STATE AGENCY: NYS Office for People With Developmental Disabilities 44 Holland Avenue Albany, NY 12229	**OPWDD CONTRACT NUMBER:** Contract Number **DESCRIPTION:** Physician Services Pilot
CONTRACTOR: Contractor Name Vendor Address City, State, Zip	**CONTRACT AMOUNT FOR TERM:** Enter contract amount
CHARITIES REGISTRATION NUMBER: Enter if applicable, or "N/A" **FEDERAL TAX IDENTIFICATION NUMBER:** Enter Tax ID # **SFS VENDOR ID:** Enter ID Number	**CONTRACT TERM:** Complete after bid award **RENEWAL TERM:**N/A **FROM:** **TO:**

APPENDICES ATTACHED OR REFERENCED AND PART OF THIS AGREEMENT:
(Applicable Appendices must be checked [X])

APPENDIX A	☒	Standard Clauses for New York State Contracts
APPENDIX A-1	☒	Agency-Specific Clauses
APPENDIX B	☒	Budget
APPENDIX C	☒	Scope of Work
APPENDIX D	☒	Billing and Payment Terms
APPENDIX E	☒	Insurance Requirements
APPENDIX F	☐	Federal Assurances and Certifications
APPENDIX G	☒	Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement (BAA)
APPENDIX H	☒	Standard Clauses for On Site Consultant Services
APPENDIX I	☒	Consulting Disclosure Instructions and Form B
APPENDIX J	☒	Solicitation Documents (RFP, IFB, RFQ) *incorporated as a separate document*
APPENDIX K	☒	Contractor's Proposal *incorporated as a separate document*
APPENDIX L	☒	Supplier Diversity (MWBE, SDVOB, EEO) Requirements
APPENDIX X	☒	Modification Agreement Form
OTHER	☒	Exhibit 1: MWBE Utilization Plan
	☒	Exhibit 2: SDVOB Utilization Plan
	☒	Exhibit 3: MWBE Request For Waiver
	☒	Exhibit 4: SDVOB Request For Waiver
	☒	Exhibit 5: Contractor Quarterly MWBE Compliance Report
	☒	Exhibit 6: Contractor Monthly SDVOB Compliance Report
	☒	Exhibit 7: EEO Workforce Employment Utilization/Compliance Report

CONTRACT SIGNATURE PAGE

OPWDD CONTRACT NUMBER: Contract Number

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

Contractor:	Contractor Name	**NYS Office for People With Developmental Disabilities**	
By:		**By:**	
Printed Name:		**Printed Name:**	
Title:		**Title:**	
Date:		**Date:**	

State Agency Certification: In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

CIVIL SERVICE APPROVAL (If Required)

☐ DATE: _____

STATE COMPTROLLER'S APPROVAL

DATE: _____

ATTORNEY GENERAL'S APPROVAL

☐ DATE: _____

STATE OF)
) SS:
COUNTY OF)

On this ____day of _____, 20 ____ , before me personally came _____, to me known who being duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is/are the _____ of _____, the corporation described in and which executed the foregoing instrument; that he/she/they knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she/they signed his/her/their name thereto by like order.

_____
Notary Public

NEW YORK STATE

OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES (OPWDD)

This Agreement is hereby made by and between OPWDD and the public or private agency (Contractor) identified on the face page hereof.

OPWDD has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

Contractor is ready, willing, and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities, and expertise to perform or have performed the services required pursuant to the terms of this Agreement.

In consideration of the promises, responsibilities, and covenants herein, OPWDD and the Contractor agree as follows:

1. CONDITIONS OF AGREEMENT

1.1. This Agreement may consist of successive periods (Period), as specified within the Agreement or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding Period shall be on the forms specified by OPWDD and shall be incorporated into this Agreement. Any modifications to the terms and conditions of this Agreement shall only be made by mutual written consent of the parties, and approval by the New York State Office of the Attorney General and Office of the State Comptroller (OSC), if required. Any terms and conditions of this Agreement not modified shall remain in effect for each Period of the Agreement.

1.2. This Agreement incorporates the face pages attached and all the marked appendices identified on the face page hereof.

1.3. The Contractor shall perform all services to the satisfaction of OPWDD. The Contractor shall provide services and meet the program objectives summarized in the Scope of Work (Appendix C) in accordance with: provisions of the Agreement; relevant laws, rules, and regulations; administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

1.4. In the event of a conflict among documents included in a category listed below, the document latest in time shall take precedence.

