- DISABLED VETERAN-OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. NYS Office of People With Developmental Disabilities recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of NYS Office of People With Developmental Disabilities contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, NYS Office of People With Developmental Disabilities conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at <https://ogs.ny.gov/veterans/>.

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

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## **APPENDIX B: OPWDD STANDARD CONTRACT PROVISIONS**

The Procurement, the Bidder's Proposal, and the contract award resulting from this Request for Proposals (RFP) are subject to and incorporate the following terms and conditions.

### **1. CONTRACT TERM**

This Contract shall commence on **[Contract Start Date]** and shall continue for five (5) years, subject to the termination provisions contained in the subsequent Sections 22 and 23, titled Termination and Default, respectively, and the document titled Standard Clauses for New York State Contracts, Appendix A. At OPWDD's discretion, this Contract may be renewed for a one (1) year extension. Any extension will be subject to necessary approvals by the OPWDD's approval agencies. Fees shall not be increased for the five (5) year Contract term or the one (1) year extension.

### **2. MODIFICATION OF CONTRACT**

This Contract may be amended only by mutual written consent of the parties, and approval by the New York State Office of the Attorney General and the Office of the State Comptroller (OSC), if required.

### **3. EXECUTORY PROVISION/CONTRACT FORMATION**

Pursuant to State Finance Law Section 112, this Contract must be approved by OSC before becoming effective.

### **4. INTEGRATION, MERGER, AND ORDER OF PRECEDENCE**

The Contract shall be comprised solely of the following documents. In the event of an inconsistency or conflict in terms, precedence shall be given in the order indicated:

- Appendix A Standard Clauses for New York State Contracts
- Appendix A Supplement and Addendum to Appendix A Supplement
- any Amendments to the Contract
- the Contract and Appendices B–G
- Exhibit 1 – the Request for Proposals (RFP)
- Exhibit 2 – the Contractor's Proposal.

All prior agreements, representations, statements, negotiations, and undertakings are superseded.

### **5. CONTRACTOR RESPONSIBILITY AS DEFINED BY STATE FINANCE LAW**

The Contractor must remain responsible, as defined by State Finance Law, relevant case law and applicable guidelines, throughout the term of the Contract. Failure to do so may result in suspension or termination of the Contract.

The Contractor must present evidence of its continuing legal authority to do business in NYS, its integrity, experience, ability, prior performance, and organizational and financial capacity upon request by the State. The Contractor is responsible for ensuring that any proposed system or technology fulfills the requirements and terms established during the duration of the Contract.

The State reserves the right to suspend any or all activities under this Contract, at any time, if it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice of suspension and must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice lifting the suspension order.

### **6. INDEPENDENT CONTRACTOR**

The Contractor is an independent contractor and its officers, employees, subcontractors and agents are not and shall not act as State employees in the performance of the Contract. The Contractor, its officers, employees, subcontractors and agents are not entitled to any of the benefits associated with employment by the State. The Contractor agrees, during the term of this Contract, to maintain, at the Contractor's expense, those benefits to which its employees would otherwise be entitled by law, including health benefits and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the State

with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

## **7. CONTRACTOR PERSONNEL**

All of the Contractor's officers, employees, subcontractors or agents performing work under the Contract must meet or exceed the technical and training qualifications set forth in the Contract; must comply with all security and administrative requirements of the OPWDD; must possess the necessary qualifications, training, licenses and permits as may be required within the jurisdiction where the Services specified are to be provided or performed; and shall be legally entitled to work in such jurisdiction. All persons, corporations or other legal entities that perform Services under the Contract on behalf of the Contractor shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.

The OPWDD, in its sole discretion, may refuse access to State systems and facilities or require removal from any State facility any employee of the Contractor or its subcontractors performing work under this Contract whom the OPWDD determines poses a security risk, has a work performance the OPWDD finds inadequate or unacceptable, or otherwise fails to meet OPWDD business requirements or expectations. Such action by the OPWDD shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

## **8. BACKGROUND CHECKS**

The Contractor employees or subcontractors who perform services under this Contract may be required to undertake and complete a full New York State Police fingerprint background investigation process, which will include a federal criminal justice site security check, as required by ITS, the OPWDD, or NYS law, rules, regulations and policies, prior to providing services. Any costs associated with the background checks, including costs related travel, will be borne by the Contractor.

## **9. EMPLOYMENT REPORTING REQUIREMENTS**

To the extent that this is a consulting services contract, as described in §8(17)(f) of the New York State Finance Law, the Contractor shall comply with all OPWDD requests and requirements related to reporting under §163(4)(g) of the New York State Finance Law. Furthermore, all subcontracts entered into by the Contractor for purposes of performing the Contract shall contain a provision whereby subcontractors agree to comply with OPWDD requests and requirements related to reporting under §163(4)(g) of the New York State Finance Law. Reports and forms filed by the Contractor pursuant to this section shall be available for public inspection and copying under the provisions of the Freedom of Information Law (FOIL).

## **10. COOPERATION WITH THIRD PARTIES**

Upon request by the State, the Contractor shall fully cooperate with any third party designated by the State, within the scope of services under the Contract, such as but not limited to other contractors or subcontractors retained by the State.

## **11. COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS**

Upon request by the State, the Contractor shall cooperate with the State in any investigation, audit, or other inquiry related to the Procurement or the resulting Contract, or any related litigation, at no cost to the State. This provision shall survive the termination of the Contract.

## **12. WORK OUTSIDE THE SCOPE OF THE CONTRACT**

The Contractor shall provide the OPWDD the services set forth and defined in Appendix B, Scope of Work, attached hereto and made part of this Contract. The Contractor must not perform work outside the scope of the Contract, unless such work is authorized by a properly executed, OSC-approved written amendment to the Contract. Work not so authorized will not be compensated.

## **13. NOTICE OF SUBSTANTIAL CHANGE IN CONTRACTOR STATUS**

In addition to the requirements of NYS Finance Law §138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the State of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries, divisions, or partners, in writing immediately upon occurrence. "Substantial change" means: (i) sales, acquisitions, mergers, or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such

entity after the submission of the Bid; (ii) entry of an order for relief under Title 11 of the United States Code; (iii) the making of a general assignment for the benefit of creditors; (iv) the appointment of a receiver of the Contractor's business or property or that of its Affiliates, subsidiaries, divisions, or partners; or action by the Contractor, its Affiliates, subsidiaries, divisions, or partners under any State insolvency or similar law for the purposes of its bankruptcy, reorganization, or liquidation; or (v) court ordered liquidation of the Contractor, its Affiliates, subsidiaries, divisions, or partners.

Upon the State's receipt of such notice, the State shall have 30 business days from the date of notice to review the information. The Contractor may not transfer the Contract to or among Affiliates, subsidiaries, divisions, or partners, or to any other person or entity, without the express written consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to cancel the Contract, in whole or in part, for cause, if it finds, in its sole judgment, that such substantial change adversely affects the delivery of Services or is otherwise not in the best interests of the State.

#### **14. NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE**

The Contractor shall immediately notify the OPWDD upon learning of any situation that can reasonably be expected to affect the delivery of Services under the Contract adversely. If such notification is verbal, the Contractor shall follow such initial verbal notice with a written notice to the OPWDD, which shall include a description of the situation and a recommendation of a resolution within three calendar days of the Contractor becoming aware of the situation. The Contractor's failure to provide the OPWDD with notice that should have been provided hereunder may be deemed a material breach of the Contract and a basis for termination for cause.

