



Office for People With Developmental Disabilities

ANDREW M. CUOMO
Governor

KERRY A. DELANEY
Acting Commissioner

Request for Proposals

Medicare Provider Enrollment Assistance

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1. INTRODUCTION

1.1 Overview

The New York State Office for People With Developmental Disabilities (OPWDD) is seeking competitive proposals from responsible organizations interested in assisting OPWDD with the Medicare Provider Enrollment process. It is anticipated that this RFP will result in a single contract beginning September 1st, 2018, for the performance of the services described in this RFP. It is expected that the majority of services will be provided during the initial six-months; followed by revalidation, post-enrollment support, and consultation services as needed, over a period of five years. This RFP provides information and instructions necessary for the submission of proposals; please read this RFP in its entirety and follow the instructions carefully; failure to do so could result in rejection of the proposal.

1.2 Designated Contracts

1.2.1 OPWDD Designated Contact:

Pursuant to State Finance Law § 139-j(3)(a), the OPWDD identifies the following allowable contact for communications related to the submission of written proposals, written questions, pre-bid questions, and debriefings.

Connie Blais
New York State Office for People With Developmental Disabilities
Contract Management Unit
44 Holland Avenue, 4th Floor
Albany, New York 12229-0001

Email: Connie.X.Blais@opwdd.ny.gov
Phone: (518) 474-5513 (to be used for delivery purposes only)

Further information about contacts with employees, Public Officers Law and Restrictions on Communication SFL § 139-j(3)(a), can be found in section 6.1.51.1 of this RFP and at <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

1.2.2 Proposer Designated Contact:

Proposers are required to submit Attachment One: Mandatory Notice of Participation identifying the allowable contact for communications related to the submission of written proposals, written questions, pre-bid questions and all notifications containing instructions or procurement updates. **It is important to note that the Proposer's email address, as submitted by the Proposer on the Attachment One: Mandatory Notice of Participation, will be used for all communication purposes.**

1.3 Minimum Qualifications

1.3.1 OPWDD will accept proposals from organizations with the following minimum qualifications, which are Pass/Fail; proposers failing to meet the minimum qualifications as

indicated below will result in a firm’s ineligibility for further consideration in the proposal evaluation process.

- 1.3.1.1 Proposals must meet the Format and Content requirements of section 2.3 of this RFP.
- 1.3.1.2 The applicant must have experience assisting entities in similar size and scope to OPWDD with achieving Medicare enrollment. Experience assisting state agencies, particularly in New York State, is preferred.
- 1.3.2 Failure to meet these Minimum Qualifications will result in a proposal being found non-responsive and eliminated from further consideration.

1.4 Key Events Schedule*

Release of Request for Proposals.....	March 20 th , 2018
Mandatory Notice of Participation	March 29 th , 2018
Mandatory Pre-Proposal Teleconference	April 4 th , 2018
Closing Date for Submission of Written Questions.....	April 6 th , 2018
Official Responses to Questions.....	April 13 th , 2018
Proposal(s) Due/Bid Opening.....	3:00 pm April 25 th , 2018
<i>Anticipated</i> Interviews (not earlier than the week of).....	May 7 th , 2018
<i>Anticipated</i> Notification of Tentative Award	May 28 th , 2018
<i>Anticipated</i> Contract Start Date	September 1 st , 2018

*Above dates may change at the sole discretion of OPWDD

1.5 Mandatory Pre-Proposal Teleconference

- 1.5.1 A mandatory Pre-Proposal teleconference is scheduled for 2:00 p.m. for the date noted in 1.4 of this RFP. The purpose of this teleconference is to provide Prospective Bidders with detailed information regarding the Procurement process and to address questions and concerns. A teleconference call-in number will be provided to firms who have submitted a Mandatory Notice of Participation as described in 2.1, and as provided in Attachment One of this RFP. Attendance is mandatory; attendance will be verified by asking participants for the last four (4) digits of their phone number and confirming it against the four (4) digits provided in the Notice of Participation per section 2.1.2 of this RFP.

Please Note: Attachment One: Mandatory Notice of Participation, also requires Proposers to indicate their intent to participate in this procurement as further described in section 2.1 of this RFP.

- 1.5.2 Questions submitted prior to the teleconference will be reviewed. Additional questions will be permitted at the teleconference.
- 1.5.3 On or before the date specified for Official Responses to Questions in section 1.4 of this RFP, OPWDD’s responses to questions submitted prior to the teleconference, responses to questions from the teleconference, and notifications of amendments to the RFP will be

distributed by email to all vendors who indicated an interest in submitting a proposal on the Attachment One: Mandatory Notice of Participation; and posted at:

http://www.opwdd.ny.gov/opwdd_resources/procurement_opportunities

and the New York State Contract Reporter website:

<https://www.nyscr.ny.gov/contracts.cfm>

2. PROPOSAL SUBMISSION

2.1 Mandatory Notice of Participation

2.1.1 Proposers intending to submit a proposal in response to this RFP must email a completed Mandatory Notice of Participation (see Attachment One of this RFP) to the Designated Contact identified in Section 1.2 of this RFP.

2.1.2 The Mandatory Notice of Participation must be submitted no later than 5:00 pm EST, on the date provided in Section 1.4 of this RFP. The Mandatory Notice of Participation must provide the current mailing address, e-mail address, and telephone number(s) for the person who will be the Proposer's designated point of contact throughout the duration of this RFP.

Please Note: The last four digits of the phone number provided on the Mandatory Notice of Participation will be used to identify the Proposer as a participant in the Mandatory Pre-Proposal Teleconference per section 1.5.1 of this RFP.

2.1.3 Proposers must notify OPWDD of any and all changes relative to the point of contact provided in the Mandatory Notice of Participation. OPWDD is not responsible for any miscommunications that occur throughout this RFP process as a result of a Proposer's failure to provide notification of changes in the point of contact information

2.1.4 Subsequent to the date for submission of the Mandatory Notice of Participation, prospective Proposers who do not submit a Mandatory Notice of Participation will not be considered "Proposers" as that term is used herein and will not be advised of subsequent changes in the scope of this RFP. A Mandatory Notice of Participation is required in order for OPWDD to consider a proposal.

2.1.5 A firm who elects not to submit a proposal but wishes to be kept advised of subsequent developments in this procurement (including changes to the RFP) can make arrangements in such regard by submission of a written request to the designated contact listed in Section 1.2 of this RFP.

2.1.6 Proposers who DO NOT INTEND to submit a proposal in response to this RFP should indicate such by checking the No-Bid Reply option on the Mandatory Notice of Participation, provided in Attachment One of this RFP. Completing and returning the form to the OPWDD will ensure their name remains on our Proposers' list for future solicitations. The Mandatory Notice of Participation includes space for vendors to explain why a proposal is not being submitted. A No-Bid response will not impact participation in future solicitations. The explanations given for No-Bid Replies help the OPWDD demonstrate that proposals were shared with others besides those responding to this RFP, and to understand why a company did not bid.

2.1.7 Bidders may submit more than one proposal for the purpose of offering alternative solutions, but each proposal must meet all of the mandatory requirements of the RFP, be complete in itself, and must not reference or incorporate portions of another proposal submitted by Bidder. Multiple proposals received from the same Bidder will be evaluated separately by OPWDD, as if each proposal were the sole submission of the Bidder.

2.1.8 Cost of Proposal Preparation

All costs associated with responding to this RFP are entirely the responsibility of the Proposer and shall not be reimbursed by OPWDD. No claim will be made against OPWDD for any costs incurred by the Proposer for proposal preparation or any equipment demonstration which OPWDD may require.

2.2 RFP Questions and Clarifications

- 2.2.1 Questions concerning this RFP shall be submitted in writing by the Closing Date for Submission of Written Questions as stated in section 1.4 of this RFP.
- 2.2.2 Questions must be emailed to the Designated Contact as provided in section 1.2 of this RFP.
- 2.2.3 The SUBJECT of the e-mail must state “**Medicare Provider Enrollment Assistance RFP Question**”. Each inquiry must cite the relevant proposal section and paragraph number.
- 2.2.4 Additional questions will be permitted at the mandatory Pre-Proposal teleconference. Responses to questions submitted prior to the teleconference and questions from the teleconference will be posted to the OPWDD website and the New York State Contractor Reporter website provided in section 1.5.3 of this RFP.
- 2.2.5 The responses to all questions will be in the form of a formal addendum which will be annexed to and become part of this RFP and any ensuing contract.
- 2.2.6 If the Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Proposer shall immediately notify OPWDD of such error in writing, to the designated Contact listed in 1.2 of this RFP.
- 2.2.7 If, prior to the Deadline for Submission of Proposals, a bidder fails to notify OPWDD of a known error or an error that reasonably should have been known, the bidder shall assume the risk of proposing. If awarded the contract, the Proposer shall not be entitled to additional compensation by reason of the error or its correction. Prior to the Deadline for Submission of Proposals, any such clarifications or modifications as deemed necessary by OPWDD will be posted to the OPWDD website and the New York State Contractor Reporter website provided in section 1.5.3 of this RFP.

2.3 PROPOSAL FORMAT and CONTENT

- 2.3.1 To be considered responsive, a Proposer must submit a complete proposal that satisfies all requirements stated throughout this RFP.
- 2.3.2 Proposer Covenant

In submitting a proposal, the Proposer covenants they will not make any claims for, or have any right to, damages for any misinterpretation or misunderstanding of the specifications or because of any lack of information. The information that must be furnished by the Proposer, and the manner in which it must be presented, is outlined in this section, 2.3 of this RFP.

2.3.3 Cover Letter (Administrative Proposal)

- 2.3.3.1 A cover letter is a mandatory requirement of the proposal package. Submission of the Proposer’s bid, with submission of a cover letter, shall be construed by OPWDD as the

Proposer's acceptance of the procedures, evaluation criteria, and other administrative instructions in this RFP. The cover letter must be signed by an individual who is authorized to contractually bind the successful Proposer. The letter must:

- 2.3.3.1.1 Include the Proposer's Legal Entity name, address, telephone and fax numbers, and the name(s), address(es), telephone number(s) and e-mail address(es) of the Proposer's contact(s) concerning the proposal;
- 2.3.3.1.2 Be signed by an individual who is authorized to contractually bind the successful Proposer;
- 2.3.3.1.3 Confirm the Proposer has met the Minimum (Pass/Fail) Qualifications required per section 1.3 of this RFP:
 - adhered to the Format and Content requirements of section 2.3 of this RFP
 - has assisted entities in similar size and scope to OPWDD with achieving Medicare Provider Enrollment (OPWDD will verify with Proposer's References per 2.3.4.3 of this RFP)
- 2.3.3.1.4 Provide the New York State Supplier Identification Number and Federal Identification Number;
- 2.3.3.1.5 Confirm that Proposer has completed or updated Vendor Responsibility Questionnaire online in the Office of the State Comptroller's VendRep System:
http://www.osc.state.ny.us/vendrep/vendor_index.htm;
- 2.3.3.1.6 Warrant the Proposer is willing and able to comply with New York laws with respect to foreign (non-New York) corporations;
- 2.3.3.1.7 Warrant the Proposer is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof;
- 2.3.3.1.8 Warrant the Proposer will not delegate or subcontract its responsibilities under an agreement without the written permission of the OPWDD and provide a list of any possible subcontractors and the total subcontract amount for each.
- 2.3.3.1.9 Acknowledge the costs set forth in the Cost Proposal are firm costs that are binding and irrevocable for a period of not less than 270 days from the date of proposal submission;
- 2.3.3.1.10 Acknowledge the Proposer understands and accepts the provisions of this RFP and all attachments thereto.
- 2.3.3.1.11 Explicitly set forth any questions or anticipated difficulty with any such contract provisions. OPWDD reserves the right to reject any or all issues raised by a Bidder and require full acceptance of the terms of this RFP.
- 2.3.3.1.12 Acknowledge the Proposer has read the proposal, understands it, and agrees to be bound by all the conditions therein,
- 2.3.3.1.13 Warrant all information provided by the Proposer in connection with submission of a proposal is true and accurate.

- 2.3.3.1.14 Provide the name, title, address, telephone number, and email address of the person authorized to receive Notices with regard to the contract entered into as a result of this procurement. See “Notices”, Section 6.1.15 of this RFP.
- 2.3.3.2 The NYS Procurement forms and documents, as provided in Attachment Two: Additional Cover Letter Requirements of this RFP, must be completed and signed as indicated, and MUST be submitted with the Proposer’s Cover Letter:
1. Reference Forms
 2. Non-Collusive Bidding Certification
 3. Bidder’s Compliance with Communications During the Restricted Period
 4. Offerer Disclosure of Prior Non-Responsibility Determinations
 5. Listing of Proposed Subcontractors
 6. Encouraging Use of New York State Businesses In Contract Performance
 7. Diversity Practices/Quantitative Scoring Factor

2.3.4 **Technical Proposal**

General Requirements

The purpose of the technical proposal is to demonstrate the qualifications, competence, and capacity of the Proposers seeking to provide services in conformity with the requirements of this RFP. **There should be no dollar unit or costs included in the Technical Proposal document.** A technical proposal received, having costs delineated, will be deemed disqualified.

The technical proposal must demonstrate the qualifications of the Proposer and/or the particular staff; include a detailed narrative of the approach that will meet the requirements of the deliverables as specified in the Scope of Work, section 5 of this RFP.

The technical proposal must be prepared simply and economically providing a straightforward, concise description of the proposer’s capabilities to satisfy the requirements of this RFP. While additional data may be presented, items presented in section 2.3.4 of this RFP must be included. They represent the criteria against which the Technical Proposal will be evaluated.

2.3.4.1 **Approach**

- 2.3.4.1.1 The proposal must set forth a work plan to perform the services required in the Scope of Work, section 5 of this RFP. Specifically include the following in the approach:
- Assistance in having all surveys completed and compliance met as needed for Medicare Enrollment
 - Completion and submission of all appropriate CMS forms through Medicare Provider Enrollment, Chain and Ownership System (PECOS)
 - Resolution of issues arising from the submission process

- Assistance to Article 16 clinicians and IPSIDD practitioners in completion of enrollment applications
- Ability to assist OPWDD in ongoing Medicare revalidations, post-enrollment support and consultation services for a total contract term of five years

2.3.4.1.2 Fully describe and quantify resources that will be devoted to each step of the proposed approach. Proposers are required to provide the following information in their approach:

- proposed segmentation with estimated timeframes
- level of staff and number of hours to be assigned to each proposed segment of the work plan
- type and extent of resources required

2.3.4.2 **Qualifications and Experience**

2.3.4.2.1 The proposal must describe the size of the company and organizational structure.

2.3.4.2.2 The proposal must provide a description of similar projects the proposer has completed in the last five years and the outcomes to those projects.

2.3.4.2.3 The proposal must provide a description of the staff who are currently employed by the proposer and their experience with Medicare Enrollment. Provide any relevant educational qualifications and current titles. Staff may be replaced at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

2.3.4.3 **The Proposer’s References**

2.3.4.3.1 Proposers must submit three (3) references from entities the Proposer has assisted with Medicare Provider Enrollment Services on a scale similar in size and complexity to the scope of services described in section 5 of this RFP.

2.3.4.3.2 References must be submitted on the Reference Form provided in Attachment Two of this RFP.

2.3.4.3.3 Proposers are encouraged to provide up to five (5) references, with an indication of the preferred order in which OPWDD should use them.

2.3.4.4 **Diversity Practices.**

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with Non-government entities and governmental units other than the State of New York.

Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs. OPWDD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of applicants to this procurement is practical, feasible, and appropriate. Accordingly, applicants are required to respond to the eight (8) questions included in Diversity Practices Questionnaire, provided in Attachment Two of this RFP. Proposers

must submit this Questionnaire with the Cover Letter attachments as required in section 2.3.3.2 of this RFP.

2.3.4.5 Quantitative Scoring Factor for Minority/Woman Owned Business Enterprises (MWBE) and Small Businesses (SB).

2.3.4.5.1 To be considered for the Quantitative Scoring Factor, Non-NYS Certified Minority Owned, Woman Owned, or Small Businesses, must complete and submit the New York State Required Certification provided in Attachment Two of this RFP, with their Cover Letter submission as required in section 2.3.3.2 of this RFP, Small Business Certification.

2.3.4.5.2 NYS MWBE Certified: OPWDD shall consult the directory of NYS State Certified MWBEs to determine responsive bidders' eligibility for quantitative factor credit.

2.3.4.5.3 Small Business Assessment: Proposer is a Small Business as defined in Executive Law Section 310(20) and as detailed in the "New York State Required Certifications" form provided in Attachment Two of this RFP. Per Executive Law Section 310(20), "Small business" as used in this section, unless otherwise indicated, shall mean a business which has a significant business presence in the state, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, taking into consideration factors which include, but are not limited to, federal small business administration standards pursuant to 13 CFR part 121 and any amendments thereto. The Small Business definition is met by the bidder confirming each of the following four criteria:

1. Whether the Company has a significant business presence in New York demonstrated through one of the following;
 - a. Pays taxes in New York State, or
 - b. Purchases New York State products or materials, or
 - c. Has any payroll in New York State
2. Is the Company independently owned and operated;
3. Is the Company dominant in its field; and,
4. Does the Company employ less than three hundred persons?