Conflicts between documents shall be resolved in the following order of precedence:

1.4.1. Appendix A (Standard Clauses for NYS Contracts)
1.4.2. Amendment(s) to this Agreement
1.4.3. This Agreement (except Appendix A, Appendix J, and Appendix K)
1.4.4. The Solicitation Documents (Appendix J)
1.4.5. Contractor’s Proposal (Appendix K)

2. PAYMENT

2.1. The Contractor, to be eligible for payment, shall submit to OPWDD’s designated payment office (identified in Appendix D) all appropriate documentation as required by the Billing and Payment Terms (Appendix D).

2.2. OPWDD shall make payments and any reconciliations in accordance with the Billing and Payment Terms (Appendix D). OPWDD shall pay the Contractor, in consideration of contract services for a given Period, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix X designating the payment amount for that given Period. This sum shall not duplicate reimbursement from other sources for Contractor’s costs and services provided pursuant to this Agreement.

3. TERMINATION

3.1. This Agreement may be terminated at any time upon mutual written consent of OPWDD and the Contractor.

3.2. OPWDD may terminate the Agreement immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with the terms and conditions of this Agreement and/or with any laws, rules, regulations, policies, or procedures affecting this Agreement.

3.3. OPWDD may also terminate this Agreement in accordance with Appendix A-1.

3.4. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.

3.5. Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by OPWDD.

3.6. OPWDD shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the Agreement. In no event shall OPWDD be liable for expenses and obligations arising after the termination date of this Agreement.

4. TRANSITION

OPWDD may require the Contractor to provide uninterrupted services prior Contract termination/expiration ("Transition Services") as OPWDD deems reasonable and necessary for OPWDD to comply with all legal requirements for establishing a new contract and transitioning to a replacement vendor. The Contractor must remain in accordance with the terms specified herein during this transition period.

4.1. **Transition Period:** OPWDD shall determine the transition period in consultation with the Contractor and shall notify the Contractor in writing. The Contractor shall provide transition services for a period of up to nine (9) months. OPWDD reserves the right to amend the transition period subsequently, upon 30 days' advance written notice to the Contractor.

4.2. **No Interruption in Service:** At all times during the transition period, and unless directed otherwise in writing by OPWDD, the Contractor shall continue its contractual obligations set forth in the Contract until the services provided under the contract have been transitioned to a successor contractor, OPWDD, or a third party designated by OPWDD. 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 OPWDD.

4.3. **Transition Plan:** Within 15 days of receipt of a notice of termination, or three months prior to the end of the term of the agreement, whichever event occurs first, the Contractor shall submit to OPWDD, for OPWDD'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.

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

4.5. **Cooperation:** The Contractor shall cooperate with OPWDD and agents working on behalf of OPWDD (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, OPWDD, or a third party designated by OPWDD.

5. DISPUTE RESOLUTION

5.1. If either party has a dispute arising out of the other's performance of the Contract, then this 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 OPWDD's Deputy Commissioner of the Division of Fiscal Policy and Management, or his or her designee, who shall serve as the arbiter and issue 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 to avoid irreparable harm, the parties agree to defer seeking either legal or equitable relief in a court of competent jurisdiction until OPWDD's final decision has been issued.

5.2. 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.

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

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

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

5.5. In the event of a conflict between the Contractor and other consultants or contractors of OPWDD, the Contractor shall submit to OPWDD a timely written explanation of the details of the conflict, including such pertinent facts as may provide 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 OPWDD as amicably as possible.

6. GENERAL PROVISION AS TO REMEDIES

6.1. 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.

6.2. In addition to any other remedies available to OPWDD under the Contract and State and federal law for the Contractor's default, OPWDD may choose to exercise some or all the following:

6.2.1. Suspend, in whole or in part, payments due to the Contractor under this Contract.

6.2.2. Pursue equitable remedies to compel the Contractor to perform.

6.2.3. Apply Service Credits against amounts due and owing by OPWDD under the Contract.

6.2.4. Require the Contractor to cure deficient performance or perform the requirements of this Contract at no charge to OPWDD.

7. TAXES

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

7.2. Purchases made by the State of New York are not subject to state or local sales taxes or federal excise taxes. The official State of New York Voucher for materials, equipment, supplies, and services is sufficient evidence to exempt the transaction from sales tax under section 1116 (a)(1) of the Tax Law.