#### **15. NOTICE**

All notices given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered. Such notices shall be addressed as set forth below, or to such different addresses as the parties may specify, from time to time, by written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

For the NYS Office for People with Developmental Disabilities:

Dorothy Lechmanski  
Director of Fiscal Services and Revenue Support  
44 Holland Ave., 4<sup>th</sup> Fl.  
Albany, NY 12229  
(518) 474-8214  
[dorothy.v.lechmanski@opwdd.ny.gov](mailto:dorothy.v.lechmanski@opwdd.ny.gov)

For the Contractor:

Name  
Title  
Street Address  
City, State Zip  
( ) -  
Email Address

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may specify, from time to time, a new or different address in the United States as their address for purpose of receiving notice under this Contract by giving 15 days' written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Contract. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, problem resolution, and/or for dispute resolution.

#### **16. PAYMENT**

Payments for services rendered shall be as specified in the Contract. The State's payment obligations shall be governed by the provisions of the New York State Finance Law ("STF"). The Contractor shall certify that payment requests do not duplicate reimbursement of costs and services received from other sources.

The OPWDD shall pay the Contractor in consideration of the services to be provided under this Contract in accordance with the provisions in Appendix C, Budget, and Appendix D, Billing and Payment Terms, attached hereto, for the periods of time indicated therein. The total payment for services provided under this Contract shall **not exceed [estimated total contract amount] dollars (\$000,000)**. Payment of any amount due to the Contractor under this Contract shall be contingent on the Contractor submitting invoices with supporting documentation in accordance with Appendix C, Budget, and Appendix D, Billing and Payment Terms, of this Contract. Travel will be undertaken as needed and will be consistent with the New York State Travel Guidelines. All travel costs must fall within the dollar value of this Contract.

## 17. ELECTRONIC PAYMENT REQUIREMENT

The Contractor shall provide complete and accurate billing invoices to the Office of General Services (OGS) Business Services Center (BSC) to be eligible for payment. Billing invoices submitted to the BSC must contain all information and supporting documentation required by the Contract. Payment for invoices submitted by the Contractor shall be rendered electronically, unless payment by paper check is expressly authorized by the OPWDD, in its sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with OSC's procedures to authorize electronic payments. Authorization forms are available at OSC's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. The Contractor acknowledges that it will not be eligible for payment on any invoices submitted under this Contract if it does not comply with OSC's electronic payment procedures, except where the OPWDD has expressly authorized payment by paper checks as set forth above.

## 18. WARRANTIES AND GUARANTEES

- a. **Contract Deliverables.** The Contractor warrants and represents that the Services required by the Contract shall be performed or provided in accordance with all terms and conditions, covenants, statements, and representations contained in this Contract. The Contractor's failure to meet pre-defined service levels may result in a credit or chargeback in an amount pre-determined by the parties.
- b. **Compliance with Laws.** The Contractor warrants and represents that, throughout the term of the Contract, in the performance of its obligations under the Contract, it will: (i) comply with all laws, ordinances, rules and regulations of any governmental entity, in each case to the extent applicable to the Contractor in its performance of Services hereunder; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.
- c. **Workmanship Warranty.** The Contractor warrants and represents that all Services and deliverables shall meet the completion criteria set forth in the Contract and that services will be provided in a professional and workmanlike manner in accordance with commercially reasonable industry standards.
- d. **Personnel Eligible for Employment.** The Contractor warrants and represents that all personnel, including all subcontractor personnel, performing Services under this Contract are qualified to provide services, eligible for employment in the United States, and shall remain so throughout the term of the Contract. The Contractor shall provide such proof of compliance as is required by the OPWDD.
- e. **Survival of Warranties.** All warranties contained in the Contract shall survive termination of the Contract.

## 19. INDEMNIFICATION, LIMITATION OF LIABILITY

### a. Indemnification

The Contractor shall be fully liable for the actions of its agents, officers, employees, partners, or subcontractors and shall defend and indemnify fully and save harmless the State from third party suits, actions, damages, and costs of every name and description relating to bodily injury and damage to real or tangible personal property to the extent caused by the negligence or willful misconduct of the Contractor, its agents, officers, employees, partners, or subcontractors while engaged in the performance of the services, without limitation, provided however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or negligent failure to act of the State.

The Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its agents, officers, employees, partners, and subcontractors of State and the OPWDD security procedures or policies resulting from any criminal acts committed by the Contractor's officers,

agents, employees, and subcontractors while providing services under the Contract. This Section is not subject to the limitation of liability provisions of the Contract.

**b. Indemnification for Intellectual Property Infringement**

The Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees and legal fees), claims, judgments, liabilities, and costs that may be assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the services, products, documentation, or deliverables furnished or utilized by the Contractor under this Contract, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit; (ii) the opportunity to take over, settle, or defend such action, claim or suit at the Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require the Contractor, at the Contractor's sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require. This paragraph shall not apply to that portion of any infringement claim that results from (i) a material modification by the State, without the Contractor's approval, of any products, documentation, or deliverables furnished or utilized by the Contractor pursuant to this Contract, (ii) the failure of the State to use any corrections or modifications made available by the Contractor, (iii) information, materials, instructions or specifications provided by or on behalf of the State, or (iv) the use of the deliverable in combination with any product or data not provided by the Contractor whether or not with the Contractor's consent. If the State's use of any such deliverable, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its option and expense, shall have the right to (x) procure for the State the continued use of such deliverable, (y) replace such deliverable with a non-infringing deliverable, or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable is capable of performing substantially the same function. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest. This Section is not subject to the limitation of liability provisions of the Contract.

**c. Limitation of Liability**

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation," and regardless of the basis on which the claim is made, the Contractor's liability under the Contract for direct damages shall be limited to the greater of the following: (i) \$1,000,000.00; or (ii) two times the amounts paid to the Contractor under the Contract during the 12 months of the Contract term which precede the giving of notice of the claim by the State. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to the State. Unless otherwise specifically enumerated herein, neither party shall be liable for any incidental, punitive, consequential, indirect, or special damages of any kind that may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others, however caused, and regardless of the theory of liability, even if such party has been informed of the possibility of such damages. The limitations of liabilities, disclaimers of warranties, exclusivity of remedies, and other limitations are an essential element of the bargain between the parties (without which the transactions contemplated by this agreement would not occur) and will apply even if a remedy fails in its essential purpose.

**d. No Indemnification by the State**

The State does not agree to any indemnification provisions that require the State to indemnify or save harmless the Contractor or third parties.

**20. FEDERAL FUNDING CLAUSES**

To the extent that any of the goods or services provided under this Contract may be funded, in whole or in part, by federal funds, the Contractor agrees to comply with all applicable federal laws, rules, and regulations required for the receipt and/or expenditure of such funds pertaining to the following areas, as further set forth at Chapters II and XXX of 7 CFR and 45 CFR Parts 74 and 95, and described below:

- a. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375, as supplemented by 41 CFR 60, and the nondiscrimination requirements of 45 CFR Parts 80, 84, and 90, and 7 CFR Parts 15, 15b, and 15d.