2.3.4.5.4 A Proposer shall be registered with the NYS Department of State as an entity authorized to conduct business in New York State.

2.3.5 Cost Proposal

2.3.5.1 Cost Proposals must include the Title of the staff assigned to this project, the Hourly Rates and the number of hours to be assigned to each title required to meet the segmentation and timeframes of the proposed approach as required in the technical proposal per section 2.3.4.1.2 of this RFP. Hourly Rates must be inclusive of personnel, support staff, overhead, travel, and all other direct and indirect expenses related to the provision of enrollment services as detailed in section 5 of this RFP's Scope of Work.

2.3.5.2 Reimbursement will be based on the number of hours billed for each title provided on the Attachment Three: Cost Proposal Form.

2.3.5.3 Attachment Three contains the Cost Proposal instructions and submission form, which is available in an Excel version labeled ““Medicare Enrollment Assistance RFP Cost Proposal”” at:

http://www.opwdd.ny.gov/opwdd_resources/procurement_opportunities

- Proposers are required to enter a title for personnel assisting in each aspect of the enrollment process and defined by the varying levels of experience and responsibilities outlined in the proposal approach; including analysts specializing in provider enrollment and consultants with legal backgrounds, etc.
- Proposers are required to enter Hourly Rates for each title inclusive of personnel, support staff, overhead, travel, and all other direct and indirect expenses, etc.;
- Proposers are required to enter the Number of Hours for each proposed staff member, derived by considering the scope of work and details entailed in the provision of services.
- The Total will be calculated automatically on the Excel version of the Cost Proposal. Instruction for performing manual calculations of the Total are available in Attachment Three of this RFP;
- The estimated Title Totals and Deliverable Totals may fluctuate from year to year, and Deliverable to Deliverable; however, the Contract Total must not be exceeded without the mutual consent of OPWDD and the Contractor, and with the approval of the New York State Office of the State Comptroller’s Bureau of Contracts’ review and approval.
- The Total Contract Amount as proposed, must not be exceeded and must be inclusive of personnel, support staff, overhead, travel, and all other direct and indirect expenses, etc., relative to performing the services as described in the Scope of Work in section 5 of this RFP. The proposed Total is all-inclusive maximum price containing all direct and indirect costs, including all out-of-pocket expenses.

2.3.5.4 The Cost Proposal Form must be signed by an individual authorized to bind the Proposer contractually. Indicate the title or position that the signer holds with the Proposer. The State reserves the right to reject a proposal that contains an incomplete or unsigned Attachment Three: Cost Proposal Form. Failure to use the Attachment Three: Cost Proposal Form will result in a proposal being considered non-responsive. Proposers may add lines to each Deliverable to accommodate additional staff titles if necessary.

2.3.5.5 The successful Proposer guarantees that the pricing offered to the State shall be the same as or lower than that offered to other customers under the same or similar terms and conditions. If, for any reason during the term of the contract the successful Proposer reduces the pricing due to special offers to a similarly situated entity, the State shall receive an equivalent reduction in pricing for the product or services delivered to the State.

2.3.5.6 Proposals with a rate format different from the format provided in Attachment Three: Cost Proposal Form will be considered non-responsive and will be disqualified.

2.3.5.7 All rates must be presented as a fixed dollar amount carried out to no more than two decimal places (e.g., \$15.50).

2.3.5.8 Cost Proposal Forms containing a range of hourly rates will be deemed “non-responsive” and will result in disqualification of the proposal.

2.4 Instructions for Proposal Submission

2.4.1 Submission of proposals in a manner other than as described in these instructions (e.g., fax, electronic transmission) will not be accepted and the proposer will be disqualified.

2.4.2 Proposals received after 5:00 pm on the Proposal Due Date (section 1.4 of this RFP) may not be opened nor eligible for evaluation purposes, barring unavoidable circumstances beyond the Proposers control; unless it is in the best interest of OPWDD and at the sole discretion of OPWDD.

Proposers must provide an electronic version of their proposals in Microsoft Office compatible format, or Adobe PDF; USB flash drives or CDs are acceptable.

2.4.2.1 Each copy of the Cover Letter must have original signatures.

2.4.2.2 Proposers must submit three (3) hardcopies with original signatures, and one dedicated flash drive or CD labeled “Technical Proposal” containing a standard searchable PDF file with copy/read permissions only;

2.4.2.3 Proposers must submit three (3) hardcopies with original signatures, and one dedicated flash drive or CD labeled “Cost Proposal” containing a standard searchable PDF file with copy/read permissions only.

2.4.2.3.1 The electronic versions of EACH of the Cover Letter, Technical, and Financial Proposals should be representative copies of the original documents, including signatures, and must be in one file on each CD/thumb drive.

2.4.2.3.2 In the event there is a discrepancy between the information in the paper copy of the proposal and the electronic copy of the proposal, the paper copy of the proposal controls.

2.4.2.4 Packaging of RFP Response

2.4.2.4.1 Proposals must be submitted in three separately sealed envelopes, clearly labeled as follows:

- **Envelope One:**
“Medicare Enrollment RFP Cover Letter and attachments submitted by (Proposer’s Legal Entity Name)”
- **Envelope Two:**
“Medicare Enrollment RFP Technical Proposal submitted by (Proposer’s Legal Entity Name)”
- **Envelope Three:**
“Medicare Enrollment RFP Cost Proposal submitted by (Proposer’s Legal Entity Name)”

- 2.4.2.4.2 OPWDD prefers to receive the three separately sealed proposals combined into one mailing package.
- 2.4.2.4.3 Clearly indicate on the outside of the mailing package that a proposal is enclosed. The proposal response must include the Proposer's street address. Proposals with a post office box must include a street address. Complete proposals must have a label on the outside of the package that states the following:

PROPOSAL ENCLOSED (Bold, Large Print, All capital letters)
TITLE OF THIS RFP;
PROPOSER'S NAME AND ADDRESS; and
PROPOSAL SUBMISSION DATE.

- 2.4.2.4.4 Proposer should transmit proposals in a form such that a receipt is obtained indicating the date and time of delivery and recipient.
- 2.4.2.4.5 Proposals must be submitted, by U.S. Mail, by courier/delivery service (e.g., FedEx, UPS, etc.) or by hand, in a sealed package to:

Connie Blais
New York State Office for People With Developmental Disabilities
Contract Management Unit
44 Holland Avenue, Fourth Floor
Albany, New York 12229-0001

- 2.4.2.5 OPWDD must receive complete proposals by 5:00PM eastern daylight time on the Closing Date for Receipt of Proposals as indicated in section 1.4 of this RFP.
- 2.4.3 All proposals and accompanying documentation become the property of OPWDD and ordinarily will not be returned.
- 2.4.4 The Proposer's bid and all provisions of the offer must remain in effect for two-hundred and seventy (270) days, during which period bids must remain firm.
- 2.4.5 If the Proposer selection process is not finalized by the date identified under the heading Key Events in section 1.4 of this RFP, a bid shall remain firm until such later time as either a contract is awarded by the OPWDD or the Proposer delivers to the OPWDD written notice of the withdrawal of the bid.

NOTE: Proposers should request a receipt containing the time and date received and the signature of the receiver for all hand-deliveries and ask that this information also be written on the package(s).

3. ADMINISTRATIVE INFORMATION

3.1 Issuing Office

This Request for Proposal (RFP), entitled Medicare Provider Enrollment Assistance, is issued by the New York State Office of People With Developmental Disabilities (OPWDD).

3.2 Term of Contract

3.2.1 The OPWDD will enter into one contract with a responsive and responsible vendor for the provision of Medicare Provider Enrollment assistance related services as a result of this RFP. The contract to be awarded as a function of this solicitation will be for a six-month (6) term, commencing upon the date of the State Comptroller's approval, followed by the provision of support and consultation services on an as needed basis over a total five (5) year term. OPWDD, with mutual agreement of the Contractor, and with OSC approval, may exercise the option to extend or amend the resultant contract.

3.2.2 Appendix A of this RFP provides the terms and conditions of the Standard State contract. The proposal shall be submitted with the understanding that only the acceptance in writing by a designated duly authorized OPWDD representative with the approval of the Attorney General, the Office of the State Comptroller and, when appropriate, the Division of the Budget shall constitute a contract between the Successful Bidder and the State of New York.

3.3 Price

The Hourly Rates submitted in response to this RFP must be all-inclusive, covering all services required in this RFP, including personnel, support staff, overhead, travel, and all other direct and indirect expenses related to the provision of enrollment services as detailed in Section 5 of this RFP's "Scope of Work". A CPI-U adjustment, U.S. City Average, all items, index based on the prior contract year, annual September to September, may be requested by the vendor for years 3,4, and 5 of this contract. The adjustment must not exceed 3%, annually, and must be requested by the contractor.

3.4 Method of Award

Awards will be made based on "Best Value", defined by State Finance Law, Section 163j as the "basis for awarding contracts for services to the offeror which optimizes quality, cost and efficiency, among responsive and responsible offerors." This is a competitive procurement, which will result in a single contract. The major criteria in the evaluation of the proposals will include:

- Technical (60%)
- Cost (30%)
- Interview (10%)

Evaluation committees from OPWDD will review the proposals submitted and score each proposal using evaluation instruments developed for this purpose.

3.5 Method of Payment

- 3.5.1 Contractors must submit monthly invoices referencing the Contractor's New York State Supplier Identification Number, the Contract Number, the Dates of Service and specific Titles, Hourly Rates and number of hours.
- 3.5.1.1 No payments will be authorized or made until a contract has been signed and executed and the work according to the executed contract has been performed. Payment to contractors shall be made upon review and approval of the Invoice accompanied by supporting documentation as required by the OPWDD.
- 3.5.1.2 Payments are made via direct deposit with New York State's electronic payment program for vendors, transferring payments directly into the Contractor's bank account. Contractors who have not already enrolled, can do so by visiting <http://osc.state.ny.us/vendors/epayments.htm>.
- 3.5.1.3 Invoices billing for services provided under the contract resulting from this RFP, must contain hourly rates that do not exceed the Hourly Rates submitted on the Cost Proposal Form as required for participation in this procurement.
- 3.5.1.4 Invoices must be e-mailed or mailed to:

AccountsPayable@ogs.ny.gov

or mailed to:

Office for People with Developmental Disabilities
Unit ID: **OPD01**
c/o NYS OGS BSC Accounts Payable
Building 5, 5th Floor
1220 Washington Ave.
Albany, NY 12226-1900

3.6 Exceptions to RFP

Due to the requirement for uniformity of contract language with all Proposers, or prospective contractors, exceptions which materially alter the terms and conditions set forth in this RFP will be grounds for rejection of the proposal or disqualification of the Proposer. Exceptions to this RFP may only be made to the extent they are minor and do not materially alter the Terms and Conditions stated herein, and will be subject to acceptance by the OPWDD or to Proposer withdrawal prior to contract award. The State reserves the right, in its sole discretion, to determine the materiality of the Proposer's stated exception.

3.7 Waiver of Rights

No term or provision of this RFP or the resultant Contract, shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under the resultant contract, shall not constitute or consent to, a waiver of, or excuse for any other, different or subsequent breach.

3.8 Prime Contractor Responsibilities

- 3.8.1 In the event the selected Proposer's bid includes the provision of goods or services by another firm or manufacturer, it shall be mandatory for the selected Proposer to assume full responsibility for the delivery, installation, maintenance and support services for such items described in the proposal. Should the selected Proposer seek external financing, the OPWDD reserves the right to approve the assignment of the contract for financing purposes. In any event, OPWDD will contract only with the selected Proposer, not the Proposer's financing institution or subcontractors. OPWDD shall consider the selected Proposer to be the sole contactor with regard to all provisions of the contract resulting from this RFP.
- 3.8.2 Prior written approval by OPWDD shall be required for all subcontracts entered into by any Proposer selected under this RFP. Copies of subcontracts must be supplied to OPWDD prior to their approval. Any subcontract related to performance of the contract resulting from this RFP shall be subject to the provisions of law set forth in Sections 220, 220-d, and 220-e of the Labor Law of the State of New York, Articles 15 of the Executive Law of the State of New York, and to the provisions set forth in Appendix A - Article 5 of this RFP.

4. EVALUATION AND SELECTION PROCESS

4.1 Proposal Evaluation

The purpose of the evaluation process is to analyze proposals against criteria that will ensure objectivity, fairness, equality, uniformity and best value and that the OPWDD selects a responsive and responsible Proposer of this RFP.

4.1.1 Three Evaluation Teams will perform the following analysis of the submitted proposals:

Administrative Team - determine proposal minimum requirements, format and content requirements have been met;

Technical Evaluation Team - review of Proposer qualifications, such as the number of past projects performed of a similar size and scope, tracking requirements, scheduling, approach and proposed personnel resources, reference checks and interviews; comprised of program and subject matter experts;

Cost Evaluation Team - conduct a comparison of the price proposed to the prices and costs of other competing proposals.

4.2 Administrative Review (Pass/Fail)

4.2.1 The Administrative Team will conduct an administrative review of proposals to determine on a **PASS/FAIL basis the following requirements have been met – All proposals must receive a PASS for all elements to automatically move on to the Technical Evaluation; a FAIL may result in the proposal being disqualified:**

4.2.1.1 Ensure all required documents and forms are included in each proposal in accordance with 2.3 of this RFP;

4.2.1.2 Ensure the Cover Letter contains acknowledgements and required information as presented in 2.3.3 of this RFP;

4.2.2 Completed and signed forms or documents, required per section 2.3.3.2 of this RFP.

4.2.3 The Administrative Team will recommend the proposal for further evaluation if the minimum qualifications and mandatory requirements as set forth in sections 1.3, 1.5 and 2 of this RFP, have been met.

4.3 Technical Evaluation (60 percent)

4.3.1 Approach as required in 2.3.4.1 of this RFP (30 Technical points)

4.3.2 Qualifications and Experience as required in 2.3.4.2 of this RFP (27 Technical points)

4.3.3 Proposer's References as required in 2.3.4.3 of this RFP (33 Technical points)

4.3.4 Diversity Practices/Quantitative Scoring Factor (10 Technical Points)

Up to an additional 10 Technical points (6 overall) may be awarded based on diversity practices and efforts of applicants to include New York State Certified Minority and Women-owned Business Enterprises (MWBES) in their business practices as required in 2.3.6 of this RFP.

4.3.4.1 Proposals deemed responsive, will be evaluated in detail against weighted criteria. A Bidder's Technical Score will be based on the following criteria:

1. Is your company a NYS Certified Minority-owned Business?
2. Is your company a NYS Certified Women-owned Business?
3. Is your company a Small Business as defined in Executive Law Section 310(20) and as detailed in the “New York State Required Certification, Small Business Certification” form included in Attachment Two of this RFP.

IMPORTANT NOTE: Non-NYS Certified Minority and/or Woman Owned Businesses, or Small Businesses, must complete the **New York State Required Certification, Small Business Certification** provided in Attachment Two of this RFP, and submit the Certification with the Cover Letter as required in 2.3.3.2 of the RFP, in order to be considered for the Quantitative Scoring Factor.

(NOTE: Credit is to be awarded for only one category, not multiple categories)

- 4.3.5 Total points scored on the Technical Evaluation (maximum of 100 points) will be multiplied by 60%, with a maximum of 60 points awarded to the highest technical score.

Technical points awarded = 100 potential points X 60%.

- 4.3.6 **IMPORTANT TO NOTE:**

- During the evaluation process, the OPWDD may require clarifying information from a Proposer. If specific sections of the written proposal require clarification, the OPWDD will contact the Proposer and request clarification. The Proposer must respond by the deadline provided by OPWDD.
- It should be noted that three (3) references provided by the Proposer per section 2.3.4.3 of this RFP, will be evaluated and factored into the evaluation and selection of this RFP. Proposers are encouraged to provide more than the required three (3) references, with an indication of the preferred order in which to use them. OPWDD will email and phone References numbered 1, 2 and 3. If OPWDD does not receive a response from one or more of the first 3 references, OPWDD will attempt to contact Reference number 4 and then 5. If less than 3 references are obtained, OPWDD will apply 0 points to each non-responsive reference. For example: if OPWDD contacts all 5 references, but only 2 respond, the Proposer will only receive points for the 2 references responding, and a 0 for the third reference.
- It should be noted that the State reserves the right to contact other sources not necessarily identified in the proposal to obtain information
- **There should be no dollar unit or costs included in the Technical Proposal document. Inclusion of dollar unit or costs may be cause for proposal disqualification.**

4.4 Cost Evaluation (30 percent)

- 4.4.1 The cost evaluation is worth 30 percent (30 points) of the final score. The OPWDD will examine the Cost Proposal documents for responsiveness to the cost requirements. If a

Cost Proposal is found to be non-responsive, that proposal will not receive a cost score and will be eliminated from consideration for this procurement. Each responsive proposal that meets the Cost Proposal requirements will receive a cost score.

4.4.2 Cost Proposals will be ranked based on the Contract Total.

4.4.3 The maximum score (30 points) will be allocated to the proposal with the lowest Total Contract cost according to this formula. All other proposals will receive a proportionate score to the proposal with the lowest cost, according to the following calculation:

Cost points awarded = (30 potential points) X (Low Cost / Proposer's Cost).

