

**New York State**  
**Office for People With Developmental Disabilities**  
**Division of Workforce and Talent Management**



Andrew M. Cuomo  
Governor

**REQUEST FOR PROPOSAL**

**REGIONAL CENTERS FOR WORKFORCE TRANSFORMATION**

Prepared by:  
Deputy Director's Office  
NYS OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES  
Division of Workforce and Talent Management  
44 Holland Avenue  
Albany, NY 12229

April 2, 2014

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# Regional Centers for Workforce Transformation (RCWT)

## I. Introduction

By this Request for Proposals (“RFP”), the New York State Office for People With Developmental Disabilities (“OPWDD”) is seeking proposals from non- profit organizations and local government authorized to do business in New York State to serve as Regional Centers for Workforce Transformation (RCWT) within the geographical boundaries of OPWDD’s Developmental Disabilities Regional Offices (DDROs).

The RCWT are not physical structures or buildings but regional collaborations of service providers and other stakeholders from both the private and public sectors. Led by workforce champions from service entities, the RCWT are not regulatory bodies or oversight entities. Their objective is to assist service providers in building the performance capacity of direct support professionals (DSPs) in order to better serve persons with developmental disabilities.

The RFP process will result in grant contract(s) between the successful Proposer(s) and OPWDD for the performance of the services described in this RFP. This RFP provides information and instructions necessary for the submission of proposals seeking a contract award. **Please read this RFP in its entirety and follow the instructions carefully; failure to do so could result in rejection of the proposal.**

## II. Contract Duration and Calendar of Events

The term of the contract resulting from this RFP is to be for the period September 1, 2014 through August 31, 2016.

Event	Date
Proposal Release Date	April 2, 2014
Final Date for Receipt of Questions to <a href="mailto:Regis.M.Obijiski@opwdd.ny.gov">Regis.M.Obijiski@opwdd.ny.gov</a>	May 5, 2014
Answers to questions posted	May 12, 2014
Proposal Due Date	June 2, 2014
Evaluation of Proposals and Interviews	June 3 – July 7, 2014
Announcement of Award	August 18, 2014
Beginning of work under the contract	September 1, 2014
Ending of work under the contract	August 31, 2016

### III. Background

#### A. OPWDD

The New York State Office for People With Developmental Disabilities is a New York State executive agency responsible for the provision, regulation and oversight of services to individuals with developmental disabilities in New York State. OPWDD directly provides services, and also oversees services delivered by an extensive network of over 700 not for profit service providers. In its Road to Reform, [http://www.opwdd.ny.gov/transformation-agreement/OPWDD Road to Reform April2013](http://www.opwdd.ny.gov/transformation-agreement/OPWDD_Road_to_Reform_April2013) , OPWDD recognizes the 90,000 direct support professionals (DSPs) in its system as the “cornerstone of the service system...who possess the greatest potential to make a life-changing difference in the lives of the people they support.”

#### B. Statement of Need

The direct support professional (DSP) is the greatest resource within the service system for the individual with intellectual disabilities and other developmental disabilities (ID/DD) and their families—and yet New York’s DSP workforce of over 90,000 is not yet fully prepared for the changes that lie ahead. DSP turnover remains high and the workforce demographics demonstrate that fewer direct support workers will be required to fulfill a growing need for community services. The demand for direct support is great, and the supply of workers is shrinking in number and ability.

Transforming services from congregate residential and day services to highly individualized milieu supports requires much more of the DSP than the ability to follow instructions and tasks issued by immediate supervisors within a program. It requires a deep ethical commitment and a facility to exercise effective independent judgment and the professional skills. OPWDD has adopted the National Alliance for Direct Support Professionals (NADSP) Code of Ethics and created the NYS DSP Core Competencies necessary to effect personal outcome measures for persons with ID/DD.

The NYS Talent Development Consortium generated DSP Core Competencies that have been introduced to the community providers in the private and public sectors. These competencies are infused with the nationally validated Community Support Skill Standards, OPWDD’s Governing Principles, the National Alliance for Direct Support Professionals (NADSP) Code of Ethics, the fundamental tenets of the US DOL 2010 standards for DSPs, the NYD DOL competency-based DSP Apprenticeship, and the basics of the instruction curriculum of NADSP. The NYS DSP Competencies represent the fullest research, thinking and practice available nationally in the last twenty years.

The Code of Ethics (<http://www.opwdd.ny.gov/code-of-ethics/home> ) has nine tenets that inform and are infused into the seven goals, twenty-three competencies and sixty skills of OPWDD’s robust DSP Core Competencies

([http://www.opwdd.ny.gov/opwdd\\_careers\\_training/training\\_opportunities/core\\_competencies](http://www.opwdd.ny.gov/opwdd_careers_training/training_opportunities/core_competencies) ) . New York has been careful to assemble resources and tools ([http://www.opwdd.ny.gov/opwdd\\_careers\\_training/training\\_opportunities/core\\_competencies/resources-tools](http://www.opwdd.ny.gov/opwdd_careers_training/training_opportunities/core_competencies/resources-tools) ) that explain the overview of the DSP capacity-building project, answer frequently-asked questions, and provide three different performance evaluations that parallel the competencies. OPWDD began posting training modules and courses from the field that assist with preparing DSPs to attain a clearer and deeper understanding of the competencies.

Eventually, Managed Care Organizations (MCOs) will be evaluating service providers not only in the area of financial accountability but also in service deliverables. Preferred provider status will be achieved and maintained only if certain metrics such as health, safety, incident reporting, community connections, end-user satisfaction, meaningful relationships, internal quality improvement systems, etc. are tracked and goals achieved. In this context, a provider will want to not only embrace the Core Competencies but also to excel at them.

#### **IV. Vision, Mission, Objectives, Scope of Work and Potential Outcomes of RCWT**

The vision of the RCWT is a stable New York DSP workforce that is an ethical, competent, and effective profession enabling people with intellectual and other developmental disabilities lead richer lives by realizing personal potentials.