- b. Copeland "Anti-Kickback Act" (18 U.S.C. 874 and 40 U.S.C. 276c) which provides that all contracts/sub-grants greater than \$2,000 for construction or repair must have a provision requiring compliance with 18 U.S.C. 874, as supplemented by 29 CFR Part 3, which prohibits Contractors or sub-recipients from inducing, by any means, any person employed in construction, completion, or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the federal awarding agency.
- c. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7), which requires all construction contracts awarded by recipients of more than \$2,000 to comply with the Act as supplemented by USDOL Regulations, 29 CFR Part 5 requiring all Contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the "prevailing wage") in each solicitation, and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the federal awarding agency.
- d. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers, requires compliance with 40 U.S.C. 327-333, as supplemented by USDOL Regulations 29 CFR 5, when said contracts exceed \$100,000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
- e. Rights to Inventions Made under a Contract or Agreement – Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by the USDHHS or USDA.
- f. Ownership Rights in Software or Modifications Thereof – The State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed, or installed with federal financial participation, and the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, such software, modifications, and documentation; provided, however, that this sentence shall not apply to 'proprietary operating/vendor software packages' within the meaning of 45 CFR 95.617(c) and 7 CFR 277.18(l)(1)(iii). OPWDD will provide written notification to the Contractor when federal funds become available to fund payments to the Contractor pursuant to this Contract.
- g. Contracts and sub-grants of amounts more than \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.). Violations shall be reported to the USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.
- h. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Requires that every Contractor under a contract for more than \$100,000, and every tier of Contractors or subcontractors thereunder, shall file certification, as required, that said Contractor will not and has not used any federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or award covered by such Amendment. A Contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93.)
- i. Debarment and Suspension. (Federal E.O.s 12549 and 12689) - Certain contracts shall not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs" in accordance with E.O.s 12549 and 12689 (see 45 CFR 76). Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals, prior to award.
- j. Contractor shall make positive efforts to assure that small businesses and minority- and women-owned business enterprises (M/WBEs) are utilized when possible as sources of supplies, equipment, construction and services. If any subcontracts are to be let, Contractor shall: (1) include qualified small businesses and M/WBEs on solicitation lists; (2) ensure that they are solicited whenever they are potential sources; (3) when

economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small business and M/WBE participation; (4) where the requirement permits, establish delivery schedules which will encourage participation by small businesses and M/WBEs; and (5) use the services and assistance of the New York State Department of Economic Development [(518) 292-5100 or website [www.empire.state.ny.us](http://www.empire.state.ny.us)], the US Small Business Administration, the Office of Minority Business Enterprise of the US Department of Commerce, and the US Community Services Administration, as appropriate.

## 21. SUSPENSION OF WORK

The State reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State. In the event of such suspension, the Contractor will be given a formal written notice of such suspension. Examples of the reasons for such suspension include, but are not limited to, a budget freeze on State spending or declaration of emergency. Upon issuance of such notice, the Contractor shall comply with the suspension order. The Contractor shall be paid for services performed prior to suspension in accordance with the Contract. Such suspension will be lifted upon written notice to the Contractor.

## 22. TERMINATION

- a. **For Convenience.** By written notice, this Contract may be terminated, at any time, by (i) the State for convenience upon 30 days' written notice, without penalty or other early termination charges due or (ii) written mutual agreement of the parties. If the Contract is terminated pursuant to this paragraph, the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.
- b. **For Cause.** For a material breach that remains uncured for more than 30 days from the date of written notice to the Contractor, the Contract may be terminated by the State, at the Contractor's expense, where the Contractor becomes unable or incapable of performing or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible or for any of the other reasons stated in this section, with the exception of termination for convenience. Such termination shall be upon written notice to the Contractor. In such event, the State may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
- c. **For Suspension or Delisting of Contractor's Securities.** If the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable, if the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Contract or exercise such other remedies as shall be available under the Contract, at law and/or equity.
- d. **For Vendor Responsibility Related Findings.** The OPWDD may, at its sole discretion, terminate the Contract if it finds, at any time during the term of the Contract, that the Contractor is non-responsible or that any information provided in the Vendor Responsibility Questionnaire submitted with the Contractor's bid was materially false or incomplete, or if the Contractor fails to comply timely or truthfully with the OPWDD's request to update its Vendor Responsibility Questionnaire.
- e. **Mitigation of Costs.** The Contractor shall not undertake any additional or new contractual obligations on or after the receipt of notice of termination without the prior written approval of the State. On or after the receipt of a notice of termination and during the termination notice period, as applicable, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State. Upon termination of the Contract, there shall be a reconciliation based upon the services provided by the Contractor and payments made by the State. The Contractor shall refund to the State any overpayments made by the State pursuant to the Contract.

## 23. DEFAULT

- a. If either party breaches a material provision of this Contract, which breach remains uncured for a period of 30 days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the 30-day period, such longer period of time approved by the non-breaching party, provided that the breaching party proceeds with reasonable diligence to completely cure the breach), or if the Contractor shall cease conducting business in the normal course, becomes insolvent, makes a general

assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, the other party may, at its option, terminate this Contract upon 10 days' written notice and exercise such other remedies as shall be available under this Contract, at law and/or equity.

- b. No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power, or remedy or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- c. If, due to default that remains uncured for the period provided herein, a third party shall commence to perform the Contractor's obligations under this Contract, the State shall thereafter be released from all obligations to the Contractor hereunder, including any obligation to make payment to the Contractor; provided, however, that the State shall continue to be obliged to pay for any and all Services provided prior to any such date, and if any lump-sum payment has been made, the State shall be entitled to a pro-rata refund of such payment.

## 24. TRANSITION

The State may require the Contractor to provide uninterrupted services after Contract termination/expiration ("Transition Services") as the State deems reasonable and necessary for the State to comply with all legal requirements for establishing a new contract and transitioning to a replacement the Contractor in accordance with the terms specified herein.

- a. **Transition Period.** The State shall determine the transition period in consultation with the Contractor and shall notify the Contractor in writing. The State reserves the right to amend the transition period subsequently, upon 30 days' advance written notice to the Contractor.
- b. **No Interruption in Service.** At all times during the transition period, and unless directed otherwise in writing by the State, the Contractor shall continue its contractual obligations set forth in the Contract until the services provided under the contract have been transitioned to a successor contractor, the State, or a third party designated by the State. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph, notwithstanding the issuance of a termination for cause or convenience by the State.
- c. **Transition Plan.** Within 15 days of receipt of a notice of termination, or three months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall submit to the State, for the State's review and approval, a detailed written plan for transition (Transition Plan) that outlines, at a minimum, the tasks, milestones, and deliverables associated with a smooth transition of services and corresponding timeline.
- d. **Contractor Transition Services.** Transition Services shall include the performance of the Contractor's responsibilities, as outlined in the Contract, and the transferring of those responsibilities to a successor contractor, the State, or a third party designated by the State in accordance with the Transition Plan agreed upon by the Parties. The Contractor shall maintain the same level of service during the transition period as is set forth in the Contract until specific tasks or services are completely transitioned to or assumed by a successor contractor, the State, or a third party designated by the State.
- e. **Compensation for Transition Services.** The Contractor shall be reimbursed for Transition Services performed at the rates set forth in the Contract that are in effect at the beginning of the transition period.
- f. **Cooperation.** The Contractor shall cooperate with the State and agents working on behalf of the state (e.g., consultants) to facilitate a smooth and orderly transition. Periodic project review meetings shall be held with representatives of the Contractor, a successor contractor, the State, or a third party designated by the State.