4.4.4 Cost proposals must be presented as directed in 2.3.5, using the Cost Proposal Form provided in Attachment Three of this RFP, in order to enable the evaluation of cost according to the OPWDD's prescribed formula. The Cost Proposal submission form is also available in Excel Format labeled "Medicare Enrollment Assistance RFP Cost Proposal" at http://www.opwdd.ny.gov/opwdd_resources/procurement_opportunities

4.5 Intermediate Score

4.5.1 An intermediate score will be calculated, by adding the Technical Evaluation points and the Cost Evaluation points together, with the highest possible score being 90 points.

4.6 Interviews (10 percent)

4.6.1 OPWDD will interview responsive and responsible proposers susceptible to award within 10 points of the highest intermediate score.

4.6.2 Interview eligible proposers will be notified of the date, place, and time of interviews to be held beginning the week listed in section 1.4 of this RFP.

4.6.3 Interviews will be held in person in Albany, NY, or by telephone or videoconference.

4.6.4 The Technical Evaluation Team will conduct interviews using a prepared set of questions based on the criteria listed in section 1.3, 2.3, 4 and 5 of this RFP. Each question will be worth a pre-defined number of points.

4.6.5 If as a result of the Interview, the OPWDD determines that material differences exist in the proposed solution between what was submitted in the Technical Proposal and the subsequent Interview, OPWDD at its sole discretion, may permit the Technical Evaluators to adjust the Technical Proposal scores accordingly. This may result in additional proposers becoming eligible to be interviewed.

4.6.6 The Proposers will receive points for each response confirming the ability to provide the services specified in section 5 of this RFP, with the highest possible score of 10. Individuals assigned to positions included in the proposal must be present and participate in the interview. No new material will be permitted to be introduced during the interview.

4.7 Final Composite Score

4.7.1.1 The final composite score will consist of the Intermediate Score plus the Interview Score.

4.7.1.2 Tie scores – in the event of a tie, award will be made to the Proposer submitting the lowest cost. If a tie continues to exist, years of experience with Medicare Provider Enrollment Assistance will be considered next, followed by preference given to New York State firms, and then firms with experience in New York State, and finally by a coin toss.

4.8 Notification of Award

- 4.8.1 Upon completion of the evaluation and vendor selection, OPWDD will send notification of award to successful and non-successful proposers.
- 4.8.2 Notification to the selected proposer is of pending award, the resultant contract shall not be binding until fully executed and approved by the New York State Office of the Attorney General and the Office of the State Comptroller. The awarded Proposer will enter into a written Agreement substantially in accord with the terms of Exhibit II, OPWDD Boilerplate Contract, to provide the required services as specified in this RFP.
- 4.8.3 Non-successful proposers will be provided with an opportunity for a debriefing in accordance with section 6.1.51.5 of this RFP.
- 4.8.4 News releases relating to this RFP or resulting contract shall not be made by any Proposer or its agent without written prior approval of OPWDD.

5. SCOPE OF WORK

5.1 Purpose

- 5.1.1 OPWDD intends to establish its status as an approved Medicare provider by March 1, 2019. This date is when OPWDD expects its new Electronic Health System (EHR) will be capable of billing for clinical services.
- 5.1.2 Through this RFP, OPWDD intends to secure the services of a qualified Vendor to lead OPWDD through the Medicare Provider enrollment process and to assist with post enrollment issues that may arise related to OPWDD maintaining its status as an authorized Medicare provider.
- 5.1.3 Proposers must ensure that the services offered will meet the requirements, specifications and performance standards as detailed in this section of the RFP.

5.2 Background

- 5.2.1 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 who employ over 70,000 people. More than 140,000 individuals with developmental disabilities are served by the combined public/private service system.
- 5.2.2 Within OPWDD's organizational structure, the oversight of voluntary providers and state operations is divided into two distinct but coordinated offices under the Division of Service Delivery -- Developmental Disabilities Regional Offices (DDROs) and Developmental Disabilities State Operations Offices (DDSOOs).
- 5.2.3 **Developmental Disabilities Regional Offices (DDROs)** - Five regional offices are responsible for overseeing voluntary agency coordination and monitoring. Because voluntary agencies account for approximately 80% of OPWDD's service provision, it is important for regional offices to focus on this segment of the system (see Exhibit I – List of Voluntary Agency Providers). The catchment areas of the regional offices were established to improve oversight and quality improvement, as well as to allow for cross system collaboration among State agencies.
- 5.2.4 **Developmental Disabilities State Operations Offices (DDSOOs)** - Six state operations offices are responsible for the operation and oversight of residential, day service, clinic, and other programs for which New York State is the direct provider of service or provider of record. Each of the geographic catchment areas formerly served by one of the 13 DDSOs is now provided with oversight and direction by one of the six state operations offices.

5.3 Resources

- 5.3.1 OPWDD operates seven **Article 16 clinics** that provide services to individuals with developmental disabilities as well as to those caregivers whose participation in the service is deemed necessary to maintain the effectiveness of the treatment, enable the individual to remain in his/her current residential setting and enhance the individual's quality of life. Services are provided at a main clinic or satellite site by appropriately licensed/certified practitioners. A listing of Article 16 Clinic Locations is provided in Exhibit II of this RFP. Services at a clinic may include the following:

- Medical services
- Psychological and neurological evaluations
- Test procedures (e.g. EEG, EMG, SEP, BAER)
- Dental services
- Nursing
- Dietetics and nutrition
- Audiology
- Podiatry
- Physical therapy
- Occupational therapy
- Psychology
- Speech and language pathology
- Social work

5.3.2 Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD) are services provided at locations other than the clinic. Currently OPWDD has approximately 50 clinicians providing IPSIDD. Services provided by an Independent Practitioner may include:

- Physical therapy
- Occupational therapy
- Psychology
- Speech and language pathology
- Social work

5.3.3 Roughly 775 individuals are served per month through the IPSIDD and Article 16 clinics and it is expected that IPSIDD services will continue to grow. OPWDD has approximately 325 clinicians working across the state. Approximately 40% of clinicians work in Physical Therapy and Occupational Therapy with another 40% working in Audiology/Speech, Psychology, Social Work, and Dietetics and Nutrition. The remaining 20% work in the other disciplines.

5.3.4 Currently OPWDD uses its Tracking And Billing System (TABS) to record activities and process billing. OPWDD is working to implement an Electronic Health Record (EHR) where services will be documented and will also be used to bill for Article 16 clinical services.

5.3.5 Article 16 clinics operate under 14 CRR-NY XIV 679. In addition, staff must meet any licensing and certification requirements as described by relevant regulations for that profession.

5.4 Requirements

- 5.4.1 The following activities, including, but not limited to, MUST be completed by the Vendor or adequately supported by the Vendor and completed by OPWDD timely to ensure OPWDD obtains Medicare Provider status by March 1, 2019:
 - 5.4.1.1 Ensure OPWDD meets eligibility requirements that may include the certification of compliance and certification surveys
 - 5.4.1.2 Provide guidance for completion of all necessary forms required for enrollment, including the CMS-855 Enrollment Application;
 - 5.4.1.3 Complete the appropriate CMS-855 Enrollment Application(s) and submit them via PECOS;
 - 5.4.1.4 Assist in completion of Enrollment applications for physician/non-physician practitioners providing services through the Article 16 Clinics or IPSIDD;
 - 5.4.1.5 Assist in completing and submitting any supporting documents, including but not limited to, a copy(s) of all documentation verifying proficiency and/or State licenses or certification for clinical personnel;
 - 5.4.1.6 Assist OPWDD so that OPWDD's provider's enrollment works within the framework of a public entity working under New York State is in sync with Medicare;
 - 5.4.1.7 Assist in resolution of issues that arise after submission if the application is not initially accepted until OPWDD is a Medicare Provider.
- 5.4.2 The Contractor must provide instruction for OPWDD and assistance as needed, for revalidations, post-enrollment support and consultation services for a total contract term of five years.

5.5 Roles and Responsibilities of the Contractor and Agency

- 5.5.1 Contractor
 - 5.5.1.1 The contractor will be responsible for assisting with completing forms, advising OPWDD on which forms and information are needed to complete forms correctly.
 - 5.5.1.2 The contractor will assist staff in getting validated, follow up with staff or their supervisors in ensuring information is completed timely.
 - 5.5.1.3 Finally, the contractor will help to ensure that OPWDD meets any additional qualifications necessary to become Medicare enrolled.
- 5.5.2 OPWDD
 - 5.5.2.1 OPWDD will assist the contractor in providing necessary information to complete its work.
 - 5.5.2.2 OPWDD will provide a staff person who will operate as the project coordinator to ensure that OPWDD's staff persons' responsibilities are completed.

5.6 Performance Standards

- 5.6.1 The contractor will be expected to be available for staff questions, provide clear information on what is needed to complete enrollment, ensure that paperwork is completed accurately and submitted timely.

5.7 Contract Deliverables

The contractor must deliver the following:

- 5.7.1 Assurance that all necessary surveys are completed
- 5.7.2 Submission of the Medicare Enrollment Application on OPWDD's behalf.
- 5.7.3 Validation of required clinical staff and submission of the Medicare Enrollment Applications and Assignment of benefit forms for OPWDD staff.
- 5.7.4 Activation of OPWDD as a Medicare Provider.
- 5.7.5 Availability after OPWDD is a Medicare Provider to assist with the transference of knowledge in ensuring revalidations and post-enrollment issues are addressed, and support and consultation services are provided as needed for a total contract term of five years.

5.8 Reporting Requirements

Contractor will be required to provide regular reports and updates on the status of the application and on validation of the clinicians, meeting proposal segmentation and estimated timeframes.

- 5.8.1 For the agency application, reports must identify all outstanding documents needed, as well as any unfinished items that need to be completed in the actual application. Once the application is submitted, the contractor must provide an update on any requests needed from CMS if the application is not initially accepted.
- 5.8.2 For the validation of clinicians, the contractor must provide information on the clinicians who have not yet completed the validation process, and what is still outstanding with those clinicians (i.e. what is still needed from the clinician to complete the validation process).

6. OPWDD STANDARD CONTRACT PROVISIONS

6.1 Terms and Conditions

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

6.1.1 CONTRACT TERM

6.1.1.1 The term of the Contract shall commence upon the approval of the New York State Office of the State Comptroller (OSC) except that, by mutual agreement, the parties may, retroactively or prospectively as the case may be, delay or advance the starting date by a period of up to 30 calendar days, subject to OSC approval, and shall continue for five years, subject to the termination provisions contained in the subsequent Sections 6.1.22 and 6.1.23, titled Termination and Default, respectively, and the document titled Standard Clauses for New York State Contracts (Appendix A). A CPI-U adjustment, U.S. City Average, all items, index based on the prior contract year, annual September to September, may be requested by the vendor for years 3,4, and 5 of this contract. The adjustment must not exceed 3%, annually, and must be requested by the contractor.

6.1.1.2 The OPWDD has the option, at its sole discretion and subject to the approval of the OSC, to extend the date of this Agreement for up to one five-year period, at which time a CPI-U adjustment, U.S. City Average, all items, index based on prior contract year, annual September to September, can be made available upon the request of the contractor. The adjustment must not exceed 3%, annually, and must be requested by the contractor.

6.1.2 MODIFICATION OF CONTRACT

The Contract may be amended only by mutual written consent of the parties, and approved by the State's Attorney General and the OSC, if required.

6.1.3 EXECUTORY PROVISION/CONTRACT FORMATION

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

6.1.4 INTEGRATION, MERGER, AND ORDER OF PRECEDENCE

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

6.1.4.1 Appendix A -Standard Clauses for New York State Contracts

6.1.4.2 Any Amendments to the Contract

6.1.4.3 The Contract and all appendices, attachments, and exhibits setting forth the final agreement between the Parties, except for Appendix A, the Request for Proposals, and the Contractor's Proposal

6.1.4.4 The Request for Proposals (RFP)

6.1.4.5 Contractor's Proposal

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

6.1.5 CONTRACTOR RESPONSIBILITY AS DEFINED BY STATE FINANCE LAW

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

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

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

6.1.6 INDEPENDENT CONTRACTOR

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

6.1.7 CONTRACTOR PERSONNEL

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

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

6.1.8 BACKGROUND CHECKS

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

6.1.9 EMPLOYMENT REPORTING REQUIREMENTS

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

6.1.10 COOPERATION WITH THIRD PARTIES

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

6.1.11 COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS

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

6.1.12 WORK OUTSIDE THE SCOPE OF THE CONTRACT

The Contractor must not perform work outside the scope of the Contract, unless such work is authorized by a properly executed, Comptroller-approved written amendment to the Contract. Work not so authorized will not be compensated.

6.1.13 NOTICE OF SUBSTANTIAL CHANGE IN CONTRACTOR STATUS

- 6.1.13.1 In addition to the requirements of NYS Finance Law §138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the State of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries, divisions, or partners, in writing immediately upon occurrence. "Substantial change" means: (i) sales, acquisitions, mergers, or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid; (ii) entry of an order for relief under Title 11 of the United States Code; (iii) the making of a general assignment for the benefit of creditors; (iv) the appointment of a receiver of Contractor's business or property or that of its Affiliates, subsidiaries, divisions, or partners; or action by Contractor, its Affiliates, subsidiaries, divisions, or partners under any State insolvency or similar law for

the purposes of its bankruptcy, reorganization, or liquidation; or (v) court ordered liquidation of Contractor, its Affiliates, subsidiaries, divisions, or partners.

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

6.1.14 NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR’S PERFORMANCE

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

6.1.15 NOTICE

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

6.1.15.1 For the NYS Office for People with Developmental Disabilities:

Lisa F. Davis
Director of Fiscal and Contract Management
NYS Office for People with Developmental Disabilities
44 Holland Avenue, 4th Floor
Albany, NY 12229
(518) 474-5513

6.1.15.2 For Contractor:

[Name]
[Title]
[Street Address]
[City, State, Zip code]
Telephone Number: ()

6.1.15.3 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.

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

6.1.16 PAYMENT

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

6.1.17 ELECTRONIC PAYMENT REQUIREMENT

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

6.1.18 WARRANTIES AND GUARANTEES

6.1.18.1 Contract Deliverables. Contractor warrants and represents that the Services required by the RFP and the Contract shall be performed or provided in accordance with all terms and conditions, covenants, statements, and representations contained in this Contract. Contractor's failure to meet pre-defined service levels may result in a credit or chargeback in an amount pre-determined by the parties.

6.1.18.2 Compliance with laws. Contractor warrants and represents that, throughout the term of the Contract, in the performance of its obligations under the Contract, it will: (i) comply with all applicable laws, ordinances, rules and regulations of any governmental entity; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.

6.1.18.3 Workmanship Warranty. Contractor warrants and represents that all services and deliverables shall meet the completion criteria set forth in the Contract and that services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards.

- 6.1.18.4 Personnel Eligible for Employment. Contractor warrants and represents that all personnel, including all subcontractor personnel, performing Services under this Contract are qualified to provide services, eligible for employment in the United States, and shall remain so throughout the term of the Contract. Contractor shall provide such proof of compliance as is required by the OPWDD.
- 6.1.18.5 Survival of Warranties. All warranties contained in the Contract shall survive termination of the Contract.
- 6.1.19 INDEMNIFICATION, LIMITATION OF LIABILITY
- 6.1.19.1 Indemnification
- 6.1.19.1.1 Contractor shall be fully liable for the actions of its agents, officers, employees, partners, or subcontractors and shall indemnify fully and save harmless the State from suits, actions, damages, and costs of every name and description relating to personal injury and damage to real or personal property caused by Contractor, its agents, officers, employees, partners, or subcontractors, without limitation, provided however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or negligent failure to act of the State.
- 6.1.19.1.2 Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its agents, officers, employees, partners, and subcontractors of State and the OPWDD security procedures or policies resulting from any criminal acts committed by Contractor's officers, agents, employees, and subcontractors while providing Services under the Contract.
- 6.1.19.1.3 This section is not subject to the limitation of liability provisions of the Contract.
- 6.1.19.2 Indemnification for Intellectual Property Infringement
- 6.1.19.2.1 Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees and legal fees), claims, judgments, liabilities, and costs that may be assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the services, products, documentation, or deliverables furnished or utilized by Contractor under this Contract, provided that the State shall give Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit; (ii) the opportunity to take over, settle, or defend such action, claim or suit at Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at contractor's sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require. This paragraph shall not apply to that portion of any infringement claim that results from a material modification by the State, without Contractor's approval, of any products, documentation, or deliverables furnished or utilized by Contractor pursuant to this Contract. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest.
- 6.1.19.2.2 This section is not subject to the limitation of liability provisions of the Contract.

6.1.19.3 Limitation of Liability

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

6.1.19.4 No Indemnification by the State

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

6.1.20 FEDERAL FUNDING CLAUSES

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

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

6.1.20.2 Copeland "Anti-Kickback Act" (18 U.S.C. 874 and 40 U.S.C. 276c) which provides that all contracts/sub-grants greater than \$2,000 for construction or repair must have a provision requiring compliance with 18 U.S.C. 874, as supplemented by 29 CFR Part 3, which prohibits Contractors or sub-recipients from inducing, by any means, any person employed in construction, completion, or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the federal awarding agency.