The mission of RCWT is a synchronized effort to develop the capacity of the New York DSP workforce through regional collaborations and with guidance from standards that are nationally validated for community supports for people with disabilities.

The reason for RCWT is to enlist the goodwill and talent of our entire field by establishing local collaborations to assist with the adoption of the Code of Ethics and the implementation of the Core Competencies as the building blocks of DSP capacity building. DSPs represent over 80% of all service provider personnel, and they are the ones who, by their abilities and action, define the quality of services for people with disabilities.

What are the objectives of RCWT?

1. Develop a collaborative team of service stakeholders (e.g., DSPs, frontline supervisors, service provider administrators, persons with ID/DD, family members, staff developers, educators, etc), who will implement a plan of DSP capacity building;
2. Understand the successes and dispositions of service providers within their regions and bring them together to work collaboratively for DSP capacity building;
3. Encourage service providers to assist each other with their strengths in workforce development and

- a. collect and share training modules and courses germane to the Core Competencies;
  - b. showcase positive service outcomes as a result of these efforts;
  - c. help build career ladders and credentialing within the DSP profession, and
  - d. document and share lessons learned—those learned so far as listed below and those learned subsequently;
4. Develop an assessment process and long-term implementation plan to establish technical assistance for and support of New York’s DSP workforce; provide assistance how to teach the code of ethics and core competencies and show examples of leading practices from among the provider community;
  5. Implement a professional development plan and provide training to key stakeholders so that all service providers will have fully implemented the NADSP Code of Ethics, the NYS DSP Core Competencies and related DSP Performance Evaluations by April 2017; and
  6. Implement with RCWT workgroup stakeholders an outcome evaluation method to document project strengths, weaknesses, and lessons learned.

#### Description of the Project and Scope of Work

RCWT are a very important step in helping to change system-wide cultural thinking about and practice by DSPs, introducing a higher level of DSP performance, and effecting those changes collaboratively.

OPWDD will form six Regional Centers for Workforce Transformation to provide assistance to service providers with incorporating the Code of Ethics, the Core Competencies and Performance Evaluations into agency practice. They are intended to assist providers over a two year period with organizational readiness and helping with the gap analysis between current practices and near-future expectations.

#### RCWT to Apply Lessons Learned from Earlier Piloting

Three Developmental Disabilities Services Office Operations Offices (DDSOOs) and scores of private sector provider agencies have been piloting the Code of Ethics and Core Competencies from one to two years. Among the lessons learned so far are

- Once examined and tried, the core competencies are not as intimidating as once thought.
- Service providers who have based their DSP development on nationally validated standards have had little difficulty in accommodating to the Core Competencies.
- Even within agencies dedicated to continuous quality improvement, pockets of resistance to change can be formidable. Successful early adopters have overcome resistance by beginning implementation in their organization with high performing staff within service structures. These successes convince resisting staff and programs to join in the transformation effort.
- The core competencies require executive and administrative understanding and support in order to gain cultural traction.

- The key to the success of the ethics, competencies, and evaluations is culturally defined in practice by front line supervisors. Organizationally, front line supervisors are the interpreters of administrative directions and the reflection of the direct support workforce whom they lead. Beginning DSP capacity building with front line supervisors is a very effective plan.
- The full adoption and effective implementation of the code of ethics, the core competencies and performance evaluations will require two to three years for most service providers.
- Because of so many competing priorities within OPWDD's transformation plan, leadership commitment to the code of ethics and core competencies in both the public and private sectors has been uneven.

What will RCWT success look like? What are the potential outcomes and impact?

RCWT is expected to

- Build, enhance and sustain a broad variety of service stakeholders (persons with ID/DD, DSPs, Frontline Supervisors, Staff Developers / Trainers, family members, educators, administrators...) who continue to champion the importance of DSP professional development, and steer the strategic directions to this end. These stakeholders will be standing regional talent development consortia for the DSP profession;
- Support the teaching and adoption of the code of ethics and core competencies;
- Support the pursuit of career-based training and education, and building professional collaborations among DSPs;
- Share and disseminate leading practices through multiple forms of media and other sources;
- Demonstrate enhanced capacity in person-centered, self-directed supports; and
- Replicate training and promising practices which promote positive system change.

Expected Performance Measures of RCWT are:

- Policy changes in government occur as a result of demonstrative excellence of service.
- Successful person-centered, self-directed supports replicate in other service systems.
- Promising practices are recognized and disseminated. Intellectual, human and physical resources are shared willingly.
- Service providers commit to become learning organizations serving our common mission.
- The New York State Department of Labor recognizes DSPs as a distinctly legitimate occupational trade.
- The number of people involved in systems advocacy increase yearly.
- The number of DSPs formally committing to the NADSP Code of Ethics and meeting the performance standards of the core competencies increases quarterly up to 100% by April 2017.
- The number of frontline supervisors learning about and committing to the NADSP Code of Ethics increases quarterly by up to 100% by April 2017.

- The number of frontline supervisors demonstrating that they meet the nationally validated Frontline Supervisors Core Competency Set increases annually.
- Six month and annual DSP turnover data are used to develop strategic workforce improvement.
- In the last year of the grant, RCWT creates an effective sustainability plan for the future.

Other Highlights of a successful RCWT are:

- Participating service providers adopt, teach, and measure the performance of their workforce against the code of ethics and core competencies.
- Individuals supported enjoy a healthy measure of self-esteem from achieving personal outcome measures. This can be measured by satisfaction surveys.
- DSPs are honored for and challenged by their work and earn rightful places of recognition within DSP career lattices. DSPs are invited to contribute to organizational development. DSPs gain titles and compensation differentials based on learning and performance.
- DSPs pursue professional certificates, national credentialing, career-based education. They learn, demonstrate and earn accordingly.
- Front line supervisors are acknowledged, developed and rewarded for doing their extraordinarily difficult supervisory and frontline work in all service provider agencies. They are invited to contribute to organizational development, and they receive training that enhances their skills and are rewarded with performance-based compensation.
- Staff developers / trainers collaboratively create human resource leading practices in the field.
- Self-advocates partner with DSPs systemically and individually as if their lives depended on it. For many persons with ID/DD, the quality of living pivots on DSP performance.
- Service providers assist each other with their successes in DSP capacity building.
- RCWT create products to facilitate their efforts such as videos, news releases, newsletters, consolidated training modules related to the core competencies, satisfaction survey data, education of elected officials at events, and much more.
- RCWT generate funds from other sources due to their work on workforce.