## 25. ADDITIONAL TECHNOLOGY PROVISIONS

- a. **Permitted License Transfers.** Should the State's business operations be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies, as applicable ("permitted license transfers"). The State may make such permitted license transfers without the need to secure the approval of the Contractor but must give thirty (30) days prior written notice to the Contractor of such transfer. There shall be no additional license or other transfer fees due the Contractor, provided that: (i) the maximum capacity of

the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to licensed capacity. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the new site, and a logical or physical partition or other means of restricting use is not available, the fees due the Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

- b. **Ownership of and Title to Contract Deliverables.** The Contractor acknowledges that it is commissioned by the State to perform the services detailed in this Contract which may include the development of intellectual property by the Contractor, its subcontractors, partners, employees or agents for the State (“Custom Products”). Unless otherwise specified in writing in this Contract, upon the creation of such Custom Products, the Contractor hereby conveys, assigns and transfers to the State the sole and exclusive rights, title and interest in the Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in performing services under the Contract in the course of the Contractor’s business. The State may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, the State shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in this Contract.
- c. **Ownership of Material.** Ownership of all data, documentary material and reports originated and prepared exclusively for the OPWDD pursuant to any Contract resulting from this RFP shall belong to the OPWDD. The Contractor agrees that, except where noted, all materials, documents, products, reports, data and other information, whether finished, unfinished, or draft developed, gathered or compiled under this agreement by consultant are the sole exclusive property of the OPWDD and that they shall not be used by the consultant or any other person or destroyed without express written permission of the OPWDD.
- d. **Data Ownership.** All State data is owned exclusively by the State and will remain the property of the State. The Contractor is permitted to use data solely for the purposes set forth in this Contract, and for no other purpose. At no time shall the Contractor access, use, or disclose any confidential information (including personal, financial, health, or criminal history record information or other sensitive criminal justice information) for any other purpose. The Contractor is strictly prohibited from releasing or using data or information for any purposes other than those purposes specifically authorized by the State. The Contractor agrees that State data shall not be distributed, used, repurposed, transmitted, exchanged or shared across other applications, environments, or business units of the Contractor or otherwise passed to other contractors, agents, subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by the State.
- e. **Data Protection and Transmission.** The Contractor shall use appropriate means to preserve and protect State data. This includes but is not limited to use of stable storage media, regular data backups and archiving, password protection of volumes, and data encryption. The Contractor must, in accordance with applicable law, regulations, or established requirements and the instructions of the State, maintain such data for the time period required by applicable law, exercise due care for the protection of data, and maintain appropriate and necessary data integrity safeguards against the deletion or alteration of such data. In the event that any data is lost or destroyed because of any act or omission of the Contractor or any non-compliance with the obligations of this Contract, then the Contractor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, the Contractor shall reimburse the State for any costs incurred by the State in correcting, recreating, restoring or reprocessing such data or in providing assistance therewith.

The Contractor agrees that any and all State data will be stored, processed and maintained solely on designated target devices, and that no State data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the contract/agreement

and or any addendum thereof, or the Contractor's designated backup and recovery processes, and is encrypted in accordance with all current federal and State statutes, regulations and requirements, to include requirements for data defined as confidential, financial information, Personal Private and Sensitive Information (PPSI), Personally Identifying Information (PII) or Protected Health Information (PHI) by statute or regulations. The Contractor shall encrypt data at rest, on file storage, database storage, or on back-up media, and in transit in accordance with state and federal law, rules, regulations, and requirements. The solution shall provide the ability to encrypt data in motion and at rest in compliance with state or federal law. The Contractor shall use secure means (HTTPS) for all electronic transmission or exchange of system, user and application data with the State.

- f. **Data Return and/or Destruction.** At the expiration or termination of the Contract, at the State's option, the Contractor must provide ITS with a copy of all State data, including metadata and attachments, in a mutually agreed upon, commercially standard format and give the State continued access to State data for no less than ninety (90) days beyond the expiration or termination of the Contract.

Thereafter, except for data required to be maintained by law or this Contract, Contractor shall destroy State data from its systems and wipe all its data storage devices to eliminate any and all State data from the Contractor's systems. The sanitization process must be in compliance NYS Security Policy NYS-S13-003, <https://www.its.ny.gov/document/sanitizationsecure-disposal-standard>, and, where required, CJIS sanitization and disposal standards. If immediate purging of all data storage components is not possible, the Contractor will certify that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. The Contractor must then certify to ITS/OPWDD, in writing, that it has complied with the provisions of this paragraph. The State may withhold payment to the Contractor if State data is not released to ITS in accordance with the preceding sections.

## 26. FORCE MAJEURE

In the event that either Party is unable to perform any of its obligations under the Contract because of natural disaster, any act of God, war, civil disturbance, court order, labor dispute, or any other acts beyond the reasonable control of either Party (hereinafter referred to as a "Force Majeure Event"), the Party that has been so affected shall immediately give notice to the other Party and shall exercise every commercially reasonable effort to resume performance, and an extension of the time for performance shall be granted for a period to be agreed to in writing by the Parties. Any delay in performance by either Party resulting from a Force Majeure Event shall not be considered a breach or default under the Contract.

## 27. DISPUTE RESOLUTION

- a. In the event that either party has a dispute arising out of the other's performance of the Contract, either party shall notify the other in writing. The other party shall then make all good-faith efforts to solve the problem or settle the dispute amicably, including meeting with the other party's designated representatives to attempt diligently to reach a satisfactory result. If the parties are unable to resolve the dispute or reach a satisfactory result within 10 business days of the original written dispute notification (the "Notification Date"), then the issue shall be presented to the OPWDD Deputy Commissioner of the Division of Enterprise Services, or his or her designee, who shall serve as the arbiter and issue the OPWDD's final decision within 15 business days of the Notification Date. Nothing herein shall limit either party's ability to pursue all available legal and equitable remedies. However, unless a party reasonably believes that immediate relief is required in order to avoid irreparable harm, the parties agree to defer seeking either legal or equitable relief in a court of competent jurisdiction until the OPWDD's final decision has been issued.

The Deputy Commissioner shall have the power to appoint or change his or her designee or otherwise alter the rules of the procedure upon written notice to the Contractor.

Pending the conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Contract by the State shall govern operation thereunder, and the Contractor and the OPWDD shall continue to perform under the Contract, unless the OPWDD has suspended or terminated the Contract in accordance with the applicable terms of the Contract.

The Contractor shall be required to bring all legal proceedings relating to this Contract against the OPWDD or the State of New York in the Supreme Court of the State of New York in the County of Albany, or the New York State Court of Claims.

Nothing in this paragraph shall diminish the State's right to suspend or terminate the Contract in accordance with applicable clauses contained within this Contract.

- b. In the event of a conflict between the Contractor and other consultants or contractors of the OPWDD, the Contractor shall submit to the OPWDD a timely written explanation of the details of the conflict, including such pertinent facts as may provide the OPWDD with a firm basis for understanding the nature of the conflict. The Contractor agrees to proceed in a good-faith effort to avoid disputes and to resolve disputes with other contractors or subcontractors of the OPWDD as amicably as possible.

## **28. GENERAL PROVISION AS TO REMEDIES**

- a. The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy, or constitute a waiver of or acquiescence to, an event otherwise constituting a breach or default under the Contract.
- b. In addition to any other remedies available to the State under the Contract and State and federal law for the Contractor's default, the State may choose to exercise some or all of the following:
  - Suspend, in whole or in part, payments due to the Contractor under this Contract.
  - Pursue equitable remedies to compel the Contractor to perform.
  - Apply Service Credits against amounts due and owing by the State under the Contract.
  - Require the Contractor to cure deficient performance or perform the requirements of this Contract at no charge to the State.

## **29. INSURANCE**

The Contractor must comply with the insurance provisions set forth in Appendix E, which is attached hereto and incorporated into this Contract.

## **30. OUTSTANDING TAX LIABILITIES**

The Contractor warrants that there are no outstanding tax liabilities against the Contractor in favor of the State of New York, or in the event that such liabilities exist, a payment schedule has been arranged for their speedy satisfaction before contract execution.

## **31. SECURITY, NON-DISCLOSURE/CONFIDENTIALITY, PRESS RELEASES**

Subject to the cure period set forth in Section 23(a) of this Contract, the Contract may be terminated by the State for cause for a material breach of this Section by the Contractor.

### **a. Security Procedures**

The Contractor shall comply fully with all security procedures and policies of the State, including but not limited to any required fingerprinting and background check procedures, which are communicated to the Contractor by the State during the performance of Services under the Contract. The Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any, of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, if any, while providing Services under the Contract.