6.1.20.3 Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7), which requires all construction contracts awarded by recipients of more than \$2,000 to comply with the Act as supplemented by USDOL Regulations, 29 CFR Part 5 requiring all Contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the "prevailing wage") in each

solicitation, and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the federal awarding agency.

- 6.1.20.4 Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers, requires compliance with 40 U.S.C. 327-333, as supplemented by USDOL Regulations 29 CFR 5, when said contracts exceed \$100,000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
- 6.1.20.5 Rights to Inventions Made under a Contract or Agreement - Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by the USDHHS or USDA.
- 6.1.20.6 Ownership Rights in Software or Modifications Thereof – The State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed, or installed with federal financial participation, and the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, such software, modifications, and documentation; provided, however, that this sentence shall not apply to ‘proprietary operating/vendor software packages’ within the meaning of 45 CFR 95.617(c) and 7 CFR 277.18(l)(1)(iii).
- 6.1.20.7 Contracts and sub-grants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.). Violations shall be reported to the USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.
- 6.1.20.8 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Requires that every Contractor under a contract for more than \$100,000, and every tier of Contractors or subcontractors thereunder, shall file certification, as required, that said Contractor will not and has not used any federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or award covered by such Amendment. A Contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93)
- 6.1.20.9 Debarment and Suspension. (Federal E.O.s 12549 and 12689) - Certain contracts shall not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement

Programs" in accordance with E.O.s 12549 and 12689 (see 45 CFR 76). Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals, prior to award.

6.1.20.10 Contractor shall make positive efforts to assure that small businesses and minority- and women-owned business enterprises (M/WBEs) are utilized when possible as sources of supplies, equipment, construction and services. If any subcontracts are to be let, Contractor shall: (1) include qualified small businesses and M/WBEs on solicitation lists; (2) ensure that they are solicited whenever they are potential sources; (3) when economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small business and M/WBE participation; (4) where the requirement permits, establish delivery schedules which will encourage participation by small businesses and M/WBEs; and (5) use the services and assistance of the New York State Department of Economic Development [(518) 292-5100 or website www.empire.state.ny.us], the US Small Business Administration, the Office of Minority Business Enterprise of the US Department of Commerce, and the US Community Services Administration, as appropriate.

6.1.21 SUSPENSION OF WORK

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

6.1.22 TERMINATION

6.1.22.1 For Convenience

By written notice, this Contract may be terminated, at any time, by the State for convenience upon 30 days' written notice, without penalty or other early termination charges due. If the Contract is terminated pursuant to this paragraph, the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.

6.1.22.2 For Cause

For a material breach that remains uncured, as solely determined by the OPWDD, for more than 15 days from the date of written notice to the Contractor, the Contract may be terminated by the State, at the Contractor's expense, where Contractor becomes unable or incapable of performing or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible or for any of the other reasons stated in this section, with the exception of termination for convenience. Such termination shall be upon written notice to the Contractor. In such event, the State may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

6.1.22.3 For Suspension or Delisting of Contractor's Securities

If the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable, if the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Contract or exercise such other remedies as shall be available under the Contract, at law and/or equity.

6.1.22.4 For Vendor Responsibility Related Findings

The OPWDD may, at its sole discretion, terminate the Contract if it finds, at any time during the term of the Contract, that the Contractor is non-responsible or that any information provided in the Vendor Responsibility Questionnaire submitted with Contractor's Bid was materially false or incomplete, or if the Contractor fails to comply timely or truthfully with the OPWDD's request to update its Vendor Responsibility Questionnaire.

6.1.22.5 Mitigation of Costs

The Contractor shall not undertake any additional or new contractual obligations on or after the receipt of notice of termination without the prior written approval of the State. On or after the receipt of a notice of termination and during the termination notice period, as applicable, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State. Upon termination of the Contract, there shall be a reconciliation based upon the services provided by the Contractor and payments made by the State. The Contractor shall refund to the State any overpayments made by the State pursuant to the Contract.

6.1.23 DEFAULT

6.1.23.1 If either party breaches a material provision of this Contract, which breach remains uncured for a period of 15 days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the 15-day period, such longer period of time approved by the non-breaching party, provided that the breaching party proceeds with reasonable diligence to completely cure the breach), or if Contractor shall cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, the other party may, at its option, terminate this Contract upon 10 days' written notice and exercise such other remedies as shall be available under this Contract, at law and/or equity.

6.1.23.2 No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power, or remedy or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

6.1.23.3 If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under this Contract, the State shall

thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor; provided, however, that the State shall continue to be obliged to pay for any and all Services provided prior to any such date, and if any lump-sum payment has been made, the State shall be entitled to a pro-rata refund of such payment.

6.1.24 TRANSITION

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

6.1.24.1 Transition Period

The State shall determine the transition period in consultation with the Contractor and shall notify the Contractor in writing. The State reserves the right to amend the transition period subsequently, upon 30 days’ advance written notice to the Contractor.

6.1.24.2 No Interruption in Service

At all times during the transition period, and unless directed otherwise in writing by the State, the Contractor shall continue its contractual obligations set forth in the Contract until such time as the services provided under the contract have been transitioned to a successor contractor, the State, or a third party designated by the State. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph, notwithstanding the issuance of a termination for cause or convenience by the State.

6.1.24.3 Transition Plan

Within 15 days of receipt of a notice of termination, or three months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall submit to the State, for the State’s review and approval, a detailed written plan for transition (Transition Plan) that outlines, at a minimum, the tasks, milestones, and deliverables associated with a smooth transition of services and corresponding timeline.

6.1.24.4 Contractor Transition Services

Transition Services shall include the performance of Contractor’s responsibilities, as outlined in the Contract, and the transferring of those responsibilities to a successor contractor, the State, or a third party designated by the State in accordance with the Transition Plan agreed upon by the Parties. Contractor shall maintain the same level of service during the transition period as is set forth in the Contract until specific tasks or services are completely transitioned to or assumed by a successor contractor, the State, or a third party designated by the State.

6.1.24.5 Compensation for Transition Services

Contractor shall be reimbursed for Transition Services performed at the rates set forth in the Contract that are in effect at the beginning of the transition period.

6.1.24.6 Cooperation

Contractor shall cooperate with the State and agents working on behalf of the state (e.g., consultants) to facilitate a smooth and orderly transition. Periodic project review meetings shall be held with representatives of the Contractor, a successor contractor, the State, or a third party designated by the State.

6.1.25 ADDITIONAL TECHNOLOGY PROVISIONS

6.1.25.1 Permitted License Transfers

Should the State's business operations be altered, expanded, or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies, as applicable ("permitted license transfers"). The State may make such permitted license transfers, without the need to secure the approval of Contractor, but must give thirty days' prior written notice to Contractor of such transfer. There shall be no additional license or other transfer fees due Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to licensed capacity. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the new site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

6.1.25.2 Restricted Use by Outsourcers, Service Bureaus, or Other Third Parties

Outsourcers, facilities management, or service bureaus retained by the State shall have the right to use the licensed product to maintain the State's business operations, including data processing, provided that: (i) Licensee gives notice to Contractor of such intended use and means of access; (ii) if required by Contractor, such third party agrees to the Contractor's standard nondisclosure or restricted use agreement; and (iii) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that solely necessary to provide contracted services to the State. In no event shall the State assume any liability for a third party's compliance with the terms of a Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State.

6.1.25.3 No Hardstop/Passive License Monitoring

Contractor hereby warrants and represents that the licensed product and all upgrades do not and will not contain any computer code that would disable or impair, in any way, its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the licensed product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in

the event of a breach or alleged breach of this provision, the State User shall not have an adequate remedy at law, including monetary damages, and shall consequently therefore be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which the State shall be entitled.

6.1.25.4 Source Code Escrow for Licensed Product

If source code or source code escrow is offered by either Contractor or the manufacturer or developer of the licensed product to any other commercial customers, Contractor shall: (i) provide the State with the source code for the licensed product; (ii) place the source code in a third-party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to the State; or (iii) certify to the State that the licensed product manufacturer/developer has named the State, acting by and through the OPWDD, as a named beneficiary of an established escrow arrangement with its designated escrow agent, who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the licensed product in the same manner as provided above, and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause or certify, immediately upon a change of the escrow agreement.

6.1.25.5 Ownership of and Title to Contract Deliverables

Contractor acknowledges that it is commissioned by the State to perform the services detailed in the RFP, which may include the development of intellectual property by Contractor, its Subcontractors, partners, employees, or agents for the State (“Custom Products”). Unless otherwise specified in writing in the RFP, upon the creation of such Custom Products, Contractor hereby conveys, assigns, and transfers to the State the sole and exclusive rights, title, and interest in the Custom Products, whether preliminary, final, or otherwise, including all trademarks and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction, and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques, and experience developed in performing services under the Contract in the course of Contractor’s business. The State may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, the State shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt, and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in the RFP and corresponding contract.

6.1.25.6 Ownership of and Title to Existing Software

Title and ownership to existing software delivered by Contractor under the Contract, which software is normally distributed commercially by the Contractor or a third-party proprietary

owner, whether or not embedded in, delivered, or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or the third party. Effective upon acceptance, such existing software shall be licensed to the State and must, at a minimum, grant the State a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the State as part of Contractor's proposal that adaptation will violate existing agreements or statutes and demonstrates such to the State's satisfaction) and distribute existing software to the State up to the license capacity stated in the Contract with all license rights necessary to fully effect the general business purposes stated in the RFP. With regard to third-party software, the Contractor shall be responsible for obtaining these rights at its sole cost and expense.

6.1.25.7 Data Ownership

All State data is owned by the State exclusively and will remain the property of the State. Contractor is permitted to use data solely for the purposes set forth in the RFP and the Contract, and for no other purpose. At no time shall the Contractor access, use, or disclose any confidential information (including personal, financial, health, or criminal history record information or other sensitive criminal justice information) for any other purpose. The Contractor is strictly prohibited from releasing or using data or information for any purposes other than those specifically authorized by the State. Contractor agrees that State data shall not be distributed, used, repurposed, transmitted, exchanged, or shared across other applications, environments, or business units of the contractor, or otherwise passed to other contractors, agents, subcontractors, or any other interested parties, except as expressly and specifically agreed to in writing by the State.

6.1.25.8 Data Protection and Transmission

6.1.25.8.1 Contractor shall use appropriate means to preserve and protect State data. This includes, but is not limited to, use of stable storage media, regular data backups and archiving, password protection of volumes, and data encryption. Contractor must, in accordance with applicable law, regulations, or established requirements and the instructions of the State, maintain such data for the time period required by applicable law, exercise due care for the protection of data, and maintain appropriate and necessary data integrity safeguards against the deletion or alteration of such data. In the event that any data is lost or destroyed because of any act or omission of the Contractor, or any non-compliance with the obligations of this Contract, then Contractor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, Contractor shall reimburse the State for any costs incurred by the State in correcting, recreating, restoring, or reprocessing such data or in providing assistance therewith.

6.1.25.8.2 Contractor agrees that any and all State data will be stored, processed, and maintained solely on designated target devices and that no State data will, at any time, be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the contract/agreement and/or any addendum thereof, or the Contractor's designated backup and recovery processes, and is encrypted in accordance with all current federal and State statutes, regulations, and requirements, to include requirements for data defined as confidential, financial information, personal private and sensitive information (PPSI), personally identifying information (PII) or protected health

information (PHI) by statute or regulations. The Contractor shall encrypt data at rest, on file storage, database storage, or on back-up media, and in transit in accordance with State and federal law, rules, regulations, and requirements. The solution shall provide the ability to encrypt data in motion and at rest in compliance with State or federal law. Contractor shall use secure means (HTTPS) for all electronic transmission or exchange of system, user, and application data with the State.

6.1.25.9 Data Return and/or Destruction

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

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

6.1.26 FORCE MAJEURE

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

6.1.27 DISPUTE RESOLUTION

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

parties agree to defer seeking either legal or equitable relief in a court of competent jurisdiction until the OPWDD's final decision has been issued.

- 6.1.27.1.1 The Deputy Commissioner shall have the power to appoint or change his or her designee or otherwise alter the rules of the procedure upon written notice to the Contractor.
- 6.1.27.1.2 Pending the conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Contract by the State shall govern operation thereunder, and the Contractor and the OPWDD shall continue to perform under the Contract, unless the OPWDD has suspended or terminated the Contract in accordance with the applicable terms of the Contract.
- 6.1.27.1.3 The Contractor shall be required to bring all legal proceedings relating to this Contract against the OPWDD or the State of New York in the Supreme Court of the State of New York in the County of Albany, or the New York State Court of Claims.
- 6.1.27.1.4 Nothing in this paragraph shall diminish the State's right to suspend or terminate the Contract in accordance with applicable clauses contained within this contract.
- 6.1.27.2 In the event of a conflict between the Contractor and other consultants or contractors of the OPWDD, the Contractor shall submit to the OPWDD a timely written explanation of the details of the conflict, including such pertinent facts as may provide the OPWDD with a firm basis for understanding the nature of the conflict. The Contractor agrees to proceed in a good-faith effort to avoid disputes and to resolve disputes with other contractors or subcontractors of the OPWDD as amicably as possible.
- 6.1.28 GENERAL PROVISION AS TO REMEDIES
 - 6.1.28.1 The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy, or constitute a waiver of or acquiescence to, an event otherwise constituting a breach or default under the Contract.
 - 6.1.28.2 In addition to any other remedies available to the State under the Contract and State and federal law for Contractor's default, the State may choose to exercise some or all of the following:
 - 6.1.28.2.1 Suspend, in whole or in part, payments due to Contractor under this Contract
 - 6.1.28.2.2 Pursue equitable remedies to compel Contractor to perform
 - 6.1.28.2.3 Apply Service Credits against amounts due and owing by the State under the Contract
 - 6.1.28.2.4 Require Contractor to cure deficient performance or perform the requirements of the RFP at no charge to the State
- 6.1.29 INSURANCE

Contractor must comply with the Insurance provisions set forth in section 6.2 of this RFP. OPWDD will adjust the limits and lines of insurance coverage shown in the matrices as commensurate with the exposure applicable to each contract.

6.1.30 TAXES

6.1.30.1 The OPWDD represents that purchases on behalf of the State of New York are not subject to any state or local sales or use taxes, or to federal excise taxes.

6.1.30.2 Contractor remains liable and solely responsible, without exemption for social security, unemployment insurance, workers' compensation, and other taxes and obligations to which Contractor may be subject by law.

6.1.30.3 Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State Agency shall not be valid, effective, or binding against the Agency unless the Contractor certifies to the Department of Taxation and Finance that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Department of Taxation and Finance that each affiliate and subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, "affiliate" means a person or organization, which through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The Contractor also must certify to the procuring State entity that it filed the certification with the Department of Taxation and Finance and that the certification is correct and complete. Accordingly, in the event that the value of this Contract exceeds \$100,000, and Contractor's sales delivered by any means to locations within New York State of tangible personal property or taxable services have a cumulative value in excess of \$300,000, measured over a specific period, the Contractor must file a properly completed Form ST-220-CA with the OPWDD and a properly completed Form ST-220-TD with the Department of Taxation and Finance before the Contract may take effect. In addition, after the Contract has taken effect, the Contractor must file a properly completed Form ST-220-CA with the OPWDD if the Contract's term is renewed. Further, a new Form ST-220-TD must be filed with the Department of Taxation and Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete. Further information about this requirement is available at <http://www.osc.state.ny.us/agencies/gbull/g222.htm>. Contractor agrees to cooperate fully with the State in administering these requirements.

6.1.31 OUTSTANDING TAX LIABILITIES

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

6.1.32 SECURITY, NON-DISCLOSURE/CONFIDENTIALITY, PRESS RELEASES

The Contract may be terminated by the State for cause for a material breach of this section by Contractor.

6.1.32.1 Security Procedures

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

6.1.32.2 Nondisclosure & Confidentiality

6.1.32.2.1 Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors, if any, have access. This requirement shall survive termination of the Contract. For purposes of the Contract, all State information of which Contractor, its officers, agents, employees, and subcontractors, if any, become aware during the course of performing services for the State, shall be deemed to be confidential information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

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

6.1.32.2.2 Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such confidential information.

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

6.1.32.3 Press Releases

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

6.1.32.4 Federal or State Requirements

6.1.32.4.1 Contractor will comply with federal and State law and regulations regarding personal, private, and sensitive data, including, but not limited to HIPAA and HI-TECH (see section 6.1.48, below), 45 CFR Part 160 and Subparts A and E of Part 164, 10 NYCRR Part 63, Mental Hygiene Law §§33.13 and 33.16.

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

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

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

6.1.32.5 Off Shore Restrictions

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

6.1.32.6 Criminal Justice Information Services (CJIS)

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

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

6.1.33 PUBLIC INFORMATION AND FREEDOM OF INFORMATION LAW (FOIL)

Disclosure of information related to this procurement and the resulting Contract shall be permitted, consistent with the laws of the State of New York and specifically FOIL. The

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

6.1.34 LEGAL REQUESTS AND RELEASE OF STATE DATA TO THIRD PARTIES PROHIBITED

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

6.1.35 MWBE AND EEO REQUIREMENTS

Portions of the following provisions may not apply where the contract goals for MWBE participation are set at 0%.