7.3. Section 5-a of the Tax Law, as amended and effective April 26, 2006, requires certain contractors awarded certain contracts valued at more than $100,000 to certify to the NYS Department of Taxation and Finance (hereinafter referred to as Tax and Finance) that they are registered to collect New York State and local sales and compensating use taxes if they 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, for the four (4) completed sales tax quarters in which the certification is made. In addition, contractors must certify to Tax and Finance that each affiliate and subcontractor exceeding such sales threshold during the period previously indicated is registered to collect New York State and local and compensating taxes.

This law imposes upon certain contractors the obligation to certify whether the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use taxes, and contractors must certify to Tax and Finance that each affiliate and subcontractor exceeding such sales threshold is registered with Tax and Finance to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to a Bidder meeting the registration requirements but who is not so registered in accordance with the law.

7.4. The Contractor is required to complete and submit to Tax and Finance the Contractor Certification Form, ST-220-TD (Part IV-2.). The Contractor must also submit the Contractor Certification to Covered Agency Form, ST-220–CA (Part IV-2.), to OPWDD certifying that they filed Form ST-220–TD and that the information contained on Form ST-220-TD was correct and complete as of the date it was filed. These forms as fillable PDF documents can be found at:
https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf and
http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf.

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

8. INDEMNIFICATION, LIMITATION OF LIABILITY

8.1. **Indemnification:** The Contractor shall be fully liable for the actions of its agents, officers, employees, partners, or subcontractors and shall defend and indemnify fully and save harmless OPWDD and the State from third party suits, actions, damages, and costs of every name and description relating to bodily injury and damage to real or tangible personal property to the extent caused by the negligence or willful misconduct of the Contractor, its agents, officers, employees, partners, or subcontractors while engaged in the performance of the services, without limitation, provided however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or negligent failure to act of OPWDD. The Contractor shall indemnify and hold OPWDD harmless from any loss or damage to OPWDD resulting from the violation by the Contractor, its agents, officers, employees, partners, and subcontractors of the State and OPWDD security procedures or policies resulting from any criminal acts committed by the Contractor's officers, agents, employees, and subcontractors while providing services under the Contract.

Notwithstanding the foregoing in this section, in no event shall the Contractor's indemnification or save harmless or hold harmless obligations include the Contractor paying for "cover costs", or the costs of replacement technologies for OPWDD.

8.2. **Indemnification for Intellectual Property Infringement:** The Contractor shall indemnify, defend, and hold OPWDD 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 OPWDD 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 OPWDD 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, OPWDD may require Contractor, at contractor's sole expense, to submit such information and documentation, including formal patent attorney opinions, as OPWDD shall require. This paragraph shall not apply to that portion of any infringement claim that results from a material modification by OPWDD, without Contractor's approval, of any products, documentation, or deliverables furnished or utilized by Contractor pursuant to this Contract. Notwithstanding the foregoing, OPWDD reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest. This section is not subject to the limitation of liability provisions of the Contract.

8.3. **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, the Contractor's liability under the Contract for direct damages shall be limited to the greater of the following: (i) $2,000,000.00; or (ii) two times the amounts paid to the Contractor under the Contract during the 12 months of the Contract term that precede the giving of notice of the claim by OPWDD. 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 OPWDD. 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 OPWDD, 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.

8.4. **No Indemnification:** OPWDD does not agree to any indemnification provisions that require OPWDD to indemnify or save harmless the Contractor or third parties.

9. SUBCONTRACTING

9.1. The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of OPWDD. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

9.2. The Contractor may arrange for a portion or portions of its responsibilities under this Agreement to be subcontracted to qualified, responsible subcontractors, subject to approval of OPWDD. If the Contractor determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of their involvement in and/or proposed performance under this Agreement must be fully explained by the Contractor to OPWDD. As part of this explanation, the subcontractor must submit to OPWDD a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the Contractor prior to execution of this Agreement.

9.3. The Contractor retains ultimate responsibility for all services performed under the Agreement.

9.4. All subcontracts shall be in writing and shall contain provisions that are functionally identical to and consistent with the provisions of this Agreement, including but not limited to the body of this Agreement, Appendix A – Standard Clauses for New York State Contracts, and the Solicitation Document. Unless waived in writing by OPWDD, all subcontracts between the Contractor and subcontractors shall expressly name the State as the sole intended third party beneficiary of such subcontract. OPWDD reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make OPWDD or the State a party to any subcontract or create any right, claim, or interest in the subcontract or proposed subcontract against OPWDD.

9.5. The subcontract is subordinate to this Contract with OPWDD, and any and all conflicting provisions of the subcontract will be superseded by the terms of this Contract. Nothing contained in the subcontract shall create any contractual relationship between the subcontractor and OPWDD or the State.