### **b. Nondisclosure & Confidentiality**

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors, if any, have access. This requirement shall survive termination of the Contract. For purposes of the Contract, all State information of which Contractor, its officers, agents, employees, and subcontractors, if any, become aware during the course of performing services for the State, shall be deemed to be confidential information (oral, visual or written).

Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

- Information that is previously rightfully known to the receiving party without restriction on disclosure.
- Information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain.
- Information that is independently developed by the Contractor without use of Confidential Information of the State.

The Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such confidential information in the event such disclosure is inconsistent with the requirements of this Section.

The Contractor employees and subcontractors shall be required to sign Confidentiality and Non-Disclosure Agreements, either before or upon arrival at the work site, or prior to providing services under the Contract.

State employees and subcontractors shall also be required to sign Confidentiality and Non-Disclosure Agreements before receiving access to the Contractor's confidential information. All intellectual property of the Contractor, including without limitation, the software provided by the Contractor as a service, shall be deemed to be confidential information of the Contractor.

**c. Press Releases**

The Contractor agrees that no brochure, news/media/press release, public announcement, memorandum, or other information of any kind regarding the Contract shall be disseminated in any way to the public, nor shall any presentation be given regarding the Contract without the prior written approval of the OPWDD, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any State or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

**d. Federal or State Requirements**

The Contractor will comply with federal and State law and regulations regarding personal, private, and sensitive State Data, including, but not limited to HIPAA and HI-TECH (see Section 47, below), 45 CFR Part 160 and Subparts A and E of Part 164, 10 NYCRR Part 63, Mental Hygiene Law §§33.13 and 33.16.

In the event it becomes necessary for the Contractor to receive Confidential Information which federal or State statute or regulation prohibits from disclosure, the Contractor hereby agrees to return or destroy all such Confidential Information that has been received from the State when the purpose that necessitated its receipt by the Contractor has been completed. In addition, the Contractor agrees not to retain after termination of the Contract any Confidential Information which federal or State statute or regulation prohibits from disclosure.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, the Contractor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify the State accordingly. The Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information, which federal or State statute or regulation prohibits from disclosure.

The Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information of any New York State Agency information directly to that New York State Agency. The State may terminate the Contract if it determines that the Contractor has violated a material term of this section. The terms of this section shall apply equally to the Contractor, its agents, and subcontractors, if any. The Contractor agrees that all subcontractors, if any, and agents shall be made aware of and shall agree to the terms of this Section.

**e. Off Shore Restrictions**

Confidential Information accessed by or provided to the Contractor during the course of performing services for the State must not be stored or accessed outside of the continental United States.

**f. Criminal Justice Information Services (CJIS)**

If the Contractor, its employees, agents, or subcontractors shall have access to criminal justice/forensic information (including criminal history record information or other sensitive criminal justice information), as defined by the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy (accessed through the link below), on NYS systems or media, the Contractor, its employees, agents, or subcontractors must comply with the requirements of the CJIS Security Policy available at:

<https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>

### **32. PUBLIC INFORMATION AND FREEDOM OF INFORMATION LAW (FOIL)**

Disclosure of information related to this procurement and the resulting Contract shall be permitted, consistent with the laws of the State of New York and specifically FOIL. The OPWDD shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this procurement that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Contractor upon submission, in accordance with provisions of this Contract. If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of: (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor; or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to §87(2) of FOIL. Acceptance of the identified information by the OPWDD does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the OPWDD.

### **33. LEGAL REQUESTS AND RELEASE OF STATE DATA TO THIRD PARTIES PROHIBITED**

Except otherwise required by law, the Contractor shall not disclose State data to a third party. Except where expressly prohibited by law, the Contractor shall promptly notify the State of any subpoena, warrant, judicial, administrative, or arbitral order of an executive or administrative agency or other governmental authority of competent jurisdiction (a "Demand") that it receives and which relates to or requires production of the State information or data the Contractor is processing or storing on the State's behalf. If the Contractor is required to produce State information or data in response to a Demand, the Contractor will provide the State with the information or data in its possession that it plans to produce in response to the Demand prior to production of such State information or data. Except as otherwise required by law, the Contractor shall provide the State reasonable time to assert its rights with respect to the withholding of such information or Data from production. If the State is required to produce State information or data in response to a Demand, the Contractor will, at the State's request and unless expressly prohibited by law, produce to the State any State information or data in its possession that may be responsive to the Demand and shall provide assistance as is reasonably required for the State to respond to the Demand in a timely manner. The State acknowledges that the Contractor has no responsibility to interact directly with the entity making the Demand. The parties agree that the State's execution of this agreement does not constitute consent to the release or production of State data or information.

### **34. MWBE AND EEO REQUIREMENTS**

Portions of the MWBE and EEO provisions of Appendix A – Supplement may not apply where the Contract goals for MWBE participation are set at 0%.

### **35. ETHICS COMPLIANCE**

The Contractor, its officers, employees, agents, and subcontractors (if any) shall comply with the requirements of Public Officers Law §73 and §74, and other State codes, rules, and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with these provisions may result in termination of the Contract and/or other civil or criminal proceedings as required by law.

Contractors, consultants, vendors, and subcontractors may hire former State Agency employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency may neither appear nor practice before the State Agency, nor receive compensation for services rendered on a matter before the State Agency, for a period of two years following their separation from State Agency service. In addition, former State Agency employees are subject to a "lifetime bar" from appearing before the State Agency or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency.



The Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics or its predecessors (collectively, the "Ethics Requirements"). The Contractor certifies that all of its employees, and those of its subcontractors, who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its subcontractors who are former employees of the State who will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any subcontractor, if utilizing such subcontractor for any work performed hereunder would conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract, at any time, if any work performed hereunder conflicts with any of the Ethics Requirements.

### **36. MOST FAVORABLE TERMS AND BEST PRICING**

The Contractor agrees that all fees, pricing, terms, and warranties provided by the Contractor under the Contract are substantially similar to the best equivalent terms being offered by the Contractor to any entity similarly situated to the State for substantially similar services or products. If during the term of the Contract, the Contractor enters into an arrangement with any similarly situated entity for substantially similar services or products, with better pricing or terms that are more favorable, the Contractor hereby agrees to amend the Contract to provide the same to the State.

### **37. TRANSFER OF CONTRACT**

The OPWDD may transfer/assign the Contract to another State Agency or entity, at its sole discretion, by informing the Contractor in writing of such a transfer. The Contractor shall execute any documents required to accomplish the transfer/assignment of the Contract. The Contractor shall comply with any instructions from the OPWDD to accomplish the transfer/assignment of the Contract, at no additional cost to the State.

### **38. SUBCONTRACTORS**

Full responsibility for the delivery of services must be provided by the Contractor under this Contract. The Contractor may not subcontract the services procured under this Contract without the State's prior written approval. The OPWDD reserves the right to reject any proposed subcontractor or supplier if it determines that the company is not qualified or responsible. All such subcontracting relationships between the Contractor and its subcontractors to perform services must be memorialized by written agreement.

The Contractor shall include in all agreements with its subcontractors, in such a manner that will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying that:

- The work performed by the subcontractor must be in accordance with the terms and conditions of this Contract
- Nothing contained in such subcontract shall impair the rights of the OPWDD or the State
- The subcontract is subordinate to this Contract with OPWDD and that any and all conflicting provisions of the subcontract will be superseded by the terms of this Contract
- Nothing contained in the subcontract shall create any contractual relationship between the subcontractor and the OPWDD or the State
- The State and the OPWDD shall have the same authority to audit the records of all subcontractors as it does those of the Contractor relating to the performance of Services under the Contract
- The subcontractor shall cooperate with any investigation, audit, litigation, or other inquiry related to the Procurement or the resulting Contract.