### Long-term Impact of Successful RCWT

Caregivers will be transformed into support professional, and support professional enables individuals with disabilities to:

- Live a life that is valued by the person as define by personal outcome measures (POMs) and not the personal values of the staff;
- Have more opportunities for desired community involvements;
- Problem solve, figuring out what they want to do;

- Learn new skills that increase community inter-dependence and decrease dependency on staff; and
- Have increased self-esteem through positive interactions focusing on their abilities and not disabilities.

## V. OPWDD’s Funding for the RCWT and Regional Definitions

Following the geographical boundaries of the five DDROs, OPWDD will provide funding for two years for six Regional Centers for Workforce Transformation (RCWT, whose purpose is to assist service providers in adopting the National Alliance for Direct Support Professionals (NADSP) Code of Ethics and the NYS DSP Core Competencies, build the capacity of DSPs statewide, and encourage credentialing and career ladders within direct support.

Funding for the period 09/01/2014 to 08/31/2016 for all five regions is \$500,000; i.e., \$50,000 per year for each of the five regions. Region 2, because of its size, will be divided into two RCWT, each funded at \$25,000 per year.

### Geographical Boundaries by County of OPWDD’s Developmental Disabilities Regional Offices (DDROs)

Region 1: Niagara, Erie, Chautauqua, Orleans, Genesee, Wyoming, Cattaraugus, Monroe, Livingston, Allegany, Wayne, Ontario, Yates, Steuben, Seneca, Schuyler, Chemung;

Region 2 (North): Clinton, Franklin, St. Lawrence, Essex, Hamilton, Lewis, Jefferson;

Region 2(Central): Herkimer, Oneida, Oswego, Otsego, Madison, Onondaga, Cayuga, Chenango, Cortland, Tompkins, Delaware, Broome, Tioga;

Region 3: Warren, Washington, Saratoga, Fulton, Rensselaer, Schenectady, Montgomery, Albany, Schoharie, Columbia, Greene, Dutchess, Ulster, Sullivan, Putnam, Orange, Westchester, Rockland;

Region 4: Bronx, New York, Queens, Kings, Richmond; and

Region 5: Nassau, Suffolk.

## VI. Qualifications of RCWT’s Coordinating Entity and Lead Person(s)

Qualified applicants are incorporated entities that will be selected to coordinate a RCWT are: not-for-profit organizations, a consortium of agencies, a coalition of intellectual and developmental disabilities' stakeholders, a trade association, a management support organization, a managed care organization, a provider agency, a municipal agency. The coordinating entity cannot be a for-profit organization; however, for-profit organizations may serve as subcontractors to the coordinating entity.

The coordinating entity must demonstrate the following qualifications:

- A record of advancing DSP development and DSP performance excellence,
- Peer credibility and leadership experience across the region,
- A record of superior collaboration and facilitation skills,
- A record of delivering workforce development outcomes,
- Skills in analyzing and measuring progress with projects,
- Administrative supports and skills, and
- Legal incorporation.

The coordinating entity must also identify the lead person(s) who will ably represent and spearhead this project for the coordinating entity. Lead person(s) must be successful workforce champions themselves and exemplify the qualities of the lead entities listed above. General responsibilities of the lead person(s) include:

- Working with and reporting to the Deputy Director of OPWDD's Workforce Transformation,
- Committing to being prepared by OPWDD for their local leadership and facilitator roles,
- Committing to collaborative meetings (at least quarterly) with other Regional Center Coordinating Entities,
- Sharing with and learning from similar workforce efforts across the OPWDD enterprise,
- Working toward OPWDD-identified workforce outcomes in their region,
- Committing to positive lasting culture change in DSP development,
- Including both private and public sector service providers,
- Inviting OPWDD DDRO Director in all correspondence and activities,
- Coordinating a workgroup committee of representative stakeholders: DDRO Director or representatives, person(s) with IDD, family member(s), DSP(s), Frontline Supervisor(s), agency administrators, trainers, State Operations personnel, workforce capacity building champions, post-secondary education professional(s), emerging and minority agency representatives etc.,
- Committing to collaboration and sharing of regional intellectual capital, human resources and physical space, and
- Building sustainability in all efforts.

## VII. MINIMUM QUALIFICATIONS FOR SELECTION

The minimum qualifications to be awarded a contract under this RFP are as follows:

1. Must be a non-profit organization authorized to do business in New York (including not-for-profit corporations formed under New York State Law, local government units, or organizations created by an act of the New York State Legislature for charitable purposes which include providing services to persons with developmental disabilities);
2. Must not be on OPWDD's Early Alert list;
3. Must be current on the submission of Consolidated Fiscal Reports (CFRs) at the time proposal is submitted;
4. Must be pre-qualified in the NYS Grants Gateway as required. Additional information on prequalification and the Grants Gateway can be found on the NYS Grants Reform website at: <http://grantsreform.ny.gov/>

Proposals which do not meet the above minimum qualifications will be disqualified from receipt of award.

## VIII. INSTRUCTIONS FOR PREPARING THE PROPOSAL

**Since there will be six (6) separate RCWT as described in Section V of this RFP, a proposer may submit a proposal for one or more RCWT. Each of the RCWT requires its own separate proposal.**

A proposer must submit two copies of a proposal and cover letter, to: **Regis Obijiski, Deputy Director for Workforce Transformation, 5<sup>th</sup> Floor, 44 Holland Ave. Albany, NY 12229.**

Proposals must be received by OPWDD at the above address according to the calendar of events in Section II of this RFP. Proposals postmarked on this date but received later will not be accepted. Email or fax submissions will not be accepted. Late submissions will be eliminated from consideration and returned unopened to the proposer.