6.1.35.1 New York State Law

- 6.1.35.1.1 The OPWDD is obligated under New York State Executive Law Article 15-A and 5 NYCRR 140-145 to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises (MWBEs) and the employment of minority group members and women in the performance of its contracts.

6.1.35.1.2 In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing, and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the OPWDD establish goals for maximum feasible participation of New York State Certified minority- and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

6.1.35.2 Business Participation Opportunities for MWBEs

6.1.35.2.1 For purposes of this solicitation, the OPWDD hereby establishes an overall contract goal of 30% for MWBE participation: 17% for New York State certified minority-owned business enterprise ("MBE") participation and 13% for New York State certified women-owned business enterprise ("WBE") participation. Contractor must document its good-faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and agrees that the OPWDD may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the OPWDD will determine a Contractor's "good-faith efforts," Contractor should refer to 5 NYCRR §142.8.

6.1.35.2.2 In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract, and the OPWDD may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between all sums identified for payment to MWBEs, had the Contractor achieved the contractual MWBE goals, and all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

6.1.35.2.3 By submitting a bid/proposal, Bidder agrees to submit the following documents and information as evidence of compliance with the foregoing:

- An MWBE Utilization Plan must be submitted to the OPWDD with the Proposal using the New York State Contract System Statewide Utilization Management Platform (SUMP).
- Contractor will also be required to submit a Contractor's Quarterly MWBE Contractor Compliance & Payment Report to the OPWDD by the 10th day following each end of quarter over the term of the Contract, documenting the progress made toward achievement of the MWBE goals of the Contract. Any modifications or changes to the MWBE Utilization Plan, after the Contract award and during the term of the Contract,

must be reported on a revised MWBE Utilization Plan submitted to the OPWDD for approval.

- If the OPWDD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the OPWDD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.
- Failure to file the waiver in a timely manner may be grounds for disqualification of the bid or proposal. A waiver request may be submitted to the OPWDD at any time during the term of the Contract but must be made no later than prior to the submission of a request for final payment on the Contract. The OPWDD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- The OPWDD may disqualify a Bidder as being non-responsive under the following circumstances:
 - Tentative awardee fails to submit an MWBE Utilization Plan
 - Bidder/Tentative awardee fails to submit a written remedy to a notice of deficiency
 - Bidder/Tentative awardee fails to submit a request for waiver
 - OPWDD determines that the Bidder/Tentative awardee has failed to document good-faith efforts

6.1.35.3 Equal Employment Opportunity Requirements

- 6.1.35.3.1 Bidders (and any subcontractors) awarded a subcontract over \$25,000 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, must undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to work, goods, or services unrelated to the Contract or to employment outside of New York State.
- 6.1.35.3.2 Bidders must submit a Minority- and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement, to the OPWDD with their bid/proposal.
- 6.1.35.3.3 For Contracts with a value in excess of \$250,000, Bidders must also submit an Equal Employment Opportunity Staffing Plan (Form EEO 100) identifying the anticipated workforce to be utilized on the Contract and, if awarded, a Contract, will, upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report to the OPWDD identifying the workforce actually utilized on the Contract, if known.

6.1.35.3.4 Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of age, race, creed (religion), color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, domestic violence victim status, or prior criminal conviction and prior arrest.

6.1.35.3.5 Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility, and/or a breach of the Contract, leading to the withholding of funds, suspension, or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

6.1.36 ETHICS COMPLIANCE

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

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

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

Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor, if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract, at any time, if any work performed hereunder is in conflict with any of the Ethics Requirements.

6.1.37 MOST FAVORABLE TERMS AND BEST PRICING

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

6.1.38 TRANSFER OF CONTRACT

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

6.1.39 SUBCONTRACTORS

- 6.1.39.1 Contractor may not subcontract the services procured under this Contract without the State's prior written approval. The OPWDD reserves the right to reject any proposed Subcontractor or supplier if it determines that the company is not qualified or responsible. All such subcontracting relationships between the Contractor and its Subcontractors to perform Services must be memorialized by written agreement.
- 6.1.39.2 Contractor shall include in all agreements with its Subcontractors, in such a manner that will be binding upon each Subcontractor with respect to work performed in connection with the Contract, provisions specifying that:
 - 6.1.39.2.1 The work performed by the Subcontractor must be in accordance with the terms and conditions of this Contract
 - 6.1.39.2.2 Nothing contained in such subcontract shall impair the rights of the OPWDD or the State
 - 6.1.39.2.3 Nothing contained in the subcontract shall create any contractual relationship between the Subcontractor and the OPWDD or the State
 - 6.1.39.2.4 The State and the OPWDD shall have the same authority to audit the records of all Subcontractors as it does those of the Contractor
 - 6.1.39.2.5 Subcontractor shall cooperate with any investigation, audit, litigation, or other inquiry related to the Procurement or the resulting Contract
- 6.1.39.3 The OPWDD reserves the right, at any time during the term of the Contract, to verify that the written subcontract(s) between Contractor and Subcontractor(s) complies with all of the provisions of this Section and any subcontract provisions contained in this Contract.

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

6.1.40 WAIVER

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

6.1.41 ACCESSIBILITY

6.1.41.1 Any web-based information and applications development, or programming delivered pursuant to the

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

6.1.42 COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS

Contractor shall comply fully with the requirements of the Information Security Breach and Notification Act, and all security procedures and policies of the State including, but not limited to, the following:

6.1.42.1 Acceptable Use of Information Technology Resources Policy

6.1.42.2 Information Security Policy

6.1.42.3 Security Logging Standard

6.1.42.4 Information Security Risk Management Standard

6.1.42.5 Information Security Controls Standard

6.1.42.6 Sanitization/Secure Disposal Standard

6.1.42.7 Mobile Device Security Standard

6.1.42.8 Remote Access Standard

6.1.42.9 Secure System Development Life Cycle Standard

6.1.42.10 Secure Configuration Standard

6.1.42.11 Secure Coding Standard

ITS Security Policies and Standards may be found at:

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

6.1.43 RIGHT TO INSPECT

The State, or contracted entities working on behalf of the state, has the right to review Contractor's procedures, practices, and controls related to the security of State data and information assets. Upon request, Contractor will, immediately or no later than five business days after the request, make available for review policies, procedures, practices, and documentation related to the protection of State data and information assets, including but not limited to that related to information security governance, network security, risk and compliance management policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, secure disposal/sanitization and documentation. Contractor may be asked to provide a recent independent audit report on security controls prior to formal awarding of any contract resulting from this RFP, or at any time during the Contract term. The State shall have the right to send its officers, employees, or contracted vendors working on behalf of the OPWDD to inspect Contractor's facilities and operations used to provide Contract services. On the basis of such inspection, the State may require Contractor to implement corrective measures where the Contractor is found to be noncompliant with Contract provisions.

6.1.44 SEVERABILITY

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

6.1.45 PIGGYBACKING

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

6.1.46 STATE'S RESERVED RIGHTS

The OPWDD reserves the right to:

- 6.1.46.1 Reject any or all proposals received in response to the RFP;
- 6.1.46.2 Withdraw the RFP at any time, at the OPWDD's sole discretion;
- 6.1.46.3 Make an award under the RFP, in whole or in part;
- 6.1.46.4 Disqualify any bidder whose conduct and/or Proposal fails to conform to the requirements of the RFP;
- 6.1.46.5 Seek clarifications and revisions of proposals;
- 6.1.46.6 Use proposal information obtained through site visits, management interviews, and the State's investigation of a bidder's qualifications, experience, ability, or financial standing,

and any material or information submitted by the Bidder in response to the OPWDD's request for clarifying information in the course of evaluation and/or selection under the RFP;

- 6.1.46.7 Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;

NOTE: Any such modification issued on or before the due date for proposals shall go to all entities that have requested a copy of this RFP and/or submitted a Mandatory Notice of Participation; after that date (or an amended date, as the case may be), notification will be only to Bidders who have submitted proposals or notices of intent. The OPWDD's right to issue modifications of this RFP permits any addition or deletion of requirements as the OPWDD may deem appropriate.

- 6.1.46.8 Prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent RFP amendments;
- 6.1.46.9 Change any of the scheduled dates;
- 6.1.46.10 Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders;
- 6.1.46.11 Waive any requirements that are not material;
- 6.1.46.12 Negotiate with the successful Bidder within the scope of the RFP in the best interests of the State;
- 6.1.46.13 Conduct contract negotiations with the next responsible Bidder, should the agency be unsuccessful in negotiating with the selected Bidder;
- 6.1.46.14 Utilize any and all ideas submitted in the Proposals received;
- 6.1.46.15 Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors to ensure a full and complete understanding of an offeror's proposal and/or to determine an offeror's compliance with the requirements of the solicitation;
- 6.1.46.16 Waive minor irregularities and/or omissions in bids, if in the best interest of the State
- 6.1.46.17 In its sole discretion, reject illegible, incomplete, or vague bids
- 6.1.46.18 Re-solicit offers from the vendor community by re-publishing and re-advertising this RFP at any time; and
- 6.1.46.19 The OPWDD shall have unlimited rights to disclose or duplicate, for any purpose whatsoever, all information or other work product developed, derived, documented or furnished by the Bidder under any Agreement resulting from this RFP.

6.1.47 EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS

- 6.1.47.1 Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting Contracts. State Agency consultant Contracts are defined as "Contracts entered into by a state Agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and

mental health services, accounting, auditing, paralegal, legal, or similar services” (“covered consultant Contract” or “covered consultant services”). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such Contracts, OSC, Division of the Budget (DOB), and Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered Contracts awarded on and after such date.

6.1.47.2 To meet these requirements, the Contractor agrees to complete:

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

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

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

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

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

Department of Civil Service	Office of the State Comptroller – Bureau of Contracts
Alfred E. Smith State Office Building	110 State St., 11th Floor
Albany, NY 12239	Albany, NY 12236
	Attn: Consultant Reporting

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

Further information is available in the Office of the State Comptroller's Bulletin G-226 regarding the Contractor Consultant Law requirements and report Forms A and B at <http://osc.state.ny.us/agencies/guide/MyWebHelp/>

6.1.47.5 INSTRUCTIONS FOR COMPLETING FORMS A AND B:

Form A and Form B should be completed for Contracts for consulting services in accordance with the OSC's policy and the following:

6.1.47.5.1 Form A - Contractor's Planned Employment Form (available from and submitted to the using Agency, if necessary.)

6.1.47.5.2 Form B - Contractor's Annual Employment Report (to be completed by May 15 of each year for each consultant Contract in effect at any time between the preceding April 1 through March 31 fiscal year and submitted to the CS, OSC, and procuring Agency.)

6.1.47.5.3 Scope of Contract - Choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

6.1.47.5.4 Employment Category - Enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the employees providing services under the Contract.

(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, online at online.onetcenter.org to find a list of occupations.)

6.1.47.5.5 Number of Employees - Enter the total number of employees in the employment category employed to provide services under the Contract during the report period, including part-time employees and employees of subcontractors.

6.1.47.5.6 Number of Hours - Enter the total number of hours worked during the report period by the employees in the employment category.

6.1.47.5.7 Amount Payable under the Contract - Enter the total amount paid by the State to the State Contractor under the Contract, for work by the employees in the employment category, for services provided during the report period.

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

To the extent Contractor or its Subcontractor(s) create, receive, maintain, or transmit protected health information on behalf of the State pursuant to their responsibilities under this Contract, Contractor and such Subcontractors must comply with HIPAA and HI-TECH, and execute the HIPAA and HITECH Compliance Certification Form provided by the OPWDD. The successful Bidder must agree to and sign the OPWDD HIPAA Business Association Agreement. The successful Bidder must notify OPWDD and ITS within two hours of any suspected breach of security involving an individual's personal or health information.

6.1.49 DELIVERABLE ACCEPTANCE

Completed work products and services ("Deliverables") will be delivered to the designated State approver who has been authorized to accept deliverables. Deliverables must meet

contract requirements. The New York State approver will accept or reject the work product or service within 15 business days of the receipt of the Contractor's notification of completion. If the New York State approver rejects a work product or service, the cause for rejection and all defects to be addressed will be documented by New York State and provided to the Contractor, and the Contractor will correct all identified deficiencies and resubmit the Deliverable for acceptance within five (5) business days. When resubmitted after rejection, the New York State approver will accept or reject the work product or service within seven (7) business days. The number of resubmissions shall be limited to two (2), after which time the issue shall be subject to the Dispute Resolution Section 6.1.27 for further determination.

6.1.50 CHANGE REQUEST

At any time during the term of this Contract, the State may make changes, subtractions, or additions in any of the Equipment, Software, Documentation, Services, and/or other Deliverables within the general scope of work set forth in the Contract, consistent with pricing established under the terms of this agreement. All such changes shall be made using a Change Request Form executed by both Parties, and shall otherwise be in accordance with the terms and conditions of this Contract. If any such change causes an increase or decrease in pricing, or the time required for the performance of the Contract, an equitable adjustment of the Contract amount and/or time of performance will be made on mutual agreement of the Parties, subject to the approval of the New York State Comptroller and any applicable control agency, if required.

6.1.51 ADDITIONAL PROCUREMENT PROVISIONS

6.1.51.1 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the procuring agency and bidders during the procurement process. Bidders are restricted from making contact, from the earliest notice of intent to solicit offers/bids through final award and approval of the procurement contract by the OPWDD and, if applicable, the Office of the State Comptroller ("restricted period"), to other than designated staff, unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Certain findings of non-responsibility can result in rejection for contract award, and in the event of two findings within a four-year period, the Bidder shall be debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

6.1.51.2 NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a contract, the Contractor must be registered in the New York State Vendor File (Vendor File) administered by the OSC. This is a central registry for all vendors who do business with New York State Agencies, and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to Contractor for use on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York. For more information on the

Vendor File, please visit the following website:
http://www.osc.state.ny.us/vendor_management/.

6.1.51.3 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT BUSINESS ENTITY

6.1.51.3.1 The State conducts a review of prospective contractors (Bidders) and Subcontractors with anticipated expenditures at \$100K or more to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to complete the Questionnaire fully and accurately. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

6.1.51.3.2 The State recommends that each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, Bidder should refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, http://www.osc.state.ny.us/vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us/>. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

6.1.51.3.3 Contractor must update its Vendor Responsibility Questionnaire within 10 business days of the State's request that it do so.

6.1.51.4 USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN CONTRACT PERFORMANCE

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation, and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services, or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés, or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law, to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services, and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority- and women-owned businesses consistent with current State law. Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and

its SDVOB partners. SDVOBs will promote the Contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements. Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

6.1.51.5 NOTIFICATION OF AWARD AND OPPORTUNITY FOR DEBRIEFING

The tentative awardee will be advised of selection by the OPWDD through the issuance of a formal written correspondence indicating a proposed award. All Bidders will be notified of the selection or rejection of their bid. Once an award has been made, Bidders may submit a written request for a debriefing as to why their bid did not result in an award. The written request must be received by the OPWDD Designated Contact identified in section 1.2 of this RFP no later than 10 business days from the date of the award announcement. The purpose of the debriefing is to provide information to each Bidder about the scoring and evaluation of the requesting Bidder's Bid. The OPWDD will not provide Bidders with information about another Bidder's bid. This is also an opportunity for a Bidder to learn how to improve future bids.

6.1.51.6 OPWDD BID PROTEST POLICY

6.1.51.6.1 Formal Written Protests

- Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. Any Vendor or prospective Vendor who believes that there are errors or omissions in the procurement process, or who otherwise has been aggrieved in the drafting or issuance of a bid solicitation, proposal evaluation, bid award, or contract award phases of the procurement, may present a formal complaint to the OPWDD and request administrative relief concerning such action ("formal protest").
- A formal protest must be submitted in writing to the OPWDD, by ground mail, except where alternate arrangements have been made, to Ms. Lisa F. Davis, Director of Fiscal and Contract Management, OPWDD Division of Enterprise Solutions, 44 Holland Avenue, 4th Floor, Albany, NY 12229.
- A formal protest must include a statement of all legal and/or factual grounds for disagreement with an OPWDD specification or purchasing decision, a description of all remedies or relief requested, and copies of all applicable supporting documentation.

6.1.51.6.2 Deadline for Submission of Formal Protests

- The OPWDD must receive formal protests concerning errors, omissions, or prejudice, including patently obvious errors in the bid specifications or documents at least 10 calendar days before the date set in the solicitation for receipt of bids.
- The OPWDD must receive formal protests concerning a pending contract award within seven calendar days after the protesting party ("protester") knows or should have known of the facts that form the basis of the protest.