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

9.7. The Contractor shall give OPWDD immediate notice in writing of the initiation of any legal action or suit that relates in any way to a subcontract with a subcontractor or that may affect the performance of the Contractor's duties under the Agreement. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the Agreement.

9.8. If at any time during performance under this Agreement 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.

10. WARRANTIES AND GUARANTEES

10.1. **Contract Deliverables:** The Contractor warrants and represents that the services required by the Contract shall be performed or provided in accordance with all terms and conditions, covenants, statements, and representations contained in this Contract. The Contractor's failure to meet predefined service levels may result in a credit or chargeback in an amount predetermined by the parties.

10.1.1. **Ownership of and Title to Contract Deliverables:** The Contractor acknowledges that it is commissioned by the State to perform the services detailed in this Contract, which may include the development of intellectual property by the Contractor, its subcontractors, partners, employees, or agents for the State ("Custom Products"). Unless otherwise specified in writing in this Contract, upon the creation of such Custom Products, the Contractor hereby conveys, assigns, and transfers to OPWDD the sole and exclusive rights, title, and interest in the Custom Products, whether preliminary, final, or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction, and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques, and experience developed in performing services under the Contract in the course of the Contractor's business.

The State may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, OPWDD shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt, and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in this Contract.

10.1.2. **Ownership of Material**: Ownership of all data, documentary material and reports originated and prepared exclusively for OPWDD pursuant to this Contract shall belong to OPWDD. The Contractor agrees that, except where noted, all materials, documents, products, reports, data, and other information, whether finished, unfinished, or draft developed, gathered or compiled under this Contract by the Contractor are the sole exclusive property of OPWDD and that they shall not be used by the Contractor or any other person or destroyed without express written permission of OPWDD.

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

10.3. **Workmanship Warranty:** The Contractor warrants and represents that all services and deliverables shall meet the completion criteria set forth in the Contract and that services will be provided in a professional and workmanlike manner in accordance with commercially reasonable industry standards.

10.4. **Personnel Eligible for Employment:** The Contractor warrants and represents that all personnel, including all subcontractor personnel, performing Services under this Contract are qualified to provide services, eligible for employment in the United States, and shall remain so throughout the term of the Contract. The Contractor shall provide such proof of compliance as is required by OPWDD.

11. 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. OPWDD shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this procurement that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Contractor upon submission, in accordance with provisions of this Contract. If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of: (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor; or (ii) why the information constitutes critical infrastructure information that should be exempted from disclosure pursuant to § 87(2) of FOIL. Acceptance of the identified information by 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 OPWDD.

12. ETHICS COMPLIANCE

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

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

The Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable

to the service of State employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Commission on Ethics and Lobbying in Government (COELIG) 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 COELIG, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State COELIG. The State shall have the right to withdraw or withhold approval of any subcontractor, if utilizing such subcontractor for any work performed hereunder would conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder conflicts with any of the Ethics Requirements.

13. MOST FAVORABLE TERMS AND BEST PRICING

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

14. TRANSFER OF CONTRACT

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

15. 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.

16. ACCESSIBILITY

Any network-based information and applications development, or programming, delivered to or by the State pursuant to this Contract, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified, or superseded, which requires that State Entity Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by the Contractor, and the results of such testing must be satisfactory to OPWDD before web-based information and applications will be considered a qualified deliverable under the Contract or Procurement.

17. COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS

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

- Acceptable Use of Information Technology Resources Policy
- Information Security Policy
- Security Logging Standard
- Information Security Risk Management Standard

- Information Security Controls Standard
- Sanitization / Secure Disposal Standard
- Mobile Device Security Standard
- Remote Access Standard
- Secure System Development Life Cycle Standard
- Secure Configuration Standard
- Secure Coding Standard

ITS Security Policies and Standards may be found at: http://www.its.ny.gov/tables/technologypolicyindex.htm/security and https://its.ny.gov/eiso/policies/security

18. RIGHT TO INSPECT

OPWDD, or contracted entities working on behalf of OPWDD, has the right to review the Contractor's procedures, practices, and controls related to the security of OPWDD Data. Upon written request, the Contractor will, immediately or no later than five (5) business days after the request, make available for review policies, procedures, practices, and documentation related to the protection of OPWDD Data, including but not limited to that related to information security governance, network security, risk and compliance management, policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, sanitization / secure disposal, and documentation.