A proposal that is incomplete in any material respect may be eliminated from consideration. All proposals will be subject to verification.

A proposal must provide the information in the prescribed format and in same order in which it is requested. Failure to follow these instructions may result in disqualification.

Listed on the calendar of events Section II of this RFP is a provision for questions and answers that proposers may have on this RFP. Answers to these questions will be posted on the NYS Contract Reporter and OPWDD's website.

#### **A. Cover letter**

A cover letter signed by the chief executive or chief operating officer of the proposer (or his or her designee). The letter must:

1. Acknowledge that the proposer has read the proposal, understands it, and agrees to be bound by all of the conditions therein;
2. Include the proposer's name, address, telephone and fax numbers, and the name(s), addresses(es), telephone number(s) and the email address(es) of the proposer's contact(s) concerning the proposal;
3. Acknowledge that the proposer understands and accepts the provisions of this RFP and all Attachments therein; state that by submitting a response to the RFP, the proposer accepts the provisions of the aforesaid documents and agrees to execute a contract in accordance with the terms of this RFP.
4. Include a specific statement addressing the requirements contained in the Minimum Qualifications for Selection. Proposers must state specifically whether they are in compliance with each of the Minimum Requirements.

#### **B. Proposal Presentation Order**

1. One-Page Summary of the Proposal
2. Plan of Action
3. Evaluation, Dissemination and Sustainability
4. Applicant Capability, Personnel, Resources
5. Budget

## **IX. Evaluation of Proposals**

### A. Evaluation Process & Decisions

Each proposal will be graded up to 95 points for technical merit and 5 points for budget, totaling up to 100 points per proposal.

An evaluation team will be comprised of three OWPDD staff or a greater odd number of staff from the Division of Workforce and Talent Management and/or other relevant OPWDD units. They will conduct an initial review of the proposals to determine whether the Minimum Qualifications for Selection have been met. Proposals which do not meet the Minimum Qualifications will be eliminated. Only those proposals which meet the Minimum Qualifications will be scored by the evaluation team.

Proposals will also be reviewed to determine if they contain all of the submittals specified in this RFP. Proposals that are incomplete in any material respect may be rejected as non-responsive.

The evaluation of the proposals will include (1) examining the responses for compliance with this RFP and (2) selecting the proposer whose merit would most benefit OPWDD purposes outlined in this document. The evaluation process will be conducted in a fair and impartial manner by an evaluation committee.

Proposers having the two highest total combined (technical and budget) scored proposals for each of the six RCWT will be invited to separate, mandatory interviews with the evaluation team. Interviews will be judged on scores generated from a series of identical questions posed to the candidates. A number scoring methodology will be the same for each candidate. All questions will be directly related to the expectations of this RFP and will address four topics in the following order: 1) the plan of action, 2) applicant capability, 3) evaluation and sustainability, and 4) budget. Interviewee(s) with the highest total interview score will be awarded the contract for the specific RCWT. In the event of a tie, the proposer with the highest interview score in topic 1, the plan of action, will be selected. If the tie is not broken, the proposer with the highest interview score in topic 2, applicant capability, will be selected. If the tie is still not broken, the proposer with the highest interview score in topic 3, evaluation and sustainability, will be selected. If a tie remains, it will be broken by random selection (e.g., a coin toss) witnessed by the evaluation team.

Other applicants may qualify for an interview under the following conditions: If the second-highest total combined score is followed by a score of two or fewer points, the third-highest total combined score will also qualify for an interview. This would include all proposals having the same total combined score. Similarly, if third highest total combined score is followed by a score of two or fewer

points, the fourth-highest score will qualify for an interview. This would include all proposals having the same total combined score. There will be no further considerations to qualify for an interview.

During the evaluation process, the content of the proposals will be held in confidence and will not be revealed except as required by law. Freedom of Information Law (FOIL) provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. If the proposal contains any such trade secret or other confidential or proprietary information, it must be accompanied by a written request to OPWDD in the proposal not to disclose such information, stating with particularity the reasons why the information should not be available for disclosure. OPWDD reserves the right to determine upon written notice to the proposer whether such information qualifies for the exemption from disclosure under the law.

## B. Proposal Application Scoring

Proposal Summary—Provide a one or two paragraph summary of your proposal that includes: identification of the requesting agency; agency/fiscal intermediary name and address; contact person, telephone, fax and email; and project title.

### Proposal Presentation

#### 1. Plan of Action (Total of 50 points)

- Provide a comprehensive overview/ summary and specific details of how the proposer plans to meet the intent and expectations of the RFP and provide a description of the geographic region(s) selected and those who will benefit. (12 points)
- Describe how and to what extent DSPs and frontline supervisors were involved in preparing this proposal and how they will be involved in the development and implementation of the initiative. (4 points)
- Explain how the initiative will focus on systems change and workforce capacity building, advocacy or a combination of these. (4 points)
- Provide specific timelines for implementation and completion of essential project activities, including detailed and specific performance milestones and targets. (10 points)
- Describe how the proposer will expand and scale up the initiative regarding the expansion of the core competencies and career ladders / lattices. (4 points)
- Describe what activities and outcomes will occur during both years. (8 points)
- Describe what proposed products and information will be available at each phase of the project and the organizational plan to disseminate and share such products and information between and among the other RCWT. (4 points)
- Describe how the proposer will use innovative, efficient and effective approaches to meet the goals of the initiative; including technologies and web based applications, etc. (4 points)