6.1.51.6.3 Review and Final Determination of Protests

- Protests will be resolved through written correspondence. However, the protester may request a meeting to discuss a formal protest, or the OPWDD may initiate a meeting on its own motion, at which time the participants may present their concerns. Either the protester or the OPWDD may elect to decline such a meeting.
- Where further formal resolution is required, the Associate Commissioner shall designate an OPWDD employee ("designee") to determine and undertake the initial resolution or settlement of any protest.
- The designee will conduct a review of the records involved in the protest and provide a memorandum to the Associate Commissioner summarizing the facts as determined by the designee, an analysis of the substance of the protest, and a preliminary recommendation. The Associate Commissioner shall: (i) evaluate the procurement team's findings and recommendations, (ii) review the materials presented by the protesting party and/or any materials required of or submitted by other Vendors, (iii) if necessary, consult with agency Counsel, and (iv) prepare a response to the protest.
- A copy of the protest decision, stating the reason(s) upon which it is based and informing the protester of the right to appeal an unfavorable decision to the Office of the State Comptroller (OSC), shall be sent to the protester or its agent within 45 calendar days of receipt of the protest, except that upon notice to the protester, such period may be extended. The protest decision will be recorded and included in the procurement record, or otherwise forwarded to the OSC upon issuance.

6.1.51.6.4 Appeals

Upon receipt of the OPWDD's determination of a protest, a protester has 10 business days within which to file an appeal of the determination with the OSC Bureau of Contracts. The appeal must be filed with Charlotte Davis at the New York State Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany, NY 12236. The protester's appeal must contain an affirmation, in writing, that a copy of the appeal has been served on the OPWDD and any other party that participated in the protest. In its appeal, the interested party shall set forth the basis on which it challenges the contracting agency's determination. The OSC Bureau of Contracts will conduct its determination of the appeal in accordance with its established policy.

6.1.51.7 BID PREPARATION EXPENSES

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a bid or for any work performed prior to the formal execution of a Contract or approval by the State Comptroller, if required.

6.1.51.8 LATE SUBMISSIONS

Bids must be received by the OPWDD on or before the date and time indicated in Section 6, RFP Calendar. Late Bids will be rejected. The received time of Bids will be determined by the OPWDD by consulting the United States Official Time Clock at <http://time.gov/HTML5/>.

6.1.51.9 BID VALIDITY

Bids must remain open and valid and, effective, firm, and irrevocable, for at least 270 days from the bid opening date, unless the time for awarding the Contract is extended by mutual consent of the OPWDD and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 270-day period, until the OPWDD makes a tentative award of the Contract or the Bidder withdraws the bid in writing.

6.1.51.10 BID RESULT NOTIFICATIONS

Bidders will be notified, in writing, of whether their proposal was tentatively selected for award. Should the OPWDD and a tentative awardee be unable to reach agreement as to the terms of the Contract within a reasonable time, as determined by the OPWDD, the OPWDD may withdraw the award and proceed to the next highest scoring bidder.

6.1.51.11 ACCURACY OF BIDS

Bidders are responsible for the accuracy of their bids. All Bidders are directed to take extreme care in developing their bids. Bidders are cautioned to review their bids carefully prior to bid submittal, as requests for bid withdrawals of any type are not likely to be granted. All exceptions and deviations must be noted in bids, and no adjustments may be made after award is issued. If a Bidder submits its bid ahead of the submission deadline, it may submit an amended bid any time prior to the Bid Submission Due Date indicated in Key Events/Dates.

6.1.51.12 BIDDERS, SUB CONTRACTORS, AND CONTRACTOR OBLIGATIONS

6.1.51.12.1 Bidders may submit proposals that include Subcontractors. Upon award, the Bidder shall be the Contractor for this engagement. The Contractor is responsible for meeting all Contract obligations set forth in the solicitation and Contract, including all Appendices, Attachments, and any subsequent amendments mutually agreed to in writing between the parties. All Subcontractors proposed by the Bidder must be identified in the proposal and must be acceptable to the OPWDD. The Bidder remains the single point of contact for the OPWDD and the party that will execute the Contract. Where applicable, the proposal may identify the subcontractor proposed to perform certain RFP requirements but such identification does not relieve the Contractor of any responsibility for performance under the contract with the OPWDD.

6.1.51.12.2 The Contractor shall provide a written copy of all subcontracts and third-party contracts to the State upon request and include a certification that it has fully disclosed all terms and conditions of such contracts and will disclose any amendments that occur subsequent to the original submission. Failure to provide such information shall constitute a breach of contract. Any waiver of breach as a result of Contractor's failure to furnish information required in this paragraph shall not be deemed a waiver of any subsequent breach. The Contractor may request the State's approval to submit redacted copies of such subcontracts and third-party contracts from which trade secrets or proprietary information has been removed pursuant to the Trade Secret Materials paragraph of this Contract.

6.1.51.13 EXTRANEIOUS TERMS

Bids must conform to the terms set forth in the Solicitation. Material deviations may render the Bid non-responsive and may result in the rejection of the Bid. Extraneous terms proposed by a Bidder for consideration must be submitted using the format and process set

forth in the RFP. Any Bidder submissions on standard, pre-printed forms, such as but not limited to product literature, order forms, license agreements, contracts, or other documents that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only. Only extraneous terms accepted by the OPWDD, in writing, shall be expressly incorporated into the Contract. Acceptance and/or processing of a Bid shall not constitute acceptance of extraneous terms. The OPWDD will not entertain any exceptions to Appendix A - Standard Clauses for New York State Contracts.

6.1.52 VULNERABILITIES, DOWNTIME AND INCIDENT RESOLUTION; PENALTIES

6.1.52.1 VULNERABILITY ASSESSMENT

6.1.52.1.1 The Contractor will be ready to demonstrate that there are no network vulnerabilities. The network must follow HIPAA and Hi-Tech Privacy and Security Standards, Federal Meaningful Use Standards, and NY Cyber Security Policy. The Contractor will demonstrate through documentation that the network is secure and meets the aforementioned standards.

6.1.52.1.2 Further, the OPWDD reserves the right to hire an industry-recognized vendor to perform a network vulnerability assessment on the implemented system. The Contractor will be expected to support the vendor during the assessment. The Contractor will be expected to develop an implementation plan within 10 days of receiving the assessment results to address any findings. The Contractor is expected to resolve minor findings as soon as possible. If deemed appropriate by the OPWDD, the change request process as described in this RFP may be used to address any major findings requiring redesign or significant changes to the system. The OPWDD reserves the right to implement penalties on the Contractor for any findings not addressed satisfactorily within 30 days.

6.1.52.2 PENALTIES FOR VULNERABILITIES

6.1.52.2.1 If a vulnerability is detected within the system, the Contractor, within 10 days, will provide a plan to address and remediate the vulnerability. Upon identification of any vulnerability, the Contractor must supply to the OPWDD for approval a plan of corrective action that outlines how the vulnerability will be addressed and the timeframes for taking corrective actions.

6.1.52.2.2 Failure to provide a remediation plan within 10 days, or failure to implement the approved plan of corrective action, will result in a daily fine of \$250.00, to be deducted from the payments due to the Contractor.

6.1.52.3 PENALTIES FOR SYSTEM DOWNTIME AND INCIDENT RESOLUTION

For those incidents described herein that are within the Contractor's control (subject to the OPWDD's reasonable agreement as to whether an incident is within the Contractor's control), and unless mutually agreed upon, the OPWDD shall levy the following penalties upon the Contractor on a monthly basis:

6.1.52.3.1 System downtime exceeding four hours will result in a \$250.00 fine for each additional four hours the system is down.

6.1.52.3.2 Failure to provide Problem Resolution for any incident within 30 days shall result in a \$250.00 fine for each additional day the incident is unresolved to the OPWDD's satisfaction.

6.1.52.3.3 Fines will be collected as a reduction to the payments due to the Contractor.

6.1.53 CONFLICTS OF INTEREST

6.1.53.1 The Contractor has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative, attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with, the State of New York, and that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

6.1.53.2 The Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Contract. The Contractor shall have a duty to notify the OPWDD immediately of any actual or potential conflicts of interest.

6.1.53.3 In conjunction with any subcontract under this Contract, the Contractor shall obtain and deliver to the OPWDD, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the Subcontractor. The Contractor shall also require in any subcontracting agreement that the Subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the OPWDD a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its Subcontractors prior to entering into a subcontract.

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

6.1.54 MEDICAID REQUIREMENTS

6.1.54.1 FEDERAL FALSE CLAIMS ACT

Federal False Claims Act (31 U.S.C. §§3729-3733) and the New York State False Claims Act (State Finance Law Article XIII, §§187-194) – contractor is bound by all of the related laws. The law requires that the OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste, and abuse in federal healthcare programs. This information must include the whistleblower protections that are in these laws. The OPWDD must also provide its Contractors with information about the OPWDD's own policies and procedures for detecting and preventing waste, fraud, and abuse. You can find detailed descriptions of these laws, their whistleblower protections, and the OPWDD's policies on the OPWDD website (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 to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud, and abuse is available from the OPWDD Contract Management Unit, 4th floor, 44 Holland Ave.,

Albany NY 12229-0001. As a Contractor of the OPWDD, you are required to participate in the reviews and audits described in the OPWDD's policies and to abide by these policies with respect to funding for OPWDD services. You are also required to make the information at the OPWDD website address listed above available to all of your employees and to all of your Contractors involved in performing work under your contract with the OPWDD.

6.1.54.2 NON-EXCLUSION REPRESENTATION

6.1.54.2.1 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.

6.1.54.2.2 The contractor represents that:

- The United States Secretary of Health and Human Services has not excluded the Contractor from participation in a federal healthcare program (including the Medicaid program) under 42 U.S.C. §§1320a-7 or 1320a-7a, or excluded the Contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. §1320c-5.
- The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the Contractor from participation in a federal healthcare program (including the Medicaid program) under 42 U.S.C. §§1320a-7(d) or 1320a-7a(a).
- 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.
- 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.

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

6.2 Contractor's Insurance Requirements

During the term of this Contract, the Contractor shall maintain in force, at its sole cost and expense, policies of insurance as required by this section. All insurance required by this section shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. The OPWDD, in its sole discretion, may accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed company's strong financial rating. If, during the term of a policy, the carrier's

A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Acceptance and/or approval by the OPWDD does not, and shall not, be construed to relieve the Contractor of any obligations, responsibilities, or liabilities under this Contract.

The Contractor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the term of the Contract.

6.2.1 General Conditions Applicable to Insurance. All policies of insurance required by this section shall comply with the following requirements:

6.2.1.1 Coverage Types and Policy Limits. The types of coverage and policy limits required from the Contractor are specified in Section B-Insurance Requirements.

6.2.1.2 Policy Forms. Except as otherwise specifically provided herein, or agreed to in the Contract, all policies of insurance required by this section shall be written on an occurrence basis.

6.2.1.3 Certificate of Insurance/Notices. The Contractor shall provide the OPWDD with a Certificate or Certificates of Insurance, in a form satisfactory to the OPWDD (e.g., an ACORD certificate), after renewal or upon request. Certificates shall reference the Contract number and shall name the New York State Office for People with Developmental Disabilities, 44 Holland Avenue, Albany New York, 12229 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to the OPWDD and in accordance with the New York State Insurance Law (e.g., an ACORD Certificate);
- Disclose any deductible, self-insured retention, aggregate limit, or exclusion to the policy that changes the coverage required by this Contract materially;
- Refer to this Contract by number;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations/Locations/Vehicles section: The State of New York, the New York State Office for People with Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage, such as the combination of CG 20 10 04 13 [covering ongoing operations] and CG 20 37 04 13 [covering completed operations]), and General liability coverage is provided on the current edition of Commercial General Liability Coverage Form CG 00 01 (or a form that provides equivalent coverage). Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (Certificates and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent, or broker via email distribution or similar means will be accepted.

Except for: (i) Data Breach and Privacy/Cyber Liability coverage; (ii) Technology Errors and Omissions; and (iii) Crime insurance coverages, the OPWDD generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although the

OPWDD reserves the right to request other proof of insurance. Contractors are requested to refrain from submitting entire insurance policies, unless specifically requested by the OPWDD. If an entire insurance policy is submitted but not requested, the OPWDD shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by the OPWDD does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

- 6.2.1.4 Forms and Endorsements. For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Contractor shall provide the OPWDD, after renewal or upon request, a Schedule of Forms and Endorsements and, upon request, all Forms and Endorsements, unless otherwise agreed to in the Contract. The Forms and Endorsements shall provide evidence of compliance with the requirements of this Contract. Only original documents or electronic versions of the same that can be traced directly back to the insurer, agent, or broker via email distribution or similar means will be accepted.
- 6.2.1.5 Primary Coverage. All insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State of New York, the New York State Office for People with Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees. Any other insurance maintained by the State of New York, the New York State Office for People with Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.
- 6.2.1.6 Breach for Lack of Proof of Coverage. The failure to comply with the requirements of this section at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the State of New York, the New York State Office for People with Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.
- 6.2.1.7 Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval by the OPWDD. Such approval shall not be unreasonably withheld, conditioned, or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program, along with a description of that program, including but not limited to information regarding the use of a third-party administrator, shall be provided upon request.
- 6.2.1.8 Subcontractors. Prior to the commencement of any work by a subcontractor, the Contractor shall require such subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that subcontractor.
- 6.2.1.9 Waiver of Subrogation. For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be

included in each of its policies a waiver of the insurer's right to recovery or subrogation against the State of New York, the New York State Office for People with Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to the OPWDD upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

- 6.2.1.10 Additional Insured. For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insureds: The State of New York, the New York State Office for People with Developmental Disabilities, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the OPWDD after renewal and/or upon request. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Contractor would have been required to pursuant to this section had Contractor obtained such insurance policies.
- 6.2.1.11 Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage, and limits of insurance), including proof that the excess/umbrella insurance follows form, must be provided after renewal and/or upon request.
- 6.2.1.12 Notice of Cancellation or Non-Renewal. Policies shall be written to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide the OPWDD with a copy of any such notice received from an insurer, together with proof of replacement coverage that complies with the insurance requirements of this Contract.
- 6.2.1.13 Policy Renewal/Expiration. Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Contract shall be delivered to the OPWDD. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to the OPWDD, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by the OPWDD.
- 6.2.1.14 Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the OPWDD Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This

requirement means that the Contractor shall provide the applicable insurance document to the OPWDD as soon as possible, but in no event later than the following time periods:

- For certificates of insurance: five business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days
- For schedules of forms and endorsements and all forms and endorsements: 60 calendar days

Notwithstanding the foregoing, if the Contractor shall have requested the insurance documents promptly from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the OPWDD, the OPWDD shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

6.2.2 Insurance Requirements: Throughout the term of this Contract, the Contractor shall obtain and maintain in full force and effect, the following insurance, with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater.

6.2.2.1 Commercial General Liability Insurance: Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage, and shall cover liability arising from bodily injury, premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

- | | |
|---|-------------|
| • General Aggregate | \$2,000,000 |
| • Products – Completed Operations Aggregate | \$2,000,000 |
| • Personal and Advertising Injury | \$1,000,000 |
| • Each Occurrence | \$2,000,000 |
| • Damage to Rented Premises | \$50,000 |
| • Medical Expenses | \$5,000 |

Aggregate limits shall apply on a per-location basis, or as otherwise agreed to in the Contract. This aggregate limit applies separately to each location at which the insured works.

Coverage shall include, but not be limited to, the following:

- Premises liability
- Independent contractors
- Blanket contractual liability, including tort liability of another assumed in any Contract resulting from this Solicitation

- Defense and/or indemnification obligations, including obligations assumed under this Contract
 - Cross liability for additional insureds
 - Explosion, collapse and underground hazards
- 6.2.2.2 Comprehensive Business Automobile Liability Insurance covering liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired, and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.
- 6.2.2.2.1 In the event that the Contractor does not own, lease, or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Comprehensive Business Automobile Liability Insurance but must attest to the fact that the Contractor does not own, lease, or hire any automobiles used in connection with performance under the Contract on a form provided by the OPWDD. If, however, during the term of the Contract, the Contractor acquires, leases, or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and must provide proof of such coverage to the OPWDD in accordance with the insurance requirements of the Contract.
- 6.2.2.2.2 In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Comprehensive Business Automobile Liability Insurance as required by this Contract, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by the OPWDD. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to the OPWDD in accordance with the insurance requirements of the Contract.
- 6.2.2.3 Data Breach and Privacy/Cyber Liability: Contractors are required to maintain, during the term of this Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor’s computer systems or the Authorized Users’ systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data. Said insurance shall be maintained in the following limits, as applicable:

Data Breach and Privacy/Cyber Liability	
Software	\$1,000,000
Hardware	\$1,000,000

Data Breach and Privacy/Cyber Liability		
Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Implementation		\$1,000,000
<p>* See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories.</p> <p>Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.</p>		

Said insurance shall provide coverage for damages arising from, but not limited to, the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form)
- Privacy notification costs
- Regulatory defense and penalties
- Website media liability
- Cyber theft of customer’s property, including but not limited to money and securities

If the policy is written on a claims-made basis, Contractor must submit to the OPWDD an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

6.2.2.4 Technology Errors and Omissions: Contractors are required to maintain during the term of the Contract and as otherwise required herein, Technology Errors and Omissions Insurance. Said insurance shall be maintained in the following limits, as applicable:

Technology Errors and Omissions		
Software		\$1,000,000
Hardware		\$1,000,000
Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Implementation		\$1,000,000
<p>*See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories.</p> <p>Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.</p>		

Said insurance shall provide coverage for damages arising from computer-related services, including but not limited to:

- Consulting
- Data processing
- Programming
- System integration
- Hardware or software development
- Installation
- Distribution or maintenance
- Systems analysis or design
- Training
- Staffing or other support services
- Manufactured, distributed, licensed, marketed or sold cloud-computing services

The policy shall include coverage for third-party fidelity, including cyber theft.