The Contractor may be asked to provide a recent independent audit report on security controls prior to formal awarding of any Contract resulting from this Contract, or at any time during the Contract term.

Certain subcontractors have engaged a third party (the "Service Provider") to (i) apply procedures based upon a version of the Shared Assessments Program Agreed Upon Procedures with respect to certain subcontractor's information technology controls and to prepare a report with respect thereto (the "Shared Assessments Report"), and (ii) conduct an examination in accordance with AT Section 101 of the Statement on Standards for Attestation Engagements to report on controls at a Service Organization relevant to security and availability, established by the American Institute of Certified Public Accountants (AICPA) ("AICPA Standards") and, subject to AICPA Standards, prepare a Type 2 service organization controls report with respect thereto (the "SOC 2 Report"). Upon written request, such applicable subcontractors shall promptly provide OPWDD with one copy of (i) the Shared Assessments Report, provided OPWDD executes any documentation required by the Service Provider to become a specified user thereof, (ii) the SOC 2 Report, or (iii) a report prepared by a third party that is designed to provide similar information as such reports. OPWDD shall not disclose such reports, or refer to such reports in any communication, to any person or entity other than OPWDD, unless otherwise required by law. In the event OPWDD has any questions regarding such reports, subcontractors shall make appropriate personnel reasonably available to discuss the contents thereof.

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

19. SEVERABILITY

If 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.

20. PIGGYBACKING

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

21. DELIVERABLE ACCEPTANCE

Completed work products and services ("Deliverables") will be delivered to the designated approver who has been authorized by OPWDD to accept deliverables. Deliverables must meet contract requirements. The approver will accept or reject the Deliverable within twenty-one (21) business days of the receipt of the Contractor's notification of

completion. If the 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 fifteen (15) business days. When resubmitted after rejection, the approver will accept or reject the work product or service within fifteen (15) business days. The number of resubmissions shall be limited to two (2), after which time the issue shall be subject to the Dispute Resolution Section 27 for further determination. To the extent that any Deliverables are or have been approved by the State pursuant to the terms hereof at any stage of the Contractor's performance under the Contract, the Contractor shall be entitled to rely on such approval for purposes of all subsequent stages of the Contractor's performance under the Contract. However, if both parties mutually agree on a deviation from the project schedule, such a deviation from original schedule is permissible within the scope of work and/or due to regulatory changes.

22. CHANGE REQUEST

At any time during the term of this Contract, OPWDD may make changes, subtractions, or additions to 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 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 Office of the State Comptroller and any applicable control agency, if required.

23. NOTICES

23.1. All notices permitted or required hereunder shall be in writing and shall be transmitted by one of the following methods:

- certified or registered United States mail, return receipt requested;
- facsimile transmission;
- personal delivery;
- expedited delivery service, or
- email.

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

State of New York, Office for People With Developmental Disabilities (OPWDD)
Name: Marc Kleinhenz
Title: Director of Contracts and Grants
Address: 44 Holland Ave., Albany, NY 12229
Telephone Number: (518) 474-7719
Email Address: Marc.L.Kleinhenz@opwdd.ny.gov

Contractor Name
Contractor Contact
Title
Vendor Address
City, State, Zip
Telephone Number: (000) 000-0000
Fax Number:(000)000-0000
Email Address:

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

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

24. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE

OPWDD conducts a review of prospective Contractors and subcontractors with anticipated expenditures of $100,000 or more to provide reasonable assurances that the Contractor is responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide information to assess a contractor's responsibility to conduct business with OPWDD based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By signing this Contract, the Contractor agrees to complete the Questionnaire fully and accurately. The Contractor acknowledges that OPWDD's execution of the Contract will be contingent upon OPWDD's determination that the Contractor is responsible and that OPWDD will be relying upon the Contractor's responses to the Questionnaire, in addition to all other information OPWDD may obtain from other sources, when making its responsibility determination.

OPWDD recommends that each contractor file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, the Contractor should refer to the VendRep System Instructions and User Support for Vendors available on the Office of the State Comptroller (OSC) website at https://onlineservices.osc.state.ny.us/Enrollment/login?0. To enroll, go directly to the VendRep System at https://onlineservices.osc.state.ny.us/Enrollment/register?1. The Contractor must update its Questionnaire within ten (10) business days of such request by the State.