The OPWDD reserves the right, at any time during the term of the Contract, to verify that the written subcontract(s) between the Contractor and Subcontractor(s) complies with all of the provisions of this Section and any subcontract provisions contained in this Contract.

If, at any time during the performance under this Contract, total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

### **39. WAIVER**

No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by a party to, or waiver of, a breach under the Contract shall constitute consent to, a waiver of, or excuse for any other, different, or subsequent breach. The rights, duties, and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law or equity.

### **40. ACCESSIBILITY**

Any web-based information and applications development, or programming delivered pursuant to the Contract, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications, as such policy may be amended, modified, or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by the Contractor, and the results of such testing must be satisfactory to the OPWDD before web-based information and applications will be considered a qualified deliverable under the Contract or Procurement.

### **41. COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS**

The Contractor, while performing Services under this Contract, shall comply fully with the requirements of the Information Security Breach and Notification Act, and all security procedures and policies of the State including, but not limited to, the following:

- Acceptable Use of Information Technology Resources Policy
- Information Security Policy
- Security Logging Standard
- Information Security Risk Management Standard
- Information Security Controls Standard
- Sanitization/Secure Disposal Standard
- Mobile Device Security Standard
- Remote Access Standard
- Secure System Development Life Cycle Standard
- Secure Configuration Standard
- Secure Coding Standard

ITS Security Policies and Standards may be found at:

<http://www.its.ny.gov/tables/technologypolicyindex.htm/security>

and

<https://its.ny.gov/eiso/policies/security>

### **42. RIGHT TO INSPECT**

The State, or contracted entities working on behalf of the State, has the right to review the Contractor's procedures, practices, and controls related to the security of State Data. Upon written request, the Contractor will, immediately

or no later than five business days after the request, make available for review policies, procedures, practices, and documentation related to the protection of State Data, including but not limited to that related to information security governance, network security, risk and compliance management. policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, secure disposal/sanitization and documentation. The Contractor may be asked to provide a recent independent audit report on security controls prior to formal awarding of any Contract resulting from this Contract, or at any time during the Contract term.

The State shall have the right to send its officers, employees, or contracted vendors working on behalf of the OPWDD to inspect the Contractor's facilities and operations used to provide Contract services. On the basis of such inspection, the State may require the Contractor to implement corrective measures where the Contractor is found to be noncompliant with Contract provisions.

#### **43. SEVERABILITY**

In the event that one or more of the provisions of the Contract shall, for any reason, be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.

#### **44. PIGGYBACKING**

The Contractor acknowledges and agrees that, pursuant to State Finance Law §163(10)(e), the New York State Office of General Services may authorize and approve purchases from contracts let by the Contractor to other New York State agencies, the United States Government, or any other state, with the concurrence of the Office of the New York State Comptroller and under appropriate circumstances.

#### **45. EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS**

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting contracts. State Agency consultant contracts are defined as "contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant Contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such contracts, OSC, Division of the Budget (DOB), and Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered contracts awarded on and after such date.

To meet these requirements, the Contractor agrees to complete:

**Form A** - Contractor's Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information as part of its bid response.

**Form B** - Contractor's Annual Employment Report. Throughout the term of the Contract, by May 15 of each year, the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1 through March 31 fiscal year or for the period of time such Contract was in effect during such prior State fiscal year, Contractor reports the:

1. Total number of employees employed to provide the consultant services, by employment category
2. Total number of hours worked by such employees
3. Total compensation paid to all employees who performed consultant services under such Contract.\*

\*NOTE: The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational, or other administrative capacity.

The Contractor agrees to report such information simultaneously to CS and OSC as designated below:

**Department of Civil Service**

Alfred E. Smith Office Building

Albany, NY 12239

Attn: Executive Office

**Email (preferred):** [SubmitformB@cs.ny.gov](mailto:SubmitformB@cs.ny.gov)

**Office of the State Comptroller – Bureau of Contracts**

110 State St., 11<sup>th</sup> Floor

Albany, NY 12236

Attn: Consultant Reporting

**Email (preferred):** [CDMOST@osc.ny.gov](mailto:CDMOST@osc.ny.gov)

The Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event that individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information is available in the Office of the State Comptroller's Bulletin G-226 regarding the Contractor Consultant Law requirements and report Forms A and B at [https://www.osc.state.ny.us/agencies/contract\\_advisories/cadvisory\\_16.htm](https://www.osc.state.ny.us/agencies/contract_advisories/cadvisory_16.htm).

**46. COMPLIANCE WITH HIPAA (HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996) AND HI-TECH (HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF 2009)**

To the extent the Contractor or its subcontractor(s) create, receive, maintain, or transmit "Protected Health Information" as defined in 45 CFR 160.103 (PHI) on behalf of the State pursuant to their responsibilities under this Contract, the Contractor must and shall require its subcontractors to comply with the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009, as amended (HI-TECH), and execute the HIPAA and HITECH Compliance Certification Form provided by the OPWDD. The successful Bidder must agree to and sign the OPWDD HIPAA Business Association Agreement. The successful Bidder must notify OPWDD and ITS within twenty-four hours of its knowledge of an actual or suspected breach of security involving an individual's Protected Health Information.

**47. DELIVERABLE ACCEPTANCE**

Completed work products and services ("Deliverables") will be delivered to the designated State approver who has been authorized to accept deliverables. Deliverables must meet contract requirements. The New York State approver will accept or reject the Deliverable within fifteen (15) business days of the receipt of the Contractor's notification of completion. If the New York State approver rejects a work product or service, the cause for rejection and all defects to be addressed will be documented by New York State and provided to the Contractor, and the Contractor will correct all identified deficiencies and resubmit the Deliverable for acceptance within five (5) business days. When resubmitted after rejection, the New York State approver will accept or reject the work product or service within seven (7) business days. The number of resubmissions shall be limited to two (2), after which time the issue shall be subject to the Dispute Resolution Section 27 for further determination. To the extent that any Deliverables are or have been approved by the State pursuant to the terms hereof at any stage of the Contractor's performance under the Contract, the Contractor shall be entitled to rely on such approval for purposes of all subsequent stages of the Contractor's performance under the Contract. However, if both parties mutually agree on a deviation from the project schedule, such a deviation from original schedule is permissible within the scope of work and/or due to regulatory changes.

**48. CONFLICTS OF INTEREST**

- a. The Contractor has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative, attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with, the State of New York.
- b. The Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's ethical performance of duties required to be performed pursuant to the terms of this Contract. The Contractor shall have a duty to notify the OPWDD immediately of any actual or potential conflicts of interest.
- c. In conjunction with any subcontract under this Contract, the Contractor shall obtain and deliver to the OPWDD, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also

require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the OPWDD a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

- d. The OPWDD and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The OPWDD will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of the OPWDD, a real or potential conflict of interest cannot be cured.