If the policy is written on a claims-made basis, Contractor must submit to the OPWDD an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

6.2.2.5 Crime Insurance: Contractors are required to maintain, during the term of the Contract and as otherwise required herein, Crime Insurance. Said insurance shall be maintained in the following limits:

Crime Insurance		
Software		\$2,000,000
Hardware		\$2,000,000
Cloud *	Low Risk	\$2,000,000
	Moderate Risk	\$5,000,000
	High Risk	\$10,000,000
Implementation		\$2,000,000
<p>*See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories.</p> <p>Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.</p>		

Contractor must provide and maintain Crime Insurance coverage, on a “loss sustained form” or “loss discovered form,” providing coverage for Third-Party Fidelity.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one year with respect to events that occurred but were not reported during the term of the policy.

- Any warranties required by the Vendor's and Contractor's insurer as a result of this Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents, and employees) of the Vendor and Contractor as a result of this Contract.
- The policy shall include coverage for third-party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the State of New York, the New York State Office for People with Developmental Disabilities, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees as "Loss Payees" for all third-party coverage secured. An Endorsement naming as Loss Payees "The State of New York, the New York State Office for People with Developmental Disabilities, any entity authorized by law or regulation to use this Contract, and their officers, agents, and employees" shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

6.2.2.6 Workers' Compensation Insurance & Disability Benefits Coverage: Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of any contract renewal. Proof of workers' compensation and disability benefits coverage, or proof of exemption, must be submitted to the OPWDD at the time of policy renewal, contract renewal, and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.

6.2.2.6.1 Proof of Compliance with the Workers' Compensation Coverage Requirements:

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov);
- Form C-105.2 (9/07), Certificate of Workers' Compensation Insurance, sent to the OPWDD by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to the OPWDD upon request from the Contractor; or
- Form SI-12, Certificate of Workers' Compensation Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office, or Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.

6.2.2.6.2 Proof of Compliance with the Disability Benefits Coverage Requirements:

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability

Benefits Insurance Coverage is Not Required, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov);

- Form DB-120.1, Certificate of Disability Benefits Insurance, sent to the OPWDD by the Contractor's insurance carrier upon request; or
- Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

January 2014

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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
email: 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
<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.

ATTACHMENT ONE: Mandatory Notice of Participation

Please indicate your interest in submitting a proposal in response to the OPWDD Medicare Provider Enrollment Assistance RFP, and in attending the Mandatory Pre-Proposal Teleconference, by completing and submitting this form to Connie.x.Blais@opwdd.ny.gov by the date indicated in section 1.4 of this RFP.

Submission of this form does not obligate firms to submit a proposal; however, proposals will not be accepted from firms who do not provide this Mandatory Notice of Participation and who do not participate in the Pre-Proposal Teleconference.

Name of Organization: _____

Address: _____

City, State, Zip Code: _____

- We are interested in submitting a proposal
- We will attend the Mandatory Pre-proposal Teleconference
- We do not intend to submit a Proposal

*Reason for No-Bid Reply: _____

- * A no bid response will not impact participation in future solicitations.

Proposer Designated Contact (per section 1.2.2 of this RFP):

Contact Name: _____

* Phone Number: _____

*Email Address: _____

- * In order to remain anonymous during the Pre-Proposal Teleconference, participants will be asked to provide the last four digits of the Designated Contact's Phone Number.
- * Proposers are responsible for providing one email address for all communications related to this RFP

ATTACHMENT TWO: Additional Cover Letter Requirements

This Attachment contains required forms that must be included with the submission of the “Cover Letter” per section 2.3.3.2 of this RFP.

1. Reference Forms
2. Non-Collusive Bidding Certification
3. Bidder’s Compliance with Communications During the Restricted Period
4. Offerer Disclosure of Prior Non-Responsibility Determinations
5. Listing of Proposed Subcontractors
6. Encouraging Use of New York State Businesses In Contract Performance
7. Diversity Practices/Quantitative Scoring Factor

Reference Form

Proposer's Name _____

Proposer's Name as known to Reference _____

Proposers are encouraged to provide more than the required three (3) references, with an indication of the preferred order in which to use them.

Reference Preference # _____	
Reference Company Name	
Type of Business	
Primary Contact Person's Name	
Title	
Mailing Address	
Phone	
E-Mail	
Term of Engagement	
Name of Engagement	
Scope of Engagement	

Non-Collusive Bidding Certification
Required by Section 139-D of the State Finance Law

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

[3] No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A proposal shall not be considered for nor shall any award be made where A(1), (2), and (3) above have not been complied with; provided however, that if in any case the Proposer cannot make the foregoing certification, the Proposer shall so state and shall furnish with the proposal a signed statement which sets forth in detail the reasons therefor.

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this ___ day of _____, 20__ as the act and deed of said corporation of partnership.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS	LEGAL RESIDENCE
_____	_____
_____	_____
_____	_____
_____	_____

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES	LEGAL RESIDENCE
President	
Secretary	
Treasurer	
President	
Secretary	
Treasurer	

Identifying Data:

Potential Contractor: _____

Street Address: _____

City, Town, etc. _____

Telephone: _____ **Title:** _____

If applicable, Responsible Corporate Officer Name

Title

Signature

Joint or combined bids by companies or firms must be certified on behalf of each participant.

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By _____
Name

Name

Title

Title

Address _____
Street

Address _____
Street

City State

City State

Bidder's Compliance with Communications During Restricted Period

A. Affirmations & Disclosures related to State Finance Law §§ 139-j & 139-k:

Pursuant to State Finance Law §§139-j and 139-k, this Request for Proposal includes and imposes certain restrictions on communications between the State agency and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, are identified in Section One of this Request for Proposal. If State agency employees, other than the designated contacts, are contacted by the Bidder, the State employees are required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.asp>

Bidder affirms that it understands and agrees to comply with the procedures relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6) (b).

Bidder Name: _____

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(E-mail Address)

Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

The Governmental Entity reserves the right to terminate the contract resulting from this RFP in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Governmental Entity may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

Instructions:

Proposers must complete the following disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k and include it with the Cover Letter submission of required proposal documents.

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address:

Name and Title of Person Submitting this Form:

Contract Procurement Number:

Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity:

Date of Finding of Non-responsibility:

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature

Name: _____

Title: _____

Listing of Proposed Subcontractors

Subcontractor:	Check applicable certification type:	Estimated Contract Amount and Brief Description of Services/Commodity	Location/Address where Services will be Performed
Name: EIN:	<input type="checkbox"/> NYS-Certified MBE <input type="checkbox"/> NYS-Certified WBE <input type="checkbox"/> NYS-Certified SDVOB <input type="checkbox"/> None of the above	Estimated Amount: \$ _____ Description:	
Name: EIN:	<input type="checkbox"/> NYS-Certified MBE <input type="checkbox"/> NYS-Certified WBE <input type="checkbox"/> NYS-Certified SDVOB <input type="checkbox"/> None of the above	Estimated Amount: \$ _____ Description:	
Name: EIN:	<input type="checkbox"/> NYS-Certified MBE <input type="checkbox"/> NYS-Certified WBE <input type="checkbox"/> NYS-Certified SDVOB <input type="checkbox"/> None of the above	Estimated Amount: \$ _____ Description:	
Name: EIN:	<input type="checkbox"/> NYS-Certified MBE <input type="checkbox"/> NYS-Certified WBE <input type="checkbox"/> NYS-Certified SDVOB <input type="checkbox"/> None of the above	Estimated Amount: \$ _____ Description:	
Name: EIN:	<input type="checkbox"/> NYS-Certified MBE <input type="checkbox"/> NYS-Certified WBE <input type="checkbox"/> NYS-Certified SDVOB <input type="checkbox"/> None of the above	Estimated Amount: \$ _____ Description:	

Encouraging Use Of New York State Businesses In Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidder/Bidders for this contract for commodities, services, and technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements for the contract. Such partnering may be as subcontractors, suppliers, protégés, or other supporting roles.

Bidder/Bidders need to be aware that all authorized users of their contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Bidder/Bidders are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects Bidder/Bidders to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidder/Bidders can demonstrate their commitment to the use of New York state businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract? _____
Yes No

If yes, identify New York State businesses that will be used and attach identifying information.

Diversity Practices/Quantitative Scoring Factor

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBES”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with Non-government entities and governmental units other than the State of New York.

Proposers are required to respond to the eight (8) questions included in the following Diversity Practices Questionnaire. Proposers must submit this Questionnaire with the Cover Letter attachments as required in section 2.3.3.2 of this RFP.

Additional points (up to 4.8% of the 100% total evaluation) may be awarded based on diversity practices and efforts of applicants to include New York State Certified Minority and Women-owned Business Enterprises (MWBES) in their business practices; or proposals may receive up to 4.8% of the 100% evaluation scale based on the following criteria:

1. Is your company a NYS Certified Minority-owned Business?
2. Is your company a NYS Certified Women-owned Business?
3. Is your company a Small Business as defined in Executive Law Section 310(20) and as detailed in the “New York State Required Certification, Small Business Certification” form following the Diversity Practices Questionnaire included in this Attachment 2.

IMPORTANT NOTE: Non-NYS Certified Minority and/or Woman Owned Businesses, or Small Businesses, must complete the New York State Required Certification, Small Business Certification provided in Attachment 2 of this RFP, and submit the Certification with the Cover Letter as required in 2.3.3.2 of the RFP, in order to be considered for the Quantitative Scoring Factor.

NOTE: Credit is to be awarded for only one category, not multiple categories.

Diversity Practices Questionnaire

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties assigned to the position and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?

4. Does your company provide technical training to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprises focused mentor protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including scope and dollar amount) and indicate whether the goals were attained.

7. Does your company have a formal minority- and women-owned business enterprises supplier diversity program? Yes or No

NEW YORK STATE REQUIRED CERTIFICATION

SMALL BUSINESS CERTIFICATION

In accordance with New York State Finance Law, Section 165, the Proposer certifies that it:

1. ___ IS NOT a Small Business as defined in New York State Executive Law Section 310(20).
2. ___ IS a Small Business as defined in New York State Executive Law Section 310(20).

"Small business" shall mean a business which:

- A. has a significant business presence in New York demonstrated through one of the following;
 1. pays taxes in New York State, or
 2. purchases New York State products or materials, or
 3. has any payroll in New York State
- B. is independently owned and operated;
- C. not dominant in its field; and,
- D. employs less than three hundred persons

Signature _____
Printed Name of Signatory _____
Title _____
Name of Business _____

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }

SS.:

COUNTY OF _____ }

On the ___ day of ___ in the year 20___, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at _____, Town of _____, County of _____, State of _____; and further that:

[Check One]

- If an individual):** ___he executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation):** ___he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, ___he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership):** ___he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company):** ___he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public
Registration No.

ATTACHMENT THREE: COST PROPOSAL

Cost Proposal Instructions

The Cost Proposal Form must be signed and dated by an authorized signatory qualified to bind the Proposer. Three (3) hardcopies with original signatures and an electronic copy is required (signature is not required on electronic versions). The excel version of the Cost Proposal is located at https://opwdd.ny.gov/opwdd_resources/procurement_opportunities

1. Proposers must enter the Title for personnel assisting in each deliverable, as outlined in the proposal approach. Proposers may request OPWDD to add lines to each Deliverable for inclusion of additional staff titles if necessary.
2. Enter Not-to-Exceed Hourly Rates for each Title in the green-shaded column
 - Do not carry rates out over 2 decimal points (e.g., \$15.50)
 - Rates include personnel, support staff, overhead, travel, and all other direct and indirect expenses related to the provision of enrollment services as detailed in Section Five of this RFP's "Scope of Work".
3. Proposers are required to enter the Number of Hours for each proposed staff member, derived by considering the scope of work and details entailed in the provision of services over a five- year period.
4. **Calculating Contract Totals**
 - All Contract totals are automatically calculated on the excel version of the cost proposal form labeled "Medicare Enrollment Assistance RFP Cost Proposal" at: http://www.opwdd.ny.gov/opwdd_resources/procurement_opportunities .
 - Manually, the Contract Total will be calculated as follows (x symbolizes multiplied by)
 - Deliverables 1 through 4
The Hourly Rate for each Title of each Deliverable x Total Hours Per Title = Estimated Title Total
The Deliverable Total = the sum of all Estimated Title Totals
 - Deliverable 5
Year One, Months Seven through Twelve:
The Hourly Rate in the column labeled "Years One & Two" is multiplied by the number of hours entered in column labeled "Months Seven – Twelve" = Estimated Title Total
Year Two:
The Hourly Rate in the column labeled "Years One & Two" is multiplied by the number of hours entered in the column labeled "Year Two" = Estimated Title Total
Year Three:

"Year Three" Hourly Rate for each title is calculated by adding the Years One & Two Hourly Rate to the Years One & Two Hourly Rate x 3% CPI. This calculated CPI Rate is multiplied by the Number of Estimated Hours per each Title.

"Year Four" Hourly Rate for each title is calculated by adding the Year Three Hourly Rate to the Year Three Hourly Rate x 3% CPI. This calculated CPI Rate is multiplied by the Number of Estimated Hours per each Title.

"Year Five" Hourly Rate for each title is calculated by adding the Year Four Hourly Rate to the Year Four Hourly Rate x 3% CPI. This calculated CPI Rate is multiplied by the Number of Estimated Hours per each Title.

The **Estimated Title Total** = the sum of the hourly rates x the number of estimated hours proposed for Months Seven – Twelve plus Years Two through Five.

Deliverable Total = the combined Estimated Title Totals for all Titles assigned to each Deliverable

5. **Contract Total** is the total of Year One through Year Five Deliverable Totals.

The estimated Title Totals and Deliverable Totals may fluctuate from year to year, and from Deliverable to Deliverable, within the scope of work and at the proposed hourly rates, allowing only proposed hours to increase or decrease as the number of hours proposed are estimates; however, the Contract Total must not be exceeded without the mutual consent of OPWDD and the Contractor, nor without the New York State Office of the State Comptroller's Bureau of Contracts' review and approval.

New York State Office for People With Developmental Disabilities
Medicare Provider Enrollment Assistance RFP
COST PROPOSAL FORM

Firm Name:

NYS Supplier ID: FEIN:

Deliverable 1

5.7.1 Assurance that all necessary surveys are completed

	Hourly Rate	Number of Estimated Hours						Total Hours	Estimated Title Total
		Month One	Month Two	Month Three	Month Four	Month Five	Month Six		
title	\$ -							\$ -	
title	\$ -							\$ -	
title	\$ -							\$ -	
Deliverable 1 Total								\$ -	

Deliverable 2

5.7.2 Submission of the Medicare Enrollment Application on OPWDD's behalf

	Hourly Rate	Number of Estimated Hours						Total Hours	Estimated Title Total
		Month One	Month Two	Month Three	Month Four	Month Five	Month Six		
title	\$ -							\$ -	
title	\$ -							\$ -	
title	\$ -							\$ -	
Deliverable 2 Total								\$ -	

Deliverable 3

5.7.3 Validation of required clinical staff and submission of the Medicare Enrollment Applications and Assignment of benefit forms for OPWDD staff

	Hourly Rate	Number of Estimated Hours						Total Hours	Estimated Title Total
		Month One	Month Two	Month Three	Month Four	Month Five	Month Six		
title	\$ -							\$ -	
title	\$ -							\$ -	
title	\$ -							\$ -	
Deliverable 3 Total								\$ -	

Deliverable 4

5.7.4 Activation of OPWDD as a Medicare Provider

	Hourly Rate	Number of Estimated Hours						Total Hours	Estimated Title Total
		Month One	Month Two	Month Three	Month Four	Month Five	Month Six		
title	\$ -							\$ -	
title	\$ -							\$ -	
title	\$ -							\$ -	
Deliverable 4 Total								\$ -	

Deliverable 5

5.7.5 Availability after OPWDD is a Medicare Provider to assist with revalidations, post-enrollment support and consultation services for a total contract term of five years

	Hourly Rates				Number of Estimated Hours					Estimated Title Total
	Years One & Two	Year Three	Year Four	Year Five	Months Seven - Twelve	Year Two	Year Three	Year Four	Year Five	
title	\$ -									
title	\$ -									
title	\$ -									
title	\$ -									
Deliverable 5 Total										\$ -

CONTRACT TOTAL

Vendor Certification: By signing this Cost Proposal, Vendor acknowledges prices are irrevocable for a period not less than 270 days from the date of proposal submission.