2. Evaluation, Dissemination and Sustainability (Total of 20 points)

- Describe what short-term benefits will result from the Plan of Action. (4 points)
- Describe how the proposer will evaluate the extent to which the program has achieved its stated objectives and outcomes. (4 points)
- Describe the details of implementation of technical assistance, method(s), frequency, and criteria for evaluating the impact of this initiative. (4 points)
- Describe how the proposer will evaluate the satisfaction of all project customers and stakeholders, including details on how they will assess positive changes related to the core competencies. (4 points)
- Describe the sustainability plan and strategies to maintain this initiative, or the benefits of this initiative, past the conclusion of the OPWDD grant funding cycle, including any ongoing commitment from project partners. Alternative strategies in addition to seeking other grant funding should be identified. (4 points)

3. Applicant Capability, Personnel, and Resources (Total of 25 points)

- Describe who will be the lead person(s) responsible for project implementation, what experience or expertise they bring to ensure the successful implementation of this initiative and the approximate hours per week devoted by the lead person to the project. The lead person(s) are expected to have a record of advancing DSP development and DSP performance excellence, peer credibility and leadership experience across the region, a record of superior collaboration and facilitation skills, a record of delivering workforce development outcomes, and skills in analyzing and measuring progress with projects. In your presentation on the lead person, refer to that person's ability to meet the list of general responsibilities included in Section VI of this RFP. In the event of the absence of the lead person, identify a backup person and describe the experience or expertise they bring to ensure the successful implementation of this initiative. (10 points)
- Describe the organizational expertise and/or capability to carry out the intent of the RFP. (5 points)
- Describe the planned collaborations and various roles these organizations will play in project development and implementation. (5 points)
- Describe past relationships and capability to collaborate with other State/local agencies or community organizations that impact this project. (5 points)  
*If using contracted services or subcontractors describe their roles and responsibilities.  
(Note: No points will be added or deducted for this information.)*

4. Budget (Total of 5 Points)

The budget for the proposed project supports and is consistent with the intent of the RFP.

## X. NOTIFICATION OF AWARD

Upon completion of the evaluation process, the Evaluation Committee will make a recommendation to the Commissioner for award. The successful proposer will be notified through a "Letter of Intent" issued by OPWDD according to the calendar of events listed in Section II of this RFP.

## **XI. DEBRIEFING**

Once an award has been made, proposers may request a debriefing of their proposal. Please note that the debriefing will be limited solely to the strengths and weaknesses of the proposer's own proposal and will not include discussion of other proposals. Requests for debriefing must be submitted no later than ten (10) business days following the date of award or non-award announcement.

## **XII. PROPOSERS' PROTESTS**

Any proposer wishing to file a protest of the awarding of the contract must notify the OPWDD, in writing, of its intent to protest the award within ten (10) working days of its receipt of notice of non-award. The protest should:

- Identify the name and number of the RFP and the award date.
- Indicate the proposer's understanding of the reason(s) they were denied the award (i.e. summarize the deficiencies identified during the debriefing) and state the justification for the bid protest.
- Bid protests must be mailed to:

John F. Smith  
OPWDD Contract Management Unit  
NY State Office for People With Developmental Disabilities  
44 Holland Avenue, 3rd Floor  
Albany, New York 12229-0001

## **XIII. CONTRACT REQUIREMENTS**

Following execution of the contract by proposer and OPWDD, the contract will be submitted for approval to the Attorney General of the State of New York, then to the Office of State Comptroller of the State of New York for final State approval. The contract will not be final and binding until the approvals of the Attorney General and State Comptroller have been obtained. Upon approval of the contract by the Office of the State Comptroller (OSC), all terms of the contract become available to the public.

#### **XIV. SUBCONTRACTING**

The proposal must indicate if any part of the proposer's program will be provided by a subcontractor (including an organization or an individual who is independent contractor). To the extent subcontractors have been identified, please name the individual or organization that would be the subcontractor, describe the qualifications and scope of services to be provided by the contractor, and provide a statement of the percentage of the work to be performed by each subcontractor. Subcontractors must also meet the Minimum Qualifications for selection set forth in Section VII of this RFP.

#### **XV. OPWDD'S RIGHTS AS TO ALL PROPOSALS**

OPWDD reserves all rights with respect to proposals, including, but not limited to:

1. Reject any and all proposals received in response to this RFP;
2. Modify the RFP;
3. Withdraw the RFP at any time in OPWDD's sole discretion;
4. Make an award under the RFP, in whole or in part;
5. Require clarification or additional information from a proposer regarding its proposal;
6. Disqualify any proposer whose conduct and/or proposal fails to conform to the requirements of this RFP;
7. Direct proposers to submit proposal modifications addressing subsequent RFP amendments;
8. Eliminate any mandatory or non-mandatory RFP requirements that cannot be complied with by all the prospective bidders;
9. Waive any RFP requirements that are not mandatory;
10. Negotiate with the successful proposer within the scope of the RFP in the best interests of the State;
11. Utilize any and all ideas submitted in the proposals received without incurring any obligation to the proposer;

12. Require correction of arithmetical or other apparent errors for the purpose of assuring a full and complete understanding of a proposer's compliance with the requirements of this RFP;
13. Waive any immaterial deviation or defect in a proposal. A waiver of immaterial deviation or defect shall in no way modify the RFP documents or excuse the Proposer from full compliance with the RFP requirements;
14. Verify information provided in proposals; reject any proposal that contains false or misleading statements, or which provides references that do not support an attribute, condition, or qualification claimed by the proposer;
15. Rescind a preliminary contract award if a signed contract is not returned to OPWDD within ten (10) business days after it is sent to the successful proposer.

## **XVI. ADMINISTRATIVE CONSIDERATIONS.**

The following administrative considerations apply to this RFP and the contract to be entered into with the successful proposer:

### **A. Foreign Businesses:**

Proposers located in foreign countries are hereby notified that New York State may seek to obtain and assign or otherwise transfer offset credits created by this procurement contract to third parties located in New York State. The successful contractor(s) shall agree to cooperate with the State in efforts to get foreign countries to recognize offset credits created by the procurement contract.