25. OFFSHORE RESTRICTIONS

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

26. CRIMINAL JUSTICE INFORMATION SERVICES (CJIS)

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

27. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

In accordance with the provisions of the Family Educational Rights and Privacy Act ("FERPA"), in order for the School to share information about the student from the student's educational records, the Contractor, its employees, agents, or subcontractors must agree not to disclose the information to a third party without the student's consent, and to use the information only for the purposes for which it was disclosed. The Contractor, its employees, agents, or subcontractors acknowledges that for the purposes of this Contract it will be designated as a "school official" with "legitimate educational interests" in the University's Education records, as those terms have been defined under FERPA and its implementing regulations, and the Contractor, its employees, agents, or subcontractors agrees to abide by the limitations and requirements imposed on school officials. The Contractor, its employees, agents, or subcontractors will use the Education Records only for the purpose of fulfilling its duties under the Contract, and will not share such data with or disclose it to any third party except as provided for in this Contract, required by law, or authorized in writing by the School.

APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

June 2023

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds $50,000 (or $75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and $150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract that, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed $85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed $125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds $200,000.

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. NONDISCRIMINATION 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 nondiscrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, 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 (2 NYCRR § 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records that 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 Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

1. 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;

2. 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

3. 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 clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. 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.

APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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 and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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 33rd Floor

APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

New York, NY 10017
Telephone: 646-846-7364
email: mwbebusinessdev@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts that they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true, and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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: https://ogs.ny.gov/iran-divestment-act-2012

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 that is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

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

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APPENDIX A-1
AGENCY SPECIFIC CLAUSES

1. GENERAL PROVISIONS

1.1. If applicable, this Agreement may be extended for an additional term as defined in the renewal term section on the cover page of the Contract.

1.2. By written notice, this Agreement may be terminated, at any time, for any reason in accordance with provisions set forth in Appendix A-1, by (i) OPWDD for convenience upon 30 days' written notice, without penalty or other early termination charges due or (ii) written mutual agreement of the parties. If the agreement is terminated pursuant to this paragraph, OPWDD shall remain liable for all accrued but unpaid charges incurred through the date of the termination.

1.3. For a material breach that remains uncured for more than 30 days from the date of written notice to the Contractor, the Agreement may be terminated by OPWDD, at the Contractor's expense, where the Contractor becomes unable or incapable of performing or meeting any requirements or qualifications set forth in the agreement, if the Contractor fails to comply with the terms and conditions of this agreement and/or with any laws, rules, regulations, policies, or procedures affecting this agreement, 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, OPWDD may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

1.4. 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, OPWDD, at its sole discretion, may terminate the agreement or exercise such other remedies as shall be available under the agreement, at law and/or equity.

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

1.6. 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 OPWDD. Upon termination of the agreement, there shall be a reconciliation based upon the services provided by the Contractor and payments made by OPWDD. The Contractor shall refund to OPWDD any overpayments made by the State pursuant to the agreement. In no event shall OPWDD be liable for expenses and obligations arising from the program(s) in this agreement after the termination date.

2. VENDOR RESPONSIBILITY

2.1. The Contractor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Contractor's Vendor Responsibility Questionnaire (hereinafter "Responsibility Questionnaire") provided to the Contractor by OPWDD prior to execution of this Agreement. The Contractor further covenants and represents that as of the date of execution of this Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Responsibility Questionnaire.

2.2. The Contractor shall at all times during the term of this Contract remain a responsible vendor as defined by State Finance Law 163, relevant case law, and applicable guidelines. Failure to do so may result in suspension or termination of the Contract.

2.3. The Contractor shall provide to OPWDD updates to the Responsibility Questionnaire if any material event occurs requiring an amendment or as new information material to such Responsibility Questionnaire becomes available.

2.4. In addition, the Contractor shall promptly report to OPWDD the initiation of any investigation by any governmental entity for an alleged violation of federal or state law by the Contractor, its Key Employees (as identified on its Responsibility Questionnaire), its officers and/or directors in connection with matters involving, relating to, or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of investigation and may, subject to the due process provided in Section (G) below, be considered by OPWDD in making a Determination of Vendor Non-Responsibility pursuant to this section.

2.5. OPWDD reserves the right, at its sole discretion, at any time during the term of this Agreement:

- To require updates or clarifications to the Responsibility Questionnaire upon written request. To inquire about information included in or required information omitted from the Responsibility Questionnaire, and to require the Contractor to provide such information to OPWDD within a reasonable timeframe.

- To require the Contractor 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.

- To suspend any or all activities under this Agreement when the State 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. The Contractor may resume activity under this Agreement at such time as OPWDD issues a written notice authorizing a resumption of performance under the Agreement.