#### **49. MEDICAID REQUIREMENTS**

##### **49.1 FEDERAL FALSE CLAIMS ACT**

Federal False Claims Act (31 U.S.C. §§3729-3733) and the New York State False Claims Act (State Finance Law Article XIII, §§187-194) – the Contractor is bound by all of the related laws. The law requires that the OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste, and abuse in federal healthcare programs. This information must include the whistleblower protections that are in these laws. The OPWDD must also provide its contractors with information about the OPWDD’s own policies and procedures for detecting and preventing waste, fraud, and abuse. You can find detailed descriptions of these laws, their whistleblower protections, and the OPWDD’s policies on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov). At the home page, select Information for Providers on the left side of the page, then select False Claims Recoveries. You can also visit the New York State Medicaid Inspector General website at [www.omig.ny.gov](http://www.omig.ny.gov) to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud, and abuse is available from the OPWDD Contract Management Unit, 4th floor, 44 Holland Ave., Albany, NY 12229-0001. As a Contractor of the OPWDD, you are required to participate in the reviews and audits described in the OPWDD’s policies and to abide by these policies with respect to funding for OPWDD services. You are also required to make the information at the OPWDD website address listed above available to all of your employees and to all of your contractors involved in performing work under your Contract with the OPWDD.

##### **49.2 NON-EXCLUSION REPRESENTATION**

Both the United States Department of Health and Human Services and the Office of the Medicaid Inspector General (OMIG) can exclude persons and organizations from federal and State healthcare programs. If this Contract is funded through the New York State Medicaid program, the following applies.

The Contractor represents that:

1. The United States Secretary of Health and Human Services has not excluded the Contractor from participation in a federal healthcare program (including the Medicaid program) under 42 U.S.C. §§1320a-7 or 1320a-7a, or excluded the Contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. §1320c-5.
2. The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the Contractor from participation in a federal healthcare program (including the Medicaid program) under 42 U.S.C. §§1320a-7(d) or 1320a-7a(a).
3. The New York State Medicaid Inspector General has not excluded the Contractor from participation in the New York Medicaid program under 18 NYCRR Part 515.
4. No federal or State agency has otherwise excluded the Contractor from participation in the New York Medicaid program or excluded the Contractor from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis.

If, during the term of this Contract, the Contractor is excluded from participation in a federal healthcare program or the New York Medicaid program, or is excluded from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis, under the authorities stated above, this Contract shall be immediately terminated.

**By submitting a Bid/Proposal for RFP C0SCO0052, the Bidder/Contractor agrees to the terms and conditions expressed within this document.**

## INSURANCE REQUIREMENTS

Prior to the start of work, the Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of the Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York (Admitted Carriers). The OPWDD may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the OPWDD to accept insurance placed with a non-authorized carrier under any circumstances.

Upon award, the Contractor shall deliver to the OPWDD evidence of such policies as defined below. In the event there is a claim asserted that is covered by insurance and upon request of the OPWDD, the Contractor shall make available for inspection to the OPWDD, at OPWDD headquarters during reasonable business hours, any applicable policy required by this Contract.

Throughout the Contract period, the Contractor shall notify the OPWDD of any material changes to the policy or any cancellations prior to the expiration date. The carrier shall also send notification of cancellation, termination, or failure to renew any policy in accordance with the policy provisions when practicable.

### **General Conditions**

A. **Conditions Applicable to Insurance.** All policies of insurance required by this Agreement must meet the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified below in Paragraph B – Specific Coverages and Limits.
2. **Policy Forms.** Policies must be written on an **occurrence** basis, except as may be otherwise specifically provided herein or agreed in writing by the OPWDD. Under certain circumstances, the OPWDD may elect to accept policies written on a claims-made basis, provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase, at its sole expense, Discovery Clause coverage sufficient to complete the 3-year period after completion of the Contract. Written proof of this extended reporting period must be provided to the OPWDD prior to the expiration or cancellation of the policy.
3. **Certificates of Insurance/Notices.** The Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the OPWDD before commencing any work under this Contract. Certificates shall be mailed using the contact information provided in Section 1 of this RFP.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to the OPWDD.

Certificates of Insurance shall:

- a. Be in the form approved by the OPWDD.
- b. Disclose any deductible, self-insured retention, aggregate limit, or any exclusion to the policy that materially changes the coverage required by the Contract.
- c. Specify the Additional Insureds and Named Insureds as required herein.
- d. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit and signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance and other attachments) will be accepted.

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the OPWDD for any claim arising from the Contractor's work under this Contract or as a result of the Contractor's activities. Any other insurance maintained by the OPWDD shall be excess of and shall not contribute with the Contractor's insurance regardless of the other insurance clause contained in the OPWDD's own policy of insurance.

5. **Policy Renewal/Expiration.** At least two (2) weeks prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the OPWDD than the expiring policies shall be delivered to the OPWDD in the manner required for service of notice in Paragraph A(3) above. If at any time during the term of this Contract the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to the OPWDD, the Contractor shall immediately cease work on the project. The Contractor shall not resume work on the project until authorized to do so by the OPWDD. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to the OPWDD shall not give rise to a delay claim or any other claim against the OPWDD. Should the Contractor fail to provide or maintain any insurance required by this Contract or proof thereof is not provided to the OPWDD, the OPWDD may withhold further Contract payments, treat such failure as a breach or default of the Contract, and/or, after providing written notice to the Contractor, require the surety, if any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Contractor.
6. **Self-Insured Retention/Deductibles.** Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
7. **Subcontractors.** Should the Contractor engage a subcontractor, the Contractor shall endeavor to impose the insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. Proof thereof shall be supplied to the OPWDD.

B. **Specific Coverages and Limits.** The types of insurance and minimum policy limits shall be as provided below.

1. **General Liability.** Commercial General Liability Insurance (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Contract. The limits under such policy shall not be less than the following:
  - Each Occurrence limit: \$1,000,000
  - General Aggregate: \$2,000,000
  - Products/Completed Operations should equal the General Aggregate limit
  - Personal Advertising Injury: \$1,000,000
  - Damage to Rented Premises: \$50,000
  - Medical Expense: \$5,000

Coverage shall include but not be limited to the following: premises liability; independent contractors; blanket contractual liability, including tort liability of another assumed in a contract; defense and/or indemnification obligations, including obligations assumed under this Contract; cross liability for additional insureds; products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by the Contract; explosion, collapse, and underground hazards; Contractor means and methods; liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the policy:

- CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall name the OPWDD as Additional Insureds and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy and any umbrella/excess policies used to meet the "Each Occurrence" limits specified above must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to and non-contributing with any other insurance maintained by the OPWDD. Any other insurance maintained by the OPWDD shall be in excess of and shall not contribute with the Contractor's or subcontractor's insurance, regardless of the "Other Insurance" clause contained in either party's policy of insurance.

2. **Automobile.** Comprehensive Business Automobile Liability Insurance covering liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired, and non-owned automobiles bearing, or under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.
3. **Workers' Compensation.** For work to be performed in New York State, the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the NYS Workers' Compensation Law.
  - a. Evidence of Workers' Compensation and Employers Liability coverage must be provided on **one** (1) of the following forms specified by the Commissioner of the Workers' Compensation Board:
    - (1) C-105.2 (September 2007 or most current version) – Certificate of Workers' Compensation Insurance. The Bidder must request its carrier to send this form to the OPWDD; or
    - (2) U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund. The Bidder must request that the State Insurance Fund send this form to the OPWDD; or
    - (3) GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance.

All forms are valid for one (1) year from the date the form is signed/stamped or until policy expiration, whichever is earlier.

**ACORD forms** are **NOT** acceptable proof of Workers' Compensation coverage.

**All forms must name THE NEW YORK STATE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

- b. If the Contractor is legally exempt from obtaining Workers' Compensation insurance coverage, the Contractor must provide **Form CE-200** Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)).
    - c. If the Contractor is self-insured, the Contractor must provide either **Form SI-12** Certificate of Workers' Compensation Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.
4. **Disability Benefits.** For work to be performed in New York State, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees, as required by the NYS Disability Benefits Law.
  - a. Evidence of Disability Benefits coverage must be provided on **Form DB-120.1** (May 2006 or most current version) Certificate of Insurance Coverage under the NYS Disability Benefits Law. The Bidder must request its business insurance carrier to send this form to the OPWDD.