### **B. Health Information Portability and Accountability Act (HIPAA)/ Mental Hygiene Law Section 33.13:**

Health Information Portability and Accountability Act (HIPAA) Standards for Privacy of Individually Identifiable Health Information (The Privacy Rule) was established by the Federal Department of Health and Human Services (HHS). The Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164) provides comprehensive federal protection for the privacy of health information. The Privacy Rule is carefully balanced to provide strong privacy protections that do not interfere with patient access to, or the quality of, health care delivery. HIPAA has an impact upon how OPWDD and contractors will deal with protected health information of our individuals with intellectual/developmental disabilities. New York State Mental Hygiene Law Section 33.13 also requires disclosure of clinical records to be limited to that information necessary in light of the reason for disclosure.

### **C. Public Officers' Law:**

New York State Public Officers Law Section 73 (8) bars former state officers and employees from appearing or practicing or rendering any services for compensation in relation to any matter before their former state agency for a period of two years from the date of their termination. Additionally, there is a permanent bar against any such activity before any state agency in relation to any case, application, proceeding or transaction with which such officer or employee was directly concerned and personally participated or which was under his or her active consideration.

D. Restriction on Contact with OPWDD Employees:

From the date of issuance of this RFP and until a contract award is made by OPWDD, (the “restricted period”) proposers and prospective proposers are restricted from making ANY contact with OPWDD personnel relating to this procurement other than contact with the following designated OPWDD staff:

**Primary contact:** Regis Obijiski, [regis.m.obijiski@opwdd.ny.gov](mailto:regis.m.obijiski@opwdd.ny.gov)

**Alternate Contact:** Angela Lauria-Gunnink, [angela.r.lauria-gunnink@opwdd.ny.gov](mailto:angela.r.lauria-gunnink@opwdd.ny.gov)

Prospective proposers shall not approach OPWDD personnel with offers of employment during the restricted period.

E. Security of Proposal:

Prior to contract award, the content of each proposal will be held in confidence and no details of any proposal will be divulged to any other proposer. Information communicated to OPWDD by proposers prior to completion of contract award and any other required New York State contract approvals shall be maintained as confidential, except as required by Federal or State law, including but not limited to the Freedom of Information Law. Notwithstanding the foregoing, OPWDD may disclose a proposal to any person for the purpose of assisting in evaluating the proposal or for any other lawful purpose.

Following final contract approval by all required state agencies, disclosure of the contents of all proposals and pre-award communications shall be available to the public to the extent required by Federal or State law, including but not limited to the Freedom of Information Law.

All proposals, the contract, and related documentation will become OPWDD records, which, in accordance with the Freedom of Information Law, will be available to the public after the contract award. Any portion of the proposal that a Proposer believes constitutes proprietary information entitled to confidential handling as an exception to the Freedom of Information Law, must be clearly and specifically designated in the proposal. If OPWDD agrees with the proprietary claim, the designated portion of the proposal will be withheld from public disclosure unless legally required to be released. Blanket assertions of proprietary material will not be accepted, and failure to specifically

designate proprietary material will be deemed a waiver of any right to confidential handling of such material.

F. Confidentiality of Information:

The successful proposer shall treat all information, in particular information relating to OPWDD service recipients and providers, obtained by it through its performance under contract, as confidential information, to the extent that confidential treatment is provided under New York State and Federal law, and shall not use any information so obtained in any manner except as necessary to the proper discharge of its obligations under the contract. The successful proposer is responsible for informing its employees of the confidentiality requirements of this agreement.

G. Publication Rights:

Materials/documents produced by the successful proposer in the fulfillment of its obligations under contract with the OPWDD become the property of OPWDD unless prior arrangements have been made with respect to specific documents. The successful proposer may not utilize any information obtained via interaction with OPWDD in any public medium (media - radio, television), (electronic - internet), (print - newspaper, policy paper, journal/periodical, book, etc.) or public speaking engagement without the official prior approval of OPWDD Senior Management. The successful proposer bears the responsibility to uphold these standards rigidly and to require compliance by their employees and subcontractors. Requests for exemption to this policy shall be made in writing, at least 14 days in advance, to OPWDD Contract Management Unit, 44 Holland Avenue, (3rd Floor), Albany, New York 12229.

H. Insurance Requirements:

The successful proposer shall agree to procure and keep in force during the entire term of this agreement, at its sole cost and expense, policies of insurance written with companies acceptable to the OPWDD in the following minimum amounts:

Premises Bodily Injury & Property Damage Liability Insurance: Limits of not less than \$1,000,000 each person, \$1,000,000 each accident or occurrence for bodily injury liability and \$300,000 each accident or occurrence for property damage liability.

Automobile Bodily Injury & Property Damage Liability Insurance with minimum limits of \$1,000,000 for injury to or death of any person, \$1,000,000 for each accident or occurrence for property damage liability.

Certificates of insurance naming the State of New York and OPWDD as additional insured shall be submitted with signed contracts. Each policy shall be issued by an insurance company or insurance companies rated B+ or better by A.M. Best & Co. and shall provide that no policy cancellation, non-renewal or material modification shall be effective except upon thirty (30) days prior written notice to OPWDD. OPWDD shall each be furnished a Certificate of Insurance prior to or simultaneously with execution of the contract and the Certificate of Insurance shall constitute a warranty by the successful proposer that the insurance required by this section is in effect.

I. Workers' Compensation Insurance Requirements:

The successful proposer shall procure and maintain Workers' Compensation Insurance covering the obligations of the proposer in accordance with Workers' Compensation Law. If the organization/individual is exempt from enrolling in worker's compensation (e.g. one or two- person owned company or an independent professional (e.g. professional such as a speech therapist, physical therapist, etc.) successful proposer must file form WC/DB 100 for NYS organizations and WC/DB 101 for an out-of-state firm/individual. The appropriate insurance/exempt forms must be provided to OPWDD with the signed contract document.