Authorized Signatory:

Date:

Print Name:

Title:

Exhibit I: OPWDD Article 16 Clinic Locations, as of 2/14/2018

Main or Satellite

Location	Address	City	State	Zip Code	County
Main Location	80-45 WINCHESTER BOULEVARD BLDG 80	QUEENS VILLAGE	NY	11428	QUEENS
Main Location	305 MAIN STREET	BINGHAMTON	NY	13905	BROOME
Satellite	119 KEMPER LN	NORWICH	NY	13815	CHENANGO
Satellite	28 HILL ST, STE 212	ONEONTA	NY	13820	OTSEGO
Satellite	67 RIVERSIDE DRIVE	BINGHAMTON	NY	13905	BROOME
Satellite	12 SCHOOL STREET	NEW BERLIN	NY	13411	CHENANGO
Satellite	213 TRACY CREEK ROAD	VESTAL	NY	13850	BROOME
Satellite	249 GLENWOOD AVENUE	BINGHAMTON	NY	13905	BROOME
Satellite	1257 TRUMANSBURG RD	ITHACA	NY	14850	TOMPKINS
Satellite	15598 STATE HIGHWAY 8	MASONVILLE	NY	13804	DELAWARE
Main Location	200 SMITH DRIVE	CORINTH	NY	12822	SARATOGA
Satellite	500 BALLTOWN ROAD	SCHENECTDY	NY	12304	SCHENECTADY
Satellite	150 LAKE HILL ROAD	BURNT HILLS	NY	12027	SARATOGA
Satellite	7 SULLIVAN PARKWAY	FT EDWARD	NY	12828	WASHINGTON
Satellite	613 SHERMAN AVENUE	QUEENSBURY	NY	12804	WARREN
Satellite	99 BROAD STREET	SCHUYLERVILLE	NY	12871	SARATOGA
Main Location	6007 FAIRLAKES ROAD, STE 400	E. SYRACUSE	NY	13057	ONONDAGA
Satellite	4601 NIXON PARK DRIVE	SYRACUSE	NY	13215	ONONDAGA
Satellite	7253 OWASCO ROAD	AUBURN	NY	13021	CAYUGA
Satellite	200 W. DOMINICK STREET	ROME	NY	13440	ONEIDA
Satellite	8679 ELMER HILL ROAD, STE 1	ROME	NY	13440	ONEIDA
Satellite	36 OWEGO STREET	CORTLAND	NY	13045	CORTLAND
Satellite	206 SOUTH GEORGE STREET	ROME	NY	13440	ONEIDA
Satellite	522 WESTCOTT STREET	SYRACUSE	NY	13210	ONONDAGA
Satellite	5635 STATE RT. 31	VERONA	NY	13478	ONEIDA
Satellite	19 RIPLEY DRIVE	CAMDEN	NY	13316	ONEIDA
Satellite	4888 STATE RT. 410	CASTORLAND	NY	13620	LEWIS
Satellite	320 GATEWAY PARK DRIVE	N. SYRACUSE	NY	13212	ONONDAGA
Satellite	801 CYPRESS STREET	ROME	NY	13440	ONEIDA
Satellite	9501 RIVER ROAD	MARCY	NY	13403	ONEIDA
Satellite	5637 WEST GENESEE STREET	CAMILLUS	NY	13031	ONONDAGA
Satellite	303 W. LIBERTY STREET	ROME	NY	13440	ONEIDA
Satellite	120 ELIZABETH STREET	FRANKFORT	NY	13340	HERKIMER
Satellite	215 BASSETT ST	SYRACUSE	NY	13210	ONONDAGA
Main Location	220 WHITE PLAINS RD	TARRYTOWN	NY	10591	WESTCHESTER
Satellite	11 WILBUR ROAD	THIELLS	NY	10984	ROCKLAND
Satellite	28 BULL ROAD	CAMPBELL HALL	NY	10916	ORANGE
Satellite	142 BROADLEA ROAD	GOSHEN	NY	10924	ORANGE
Satellite	42 RYKOWSKI LANE	MIDDLETOWN	NY	10941	ORANGE
Main Location	620 WESTFALL RD	ROCHESTER	NY	14620	MONROE
Satellite	555 WEST MAIN STREET	PALMYRA	NY	14522	WAYNE
Satellite	2300 BUFFALO ROAD BLDG. 1000	ROCHESTER	NY	14624	MONROE
Satellite	703 E MAPLE AVE, VIENNA BLDG	NEWARK	NY	14513	WAYNE

Main or Satellite

Location	Address	City	State	Zip Code	County
Satellite	220 METRO PARK	ROCHESTER	NY	14620	MONROE Satellite
	703 E. MAPLE AVENUE	NEWARK	NY	14513	WAYNE Satellite
	295 MARY JEMISON DRIVE	GENESEO	NY	14454	LIVINGSTON
Satellite	311 MAIN STREET	DANSVILLE	NY	14437	LIVINGSTON
Satellite	2059 E. HENRIETTA ROAD	ROCHESTER	NY	14623	MONROE Satellite
	40 BERMAR PARK	ROCHESTER	NY	14624	MONROE Satellite
	3220 MIDDLE CHESHIRE ROAD	CANANDAIGUA	NY	14424	ONTARIO Satellite
	3660 PREEMPTION ROAD	GENEVA	NY	14456	ONTARIO Satellite
	7059 STANDPIPE ROAD	PERRY	NY	14530	WYOMING Satellite
	3505 THOMAS DRIVE	LAKEVILLE	NY	14480	LIVINGSTON
Satellite	144 WEST MAIN STREET	ONTARIO	NY	14532	ONTARIO Satellite
	6666 BABCOCK HOLLOW ROAD	BATH	NY	14810	STEUBEN Satellite
	163 SULLIVAN STREET	ELMIRA	NY	14901	CHEMUNG Satellite
	5259 PARKSIDE COMMONS	CANANDAIGUA	NY	14424	ONTARIO
Main Location	1200 EAST AND WEST RD BLDG 16	WEST SENECA	NY	14224	ERIE
Satellite	6020 NORTH BAILEY AVENUE	BUFFALO	NY	14226	ERIE
Satellite	RT 62, RURAL DELIVERY #2	ELLINGTON	NY	14732	CHAUTAUQUA
Satellite	501 FAIR OAK STREET	LITTLE VALLEY	NY	14755	CATTARAUGUS
Satellite	258 EAST MAIN STREET	FREDONIA	NY	14063	CHAUTAUQUA
Satellite	1669 EDEN EVANS CTR ROAD	ANGOLA	NY	14006	ERIE
Satellite	12234 ROUTE 39	PERRYSBURG	NY	14129	CATTARAUGUS
Satellite	106 PINE STREET	HAMBURG	NY	14075	ERIE Satellite
	2A RICHMOND AVENUE	BATAVIA	NY	14020	GENESEE Satellite
	2295 MILLERSPORT HWY	GETZVILLE	NY	14068	ERIE
Satellite	11236 ROUTE 39	GOWANDA	NY	14070	CATTARAUGUS
Satellite	6221 TRANSIT ROAD	DEPEW	NY	14043	ERIE Satellite
	274 SOUTH TRANSIT STREET	LOCKPORT	NY	14094	NIAGARA
Satellite	10714 NORTH ROAD	PERRYSBURG	NY	14129	CATTARAUGUS
Main Location	76 FIREMENS WAY	POUGHKEEPSIE	NY	12603	DUTCHESS
Satellite	1620 TOWN CENTER, RTE 22	BREWSTER	NY	10509	PUTNAM
Satellite	3143 US HWY 9, STE 1	VALATIE	NY	12184	COLUMBIA
Satellite	3292 FRANKLIN AVE, STE 4	MILLBROOK	NY	12545	DUTCHESS
Satellite	521 BOICES LANE	KINGSTON	NY	12401	ULSTER
Satellite	26 CENTER CIRCLE	WASSAIC	NY	12592	DUTCHESS
Satellite	207 MILTON TURNPIKE	MILTON	NY	12547	ULSTER
Satellite	4279 ROUTE 22	WASSAIC	NY	12592	DUTCHESS
Satellite	607 BROADWAY	KINGSTON	NY	12401	ULSTER
Satellite	42 W. MARKET STREET	RED HOOK	NY	12571	DUTCHESS

Exhibit II: OPWDD Boilerplate Contract

NEW YORK STATE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

AGREEMENT made by the **New York State Office for People With Developmental Disabilities**, having an office at 44 Holland Avenue, Albany, New York 12229-0001 ("OPWDD") and the **[Contractor Legal Name]**, having an office at [Address] ("CONTRACTOR"),

WITNESSETH:

WHEREAS, the OPWDD has the authority to provide care, treatment, rehabilitation, education, training and support services to persons with developmental disabilities, and

WHEREAS, the OPWDD is empowered to take all actions necessary, desirable and proper to carry out its purposes and objectives within budgetary amounts made available therefore by appropriation, and

WHEREAS, , and

WHEREAS, , and

WHEREAS, , and

WHEREAS, CONTRACTOR, has proven and demonstrated experience in this area, and

WHEREAS, the OPWDD desires to utilize the CONTRACTOR'S expertise and experience in providing said services and the CONTRACTOR is prepared to render such services, and

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

FIRST: The CONTRACTOR shall provide the OPWDD the services set forth and defined in Section 5 of the RFP, Scope of Work, attached hereto and made part of this CONTRACT.

SECOND: The OPWDD shall pay the CONTRACTOR in consideration of the services to be provided under this CONTRACT in accordance with the payment provisions in Appendix C, Budget, and Appendix D, Payment Terms, attached hereto, for the periods of time indicated therein. The total payment

for services provided under this CONTRACT shall not exceed [_____ **thousand**
_____ **dollars (\$____,____.)**]

THIRD: This CONTRACT shall **commence on [Month, Day, Year]** and shall **terminate on [Month, Day, Year]**.

FOURTH: Payment of any amount due to CONTRACTOR under this CONTRACT shall be contingent on CONTRACTOR submitting invoices with supporting documentation in accordance with Appendix D, Payment Terms, of this CONTRACT.

FIFTH: This CONTRACT may be amended upon the mutual agreement of both parties to the CONTRACT.

SIXTH: Travel will be undertaken as needed and will be reimbursed consistent with the New York State Travel Guidelines. All travel costs must fall within the dollar value of this contract.

SEVENTH: Full responsibility for the delivery of services must be provided by the CONTRACTOR under this CONTRACT. No subcontracting for the provision of services required under this CONTRACT shall be permitted unless approved by OPWDD.

EIGHTH: The CONTRACTOR shall treat all information, including but not limited to information relating to the OPWDD service recipients and providers, obtained by it through its performance under CONTRACT as strictly confidential. The CONTRACTOR may not disseminate any information obtained in any manner except as necessary to the proper discharge of its obligations under CONTRACT with the OPWDD.

NINTH: The CONTRACTOR may not utilize any information obtained via interaction with the OPWDD in any public medium – print (newspaper, policy paper, journal/periodical, book etc.), media (radio or television), electronic - (internet), or public-speaking engagement without the official prior written approval of the OPWDD Senior Management. Requests for exemption from this policy shall be made in writing, at least 14 days in advance, to the OPWDD Contract Management Unit, 44 Holland Avenue, (3rd Floor), Albany, New York 12229-0001.

TENTH: Health Information Portability and Accountability Act (HIPAA): HIPAA Standards for Privacy of Individually Identifiable Health Information (The Privacy Rule) were 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 the first 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 the OPWDD and contractors will deal with protected health information of our consumers. Likewise, State Mental Hygiene Law (Section 33.13) requires disclosure of clinical records to be limited to that information necessary for health care providers to administer treatment. Appendix F, OPWDD HIPAA Business Associate Agreement, is included hereto, requiring signature of the CONTRACTOR, and included as part of this CONTRACT.

ELEVENTH: Public Officers Law: All contractors and employees/subcontractors must be aware of and comply with the requirements of the New York State Public Officers Law, and all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the CONTRACT, the CONTRACTOR guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales contracts, services, offers, relationships, etc. involving the State and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in other civil or criminal proceedings as required by law.

TWELTH: Contract Termination Pursuant to the Procurement Lobby Act: The OPWDD reserves the right to terminate this CONTRACT in the event it is found that the certification filed by the contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the OPWDD may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this CONTRACT. Attachment X is included hereto, requiring signature of the CONTRACTOR, and included as part of this CONTRACT.

THIRTEENTH: Proof of Coverage: CONTRACTOR represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the CONTRACT. Prior to the beginning of the term of the CONTRACT and during the CONTRACT term and any renewals thereof, CONTRACTOR must establish to the satisfaction of the OPWDD that it meets or exceeds all requirements of the CONTRACT and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the OPWDD. Failure to do so may constitute grounds for the OPWDD to cancel or suspend this CONTRACT, in whole or in part, or to take any other action deemed necessary by the OPWDD.

Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR'S insurance carrier and/or the Workers' Compensation Board, of coverage for Workers' Compensation:

- a. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
- b. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
- c. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR
- d. GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

For Disability Benefits coverage:

- e. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - DB-120.1 – Certificate of Disability Benefits Insurance; OR
 - DB-155 – Certificate of Disability Benefits Self-Insurance.

FOURTEENTH: Vendor Responsibility and Termination: The CONTRACTOR agrees to adhere to all New York State vendor responsibility requirements relative to business integrity, previous CONTRACT performance, legal capacity and regulatory authority to conduct business in New York State and financial and organizational capacity.

(1) General responsibility language: The CONTRACTOR shall at all times during the CONTRACT term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of the Office for People with Developmental Disabilities or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(2) Suspension of work for non-responsibility finding: The Commissioner or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this CONTRACT, at any time, when she or her designee discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. CONTRACT activity may resume at such time as the Commissioner or her designee issues a written notice authorizing a resumption of performance under the CONTRACT.

(3) Termination for non-responsibility: Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard with appropriate Office for People with Developmental Disabilities officials or staff, the CONTRACT may be terminated by the Commissioner of the Office of People with Developmental Disabilities or her designee at the CONTRACTOR'S expense where the CONTRACTOR is determined by the Commissioner of the Office for People with Developmental Disabilities or her designee to be non-responsible. In such event, the Commissioner of the Office for People with Developmental Disabilities or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

(4) Other Termination: The State and the CONTRACTOR agree and stipulate that OPWDD shall have the sole right, in its discretion, at any time to terminate a resulting CONTRACT by giving written Notice of Termination to the CONTRACTOR, and that such Notice of Termination shall in no event constitute or be deemed a breach of this Agreement and no liability shall be incurred by or arise against the State, its agents and employees there from.

The State shall have the right to terminate the CONTRACT early for:

- Unavailability of funds;
- Cause; or
- Convenience.

The State must give written notice to the CONTRACTOR no later than 30 days or more prior to the date of termination for convenience, except with respect to contracts that give the State a general right to terminate at any time.

FIFTEENTH: Appendix A, Standard Clauses for New York State contracts, including the Appendix A: Supplement and [Appendices __-__, and Attachments __-__] attached hereto are hereby incorporated into and made part of this CONTRACT. The term "State" in Appendices A and A: Supplement shall be taken to refer to the OPWDD.

SIXTEENTH: Order of Precedence: In the event of any inconsistency or conflict in the interpretation of responsibility of either party under the terms and conditions of this CONTRACT, precedence will be resolved in the following manner:

- a. Appendix A;
- b. Appendix A: Supplement;
- c. This CONTRACT including all appendices not noted above; and
- d. The RFP and Attachments

SEVENTEENTH: Certain of these assurances may not be applicable to your project or program.

If you have questions, contact the Office for People With Developmental Disabilities (OPWDD).

Exhibit III: MWBE Contractual Requirements and Procedures

Participation by Minority and Women-Owned Business Enterprises (MWBE) REQUIREMENTS AND PROCEDURES

I. General Provisions

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

II. Contract Goals

- A. For purposes of this Contract, OPWDD hereby establishes an overall goal of 30% percent for MWBE participation, 17% percent for New York State-certified minority-owned business enterprise (“MBE”) participation and 13% percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

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

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

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25percent of the total value of the contract]
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
 2. Any responses by MWBEs to the Contractor's outreach;
 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OPWDD with MWBEs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (“EEO”)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:

1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to OPWDD within seventy-two (72) hours after the date of the notice by OPWDD to award the Contract to the Contractor.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, OPWDD may require the Contractor or subcontractor to adopt a model statement (see Form – 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 OPWDD, 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 OPWDD, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph “E” of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Staffing Plan (Complete only if contract value is in excess of \$250,000)

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and

submit it as part of their bid or proposal or within a reasonable time, as directed by OPWDD.

D. Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by OPWDD on a [MONTHLY for Construction/QUARTERLY for goods and services] basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.

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

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by OPWDD, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to OPWDD, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by OPWDD. Such waiver request must be supported

by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, OPWDD shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

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

VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to OPWDD by the 10th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

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

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

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

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

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

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting OPWDD, this organization shall request each employment OPWDD, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

_____ 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 (M/WBE-EEO) program.

M/WBE Contract Goals

__30%__percent Minority and Women’s Business Enterprise Participation

__17%__percent Minority Business Enterprise Participation

__13%__percent Women’s Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____

STAFFING PLAN

Submit with Bid or Proposal – Instructions on page 2

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

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

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran				
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		(M)	(F)	(M)	(F)	
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary /Apprentices																		
Totals																		

PREPARED BY (Signature):	TELEPHONE NO.: EMAIL ADDRESS:	DATE:
NAME AND TITLE OF PREPARER (Print or Type):		Submit completed with bid or proposal MWBE 101 (Rev 03/11)

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

Instructions for completing:

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

RACE/ETHNIC IDENTIFICATION

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

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

OTHER CATEGORIES

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