2.6. OPWDD reserves the right to make a final determination of non-responsibility (hereinafter "Determination of Non-Responsibility") at any time during the term of this Agreement based on:

- Any information provided in the Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or

- OPWDD's discovery of any material information that pertains to Contractor's responsibility.

2.7. Prior to making a final Determination of Non-Responsibility, OPWDD shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. OPWDD shall detail the reason(s) for the preliminary determination and shall provide the Contractor with a reasonable opportunity to be heard.

2.8. OPWDD's final Determination of Non-Responsibility shall be a basis for termination for cause under this Agreement at the Contractor's expense. In the event of a termination for cause under this or any other provision of this Agreement, OPWDD may complete the contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

3. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN

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

3.1. 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;

3.2. 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

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

The Contractor will include the provisions of "3.1," "3.2," and "3.3" 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. In the implementation of this section of State law, OPWDD shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity that effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. 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.

4. NON-EXCLUSION REPRESENTATION

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

4.1. The Contractor represents that: The United States Secretary of Health and Human Services has not excluded the Contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§ 1320a-7 or 1320a-7a or excluded the Contractor from eligibility to provide services under the Social Security Act on a reimbursable basis under 42 U.S.C. § 1320c-5;

4.2. The Secretary of Health and Human Services has not directed the New York State Department of Health or any other New York State government agency to exclude the Contractor from participation in a federal health care program (including the Medicaid program) under 42 U.S.C. §§ 1320a-7(d) or 1320a-7a(a);

4.3. The New York State Medicaid Inspector General has not excluded the Contractor from participation in the New York Medicaid program under 18 NYCRR Part 515; and

4.4. No federal or State agency has otherwise excluded the Contractor from participation in the New York Medicaid program or excluded the Contractor from eligibility to provide services under the Social Security Act or the New York Medicaid program on a reimbursable basis.

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

5. REQUIREMENTS FOR CONTRACTORS

5.1. The Contractor's 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, 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 the Contractor.

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

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

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

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

6. COOPERATION

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

6.2. COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS: Upon request by OPWDD, the Contractor shall cooperate with OPWDD in any investigation, audit, or other inquiry related to the Procurement or the resulting Contract, or any related litigation, at no cost to OPWDD. This provision shall survive the termination of the Contract.

7. BACKGROUND CHECKS

OPWDD may require that the Contractor conduct background checks on Contractor staff with access to the data or premises, and/or on Contractor staff involved with the development of OPWDD's custom solution, at no charge to OPWDD.

As required by OPWDD, contractors must comply with the security clearance and background check process as set forth in the RFP at no cost to OPWDD.

8. PROTECTED HEALTH INFORMATION

The Contractor must comply with the provisions of Mental Hygiene Law Section 16.33 and Executive Law Section 845-b, the regulations related to criminal history record checks adopted by OPWDD in connection with the fingerprinting of certain individuals and the policies and procedures of OPWDD in connection therewith. In particular, any individual employed by or affiliated as a volunteer with a provider of services as defined in Section 1.03(5) of the Mental Hygiene Law who has regular and substantial unsupervised or unrestricted physical contact with people receiving services (such contact hereinafter referred to as "consumer contact") and who hereafter submits or who has submitted an application for employment or otherwise becomes or became affiliated with the Contractor on or after April 1, 2005 (such individual hereinafter referred to as "a subject party") shall be required to consent and submit to a criminal history record check. Upon the completion thereof, the Contractor shall deny or hold in abeyance employment or volunteer opportunities involving consumer contact to a subject party when directed to do so by OPWDD and in those instances the Contractor shall notify the subject party that his or her criminal history record information is the basis for such action taken by the Contractor.

9. NOTICE OF SUBSTANTIAL CHANGE IN CONTRACTOR STATUS

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

Upon OPWDD'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 OPWDD. 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.

10. DEFAULT

If either party breaches a material provision of this Contract, which breach remains uncured for a period of 30 days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the 30-day period, such longer period of time approved by the non-breaching party, provided that the breaching party proceeds with reasonable diligence to completely cure the breach), or if the Contractor shall cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, the other party may, at its option, terminate this Contract upon 10 days' written notice and exercise such other remedies as shall be available under this Contract, at law and/or equity.

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.

If, due to default that remains uncured for the period provided herein, a third party shall commence to perform the Contractor's obligations under this Contract, the State shall thereafter be released from all obligations to the Contractor hereunder, including any obligation to make payment to the Contractor; provided, however, that OPWDD 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, OPWDD shall be entitled to a pro-rata refund of such payment.