J. Additional General Duties and responsibilities:

The successful proposer must also:

- Maintain a reasonable level of cooperation with the OPWDD, determined by OPWDD, necessary for the proper performance of all contractual responsibilities.
- Agree that no aspect of its performance under the contract to be entered into as a result of this RFP will be contingent upon State personnel, or the availability of State resources, with the exception of all proposed actions of the successful proposer specifically identified in the contract as requiring OPWDD's approval, policy decisions, policy approvals, exceptions stated in the contract to be entered into can be expected in such a contractual relationship or the equipment agreed to by the OPWDD as available for the project completion, if any.
- Meet with OPWDD representatives to resolve issues and problems as reasonably requested by OWPDD.

K. New York State Information Security Breach and Notification Act": {New York State Technology Law, Section 208}

Successful proposer must comply with the provisions of the New York State Information Security Breach and Notification Act. {General Business Law Section 899-aa; New York State Technology Law, Section 208}. See Attachment E.

L. Work Outside Contract

Any and all work performed outside the scope of the grant contract awarded pursuant to the RFP, with or without consent of OPWDD, shall be deemed by OPWDD to be gratuitous and not subject to charge by the contractor.

**M. Limits on Administrative Expenses and Executive Compensation**

If the successful proposer is a “covered provider” within the meaning of 14 NYCRR § 645.1(d) at any time during the term of the contract to be awarded pursuant to this RFP, then during the period when such proposer is such a “covered provider”:

- a. the proposer will be required to comply with the requirements set forth in 14 NYCRR Part 645, and any amendments to such Part 645 that are effective during the term of the contract;
- b. the proposer’s failure to comply with any applicable requirement of 14 NYCRR Part 645, including but not limited to the restrictions on allowable administrative expenses, the limits on executive compensation, and the reporting requirements, may be deemed a material breach of the contract and constitute a sufficient basis for, in the discretion of OPWDD, termination for cause, suspension for cause, or the reduction of funding provided pursuant to the contract; and
- c. the proposer will be required to include the following provision in any agreement with a subcontractor or agent to provide services under the contract:

[Name of subcontractor/agent] acknowledges that it is receiving “State funds” or “State-authorized payments” originating with or passed through the New York State Office for People with Developmental Disabilities in order to provide program or administrative services on behalf of [Name of CONTRACTOR]. If at any time during the life of this Agreement [Name of subcontractor/agency] is a “covered provider” within the meaning of Section 645.1(d) of OPWDD regulations, [Name of subcontractor/agent] shall comply with the terms of 14 NYCRR Part 645, and any amendments to such Part 645 that are effective during the term of the contract. A failure to comply with 14 NYCRR Part 645, where applicable, may be deemed a material breach of this Agreement constituting a sufficient basis for suspension or termination for cause. The terms of 14 NYCRR Part 645, as amended, are incorporated herein by reference.

**XVII. Administrative Attachments**

1. Appendix A: Standard Clauses for New York State Contracts
2. Addendum to Appendix A
3. Supplement to Addendum to Appendix A

4. Vendor Responsibility Questionnaire –  
(<http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3291s.pdf>)
5. OPWDD HIPAA Business Associate Agreement

## **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, licensor, 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 \$10,000, 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 Section 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 because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. 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, 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, 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. 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 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, 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, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on 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 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 (2NYCRR 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, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 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 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.

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 section. 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. 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 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"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon 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. 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. 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 for Small Business

Albany, New York 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 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) require that they be denied contracts which they would

otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**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 Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 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, 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: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. 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. 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.

## APPENDIX A: SUPPLEMENT

The parties to the attached contract 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. General conditions relating to Article 15-A of the Executive Law are set forth in the attached Addendum.

15. A determination of vendor non-responsibility may be cause for termination of the contract.

16. 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.

17. The Procurement Lobbying Act is applicable to specified non-grant governmental procurements of annualized value greater than \$15,000 which are initiated after January 1, 2006.

18. 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) – 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 – ([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.state.ny.us](http://www.omig.state.ny.us) 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, 3rd 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.

19. 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.

20. 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.

21 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:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

[Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

(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.

22. Chapter 1 of the Laws of 2012 amends State Finance Law by adding new section 165-A known as the Iran Divestment Act of 2012. This Act became effective on April 12, 2012 and imposes limitations on vendors that do business with the Iranian energy sector. The Act prohibits, with certain exemptions, state contracts and subcontracts with “persons” engaged in investment activities in the energy sector of Iran. For commodities, services, construction, and printing, the Act requires that bids or offers for and renewals or assignments of, contracts include certification with respect to investment activities in Iran. According to the Act, a person engages in investment activities in Iran if the person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran or is a financial institution that extends twenty million dollars (\$20,000,000) or

more in credit for a minimum of 45 days to a person for purposes of providing goods or services in the energy sector of Iran. The Act requires that within 120 days after the effective date of the law (eff. April 12, 2012), the Office of General Services (OGS) develop a list of persons who engage in investment activities in Iran. Any person on the list is deemed non-responsive as defined in State Finance Law section 163. The list will be posted on the OGS website. No person on the list shall be utilized as a contractor or a subcontractor. Exemptions may be granted under certain conditions as denoted in Office of the State Comptroller (OSC) bulletin numbered G-252 issued on 3/2/2012 and available on the OSC website.

23. 14 NYCRR Sec. 624.6(t)(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 [http://www.opwdd.ny.gov/regulations\\_guidance/opwdd\\_regulations/implemenation\\_of\\_the\\_PPSNA\\_and\\_reforms\\_to\\_incident-management-effective-12-25-13](http://www.opwdd.ny.gov/regulations_guidance/opwdd_regulations/implemenation_of_the_PPSNA_and_reforms_to_incident-management-effective-12-25-13).