- b. If the Contractor is legally exempt from obtaining Workers' Compensation Disability insurance, the Contractor must provide **Form CE-200** Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)).
- c. If the Contractor is self-insured, the Contractor must provide **Form DB-155** Certificate of Disability Benefits Self-Insurance.

All forms are valid for one (1) year from the date the form is signed/stamped or until policy expiration, whichever is earlier.

**All forms must name THE NEW YORK STATE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

All required insurance must be written by company rating of "A-" or better rated by A.M. Best & Co., have a record of successful continuous operation, that is licensed, admitted (if coverage is provided by a non-admitted carrier, an ELANY Affidavit must accompany the certificate), and authorized to do business in the State of New York, and is approved by the OPWDD. Required coverage and limits must be put into effect as of the effective date of the Contract and must remain in effect throughout the term of the Contract, as determined by the OPWDD. The successful Bidder must submit proof of required insurance coverage, and any renewals thereof, to the OPWDD upon the OPWDD's request. The Contractor shall notify the OPWDD of any material changes to the policy or any cancellations prior to the expiration date. The carrier shall also send notification of cancellation, termination, or failure to renew any policy in accordance with the policy provisions when practicable.

## OPWDD HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS Agreement is made by and between **New York State Office for People With Developmental Disabilities** ("Covered Entity") and **Bidder/Contractor** ("Business Associate").

WHEREAS, Business Associate provides certain services to Covered Entity through existing written contract for **Statewide CPR, First Aid and AED Instructor Training and Certification** (the Contract) and, in connection with such services, creates, uses or discloses for or on behalf of Covered Entity certain individually identifiable protected health information relating to individuals served by the Covered Entity ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended, including Subpart D of the Health Information Technology for Economic and Clinical Health Act (HITECH) of Title XIII, Division A of the American Recovery and Reinvestment Act of 2009, and related regulations, 45 CFR Parts 160 and 164 (the HIPAA Privacy and Security Rules); and

WHEREAS, by reason of such activities, the parties believe that Business Associate is a "business associate" of Covered Entity, as such term is defined in 45 CFR 160.103; and

WHEREAS, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA and HITECH, including requirements applicable to the relationship between a covered entity and its business associates;

NOW, THEREFORE, the parties agree as follows:

### 1. Definitions.

- a. Catch-all definition. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. Specific definitions.
  - i. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the specific Business Associate listed in the first paragraph of this Agreement.
  - ii. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean OPWDD.
  - iii. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

### 2. Obligations and Activities of Business Associate.

- a. Business Associate agrees:
  - i. to not use or further disclose Protected Health Information other than as Required by Law, or as otherwise permitted or as required by this Agreement.
  - ii. to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity pursuant to this Agreement in accordance with 45 CFR 164 (the HIPAA Security Rule). Business Associate agrees to fully comply with the responsibilities of Business Associates as set forth in Sections 13401 and 13404 of the HITECH Act.
  - iii. to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
  - iv. to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. Further, Business Associate agrees to report to Covered Entity any security incident, including a breach of Unsecured Protected Health Information as defined by the Security Rule, of which it becomes aware. In the event of such a breach:
    - 1) Business Associate shall promptly notify Covered Entity of the breach when it is discovered, A breach is considered discovered on the first day on which Business Associate knows or should have known of such breach. Such notification shall identify

the Individuals, and their contact information, whose Unsecured Protected Health Information has, or is reasonably believed to have been, the subject of the breach. Business Associate shall provide additional information concerning such breach to Covered Entity as requested.

- 2) Covered Entity or Business Associate, as determined by Covered Entity, shall promptly notify individuals about a breach of their Unsecured Protected Health Information as soon as possible but not later than 60 calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Notification shall be in a form and format prescribed by Covered Entity and shall meet the requirements of Section 13402 of the HITECH Act.
  - 3) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- v. to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
  - vi. to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
  - vii. to make any amendments 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 time and manner designated by Covered Entity.
  - viii. to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
  - ix. 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.
  - x. to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section 2(a)(i) of this Agreement, to permit 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.
- b. Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that it is required to comply with the confidentiality, disclosure and re-disclosure requirements of 10 NYCRR part 63 and to the provisions of Mental Hygiene Law Section 33.13 and 33.16 to the extent such requirements may be applicable.
  - c. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule and the Security Rule to the same extent that Covered Entity is responsible for compliance with such Rules. Business Associate acknowledges that it is subject to civil and criminal penalties for violations of such provisions in the same manner as if Covered Entity violated such provisions.

### 3. Permitted Uses and Disclosures by Business Associate.

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information:
  - i. to perform functions, activities, or services for, or on behalf of Covered Entity pursuant to the Contract provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
  - ii. for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
  - iii. for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- iv. to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B). Data aggregation includes the combining of protected information created or received by a business associate through its activities under this Contract with other information gained from other sources.
- v. to report violations of law to appropriate Federal and State authorities, consistent with New York State Mental Hygiene Law and 45 CFR 164.502(j)(1).

4. Obligations of Covered Entity.

- a. Covered Entity shall notify Business Associate of any:
  - i. limitation(s) in the Notice of Privacy Practices Covered Entity produces in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
  - ii. 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 permitted or required uses or disclosures of Protected Health Information.
  - iii. restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

5. Permissible Requests 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 Privacy Rule if done by Covered Entity. Covered Entity may permit Business Associate to use or disclose Protected Health Information for data aggregation or management and administrative activities of business Associate, if the Agreement includes provisions for same.

6. Remedies in Event of Breach. Business Associate hereby recognizes that irreparable harm may result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections 2 or 3 above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of such Sections. Furthermore, in the event of breach of Sections 2 or 3 by the Contractor, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

7. Consideration. Business Associate acknowledges that the covenants and assurances it has made in the Agreement shall be relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

8. Term and Termination.

- a. Term. The Term of this Agreement shall be effective as of the Effective Date of this agreement and shall not terminate until all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of the Covered Entity is destroyed or returned to the Covered Entity or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide Business Associate with an opportunity to cure the breach and then terminate this Agreement and any other agreement between Covered Entity and Business Associate if Business Associate does not cure the breach within time period specified by the Covered Entity.
- c. Effect of Termination.
  - i. Except as provided in paragraph 2 of this Section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - ii. 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 mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protection of this Agreement 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 maintains such Protected Health Information.

9. Miscellaneous.

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. Agreement. The Parties agree to take such action as necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191, and any other applicable law.
- c. Survival. The respective rights and obligations of Business Associate under Section 6 and 8 of this Agreement shall survive the termination of this Agreement, as shall the rights of access and inspection of Covered Entity.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

10. Material Breach. The parties acknowledge that in the event the Covered Entity learns of a pattern or activity or practice of the Business Associate that constitutes violation of a material term of this Agreement, then the parties promptly shall take reasonable steps to cure the violation. If such steps are, in the judgment of the Covered Entity, unsuccessful, ineffective or not feasible, then the Covered Entity may terminate this Agreement upon written notice to the Business Associate, if feasible, and if not feasible, shall report the violation to the Secretary of HHS. Written notice may be transacted by certified or registered mail return receipt requested, facsimile transmission, personal delivery, expedited delivery service or via e-mail.

11. Law Governing Conflicts. This Agreement shall be enforced and construed in accordance with the laws of the State of New York. Jurisdiction of any litigation with respect to this Agreement shall be in New York, with venue in a court of competent jurisdiction in Albany County.

**By submitting a Proposal for RFP C0SCO0052, the Bidder/Contractor agrees to the terms and conditions expressed within this document.**