**ADDENDUM TO APPENDIX A: SUPPLEMENT**

**Authority: Article 15-A of the Executive Law and 5 NYCRR parts 140-144)  
Standard Clauses for All New York State Office for People with Developmental Disabilities  
(OPWDD) Contracts**

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO  
STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

**I. General Provisions**

- A. The Office For People With Developmental Disabilities is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) 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 the New York State Office For People With Developmental Disabilities (the “OPWDD”), to fully comply and cooperate with the OPWDD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). 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”) or other applicable federal, state or 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 withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

**II. Contract Goals**

- A. For purposes of this procurement, the OPWDD hereby establishes an overall goal of **20%** for Minority and Women-Owned Business Enterprises (“MWBE”) participation, **12%** for Minority-Owned Business Enterprises (“MBE”) participation and **8%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
  
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should

reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>.

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the OPWDD for liquidated or other appropriate damages, as set forth herein.

### **III. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors 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, grading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement to the OPWDD within seventy two (72) hours after the date of the notice by OPWDD to award the Contract to the Contractor.
  3. If Contractor or Subcontractor does not have an existing EEO policy statement, OPWDD has provided the Contractor or Subcontractor a model statement (see Form 100 – Minority and Women-Owned Business Enterprises 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. Form 101 - Staffing Plan

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. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

#### D. Form 102 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the OPWDD of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
  3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

#### **IV. MWBE Utilization Plan**

A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

#### **B. MWBE Utilization Plan (Form MWBE 103).**

1. Contractors are required to submit a Utilization Plan on **Form MWBE 103** with their bid or proposal. Complete the following step to prepare the Utilization Plan:
  - a. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
  - b. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
  - c. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and
  - d. Any modifications or changes to the agreed participation by NYS Certified MWBEs

after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the NYS OPWDD MWBE Program Management Unit.

2. The NYS OPWDD MWBE Program Management Unit will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:
  - a. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
  - b. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
  - c. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Management Unit has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and
  - d. other information which the MWBE Program Management Unit determines to be relevant to the MWBE Utilization Plan.
3. The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to NYS OPWDD MWBE Program Management Unit a written remedy in response to the notice of deficiency.
  - a. If the written remedy that is submitted is not timely or is found to be inadequate, the MWBE Program Management Unit shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by NYS OPWDD MWBE Program Management Unit.
  - b. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
4. NYS OPWDD MWBE Program Management Unit may disqualify a Contractor as being non-responsive under the following circumstances:
  - a. If a Contractor fails to submit a MWBE Utilization Plan;
  - b. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
  - c. If a Contractor fails to submit a request for waiver; or

- d. If the MWBE Program Management Unit determines that the Contractor has failed to document Good Faith Efforts.
- C. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- D. Contractor further agrees that a failure to submit and/or use 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 of Contractor non-responsiveness.

## **V. Waivers**

- A. For Waiver Requests Contractor should use Form 104 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the OPWDD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the OPWDD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the 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**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 105) to the OPWDD by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

## **VII. Liquidated Damages - MWBE Participation**

- A. Where OPWDD determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is

found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the 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
  - 2. contractual MWBE goals; and
  - 3. 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 the OPWDD, Contractor shall pay such liquidated damages to the OPWDD within sixty (60) days after they are assessed by the OPWDD unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the OPWDD.

Effective April 1, 2012

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY  
POLICY STATEMENT**

I, \_\_\_\_\_, the (awardee /contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at the address below:  
\_\_\_\_\_

**MWBE**

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

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

(c) At the request of the contracting agency, this organization shall request that 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) This organization will include the provisions of sections (a) through (c) 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.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

**Minority Business Enterprise Liaison**

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison

(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (MWBE-EEO) program.

**MWBE Contract Goals**

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women’s Business Enterprise Participation

**EEO Contract Goals**

\_\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_\_ %Female Labor Force Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**FORM 100 (MWBE UNIT REVISED: 02/2012)**

**Effective April 1, 2012**

**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>Subcontractor's name</b> _____
<b>Offeror's Address:</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	Total Female	White		Black		Hispanic		Asian		Native American						
		(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)					(M)
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>	<b>Submit completed with bid or proposal MWBE 101 (Rev 02/12)</b> <b>Effective April 1, 2012</b>
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**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.

**ISLANDER**

- **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.

**NATIVE)**

**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

**MWBE UTILIZATION PLAN**

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (MWBE) under the contract. Attach additional sheets if necessary.

**Offeror's Name:**

**Federal Identification No.:**

**Address:**

**Project/Contract No.:**

**City, State, Zip Code:**

Telephone No.:  
%

**MWBE Goals in the Contract:** MBE % WBE

Region/Location of Work:

1. Certified MWBE Subcontractors/Suppliers  Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work  (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/  Supplies/Services and intended performance dates of each component of the contract.
A.	<u>NYSEED</u> <u>CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

<b>B.</b>	<u>NYS DED CERTIFIED</u> <input type="checkbox"/> MBE  <input type="checkbox"/> WBE			
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**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (MWBE 104).**

<b>PREPARED BY (Signature):</b>  <b>DATE:</b>  <b>NAME AND TITLE OF PREPARER (Print or Type):</b>  SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>
	<b>FOR MWBE USE ONLY</b>	
<b>MWBE 103 (Revised 2/12)</b>  <b>Effective April 1, 2012</b>	<b>REVIEWED BY:</b>	<b>DATE:</b>
	<b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date:	
	<b>Contract No.:</b>	<b>Project No. (if applicable):</b>
	<b>Contract Award Date:</b>	<b>Estimated Date of Completion:</b>
	<b>Amount Obligated Under the Contract:</b>	
	<b>Description of Work:</b>	
	<b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date:	
	<b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date:	

## OPWDD HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS Agreement is made by and between New York State Office for People With Developmental Disabilities (“Covered Entity”), and \_\_\_\_\_ (“Business Associate”).

WHEREAS, Business Associate provides certain services to Covered Entity through existing written contract \_\_\_\_\_ (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 to:

- i. 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. 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. 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
- 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)(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 or 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 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.

- (1) 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.
- (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon 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.

**New York State Office for People with  
Developmental Disabilities**

By \_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date signed

**Business Associate**

By \_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date