11. CONTINUITY OF THE AGREEMENT

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken. The paragraph headings in this Agreement are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. This Agreement has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

12. STATE AGENCY SALES TAX EXEMPTION

In that purchases by the State of New York are not subject to sales tax, transportation tax and Federal excise tax, payment for such amounts may not be claimed, declared, or allowed under this Agreement. Exemption certificates will be provided upon request.

13. 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.

14. NEW YORK STATE BUSINESS USAGE IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in State/OPWDD 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, bidders for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Contractors 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, 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, bidders are reminded that they must continue to utilize small, minority- and women-owned business, consistent with current State law.

Utilizing New York State businesses in State/OPWDD 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. OPWDD therefore expects 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.

APPENDIX A-1
AGENCY SPECIFIC CLAUSES
(Continued)

15. INSURANCE

The Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and Appendix E of this Contract. Appropriate proofs of insurance coverage must be submitted to OPWDD upon notification of award and before execution of the Contract. Upon request, the Contractor shall promptly provide documentation of specified coverages at any point during the Contract term.

16. ADDITIONAL TECHNOLOGY PROVISIONS

16.1. **Data:** Any information, Analytic Derivatives (the outcome from datamining or other aggregated data analysis techniques), formula, algorithms, or other content that OPWDD may provide to the Contractor pursuant to this Contract. Data includes, but is not limited to, any of the foregoing that OPWDD and/or Contractor (i) uploads to the Cloud Solution, and/or (ii) creates and/or modifies using the Cloud Solution.

Cloud Solution shall mean any product or service sold as an "as a service" offering and has one or more of the following characteristics:

- OPWDD Data is transmitted, acted upon, or stored on equipment not owned by OPWDD;
- allows a Contractor access to OPWDD Data from a location other than OPWDD's premises;
- allows OPWDD access to data not owned by OPWDD which access may or may not result in the collection of OPWDD Data.

16.2. **Data Use Agreement:** A data use agreement (DUA) is an agreement that is required under the Privacy Rule and must be entered into before there is any use or disclosure of a limited data set to an outside institution or party.

16.3. **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"). OPWDD may make such permitted license transfers without the need to secure the approval of the Contractor but must give thirty (30) days prior written notice to the Contractor of such transfer. There shall be no additional license or other transfer fees due the Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to licensed capacity. If the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the new site, and a logical or physical partition or other means of restricting use is not available, the fees due the Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

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

16.5. **Data Protection and Transmission:** The Contractor shall use appropriate means to preserve and protect State/OPWDD 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 in rest and in transit and where specifically allowed by OPWDD written agreement, on portable devices (drives, laptops). The Contractor must, in accordance with applicable law, regulations, or established requirements and the instructions of OPWDD, 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. If any data is lost or destroyed because of any act or omission of the Contractor or any noncompliance with the obligations of this Contract, then the Contractor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, the Contractor shall reimburse OPWDD for any costs incurred by OPWDD in correcting, recreating, restoring, or reprocessing such data or in providing assistance therewith.

The Contractor agrees that any and all State/OPWDD data will be stored, processed and maintained solely on designated target devices, and that no State/OPWDD data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the contract/agreement and or any addendum thereof, or the Contractor's designated backup and recovery processes, and is encrypted in accordance with all current federal and State statutes, regulations and requirements, to include requirements for data defined as confidential, financial information, Personal Private and Sensitive Information (PPSI), Personally Identifying Information (PII) or Protected Health Information (PHI) by statute or regulations. The Contractor shall encrypt data at rest, on file storage, database storage, or on backup media, and in transit in accordance with state and federal law, rules, regulations, and requirements. The solution shall provide the ability to encrypt data in motion and at rest in compliance with state or federal law. The Contractor shall use secure means (HTTPS) for all electronic transmission or exchange of system, user, and application data with OPWDD. Contractor must support FIPS 140-2 cryptographic modules. Contractor cannot have management of or hold the encryption keys.

16.6. **Data Return and/or Destruction:** At the expiration or termination of the Contract, at OPWDD's option, the Contractor must provide OPWDD with a copy of all State/OPWDD data, including metadata and attachments, in a mutually agreed upon, commercially standard format and give OPWDD continued access to State/OPWDD data for no less than ninety (90) days beyond the expiration or termination of the Contract. Contractor cannot charge for the transfer of data unless the charges are provided for in response to solicitation.

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

Upon expiration or termination of the contract, OPWDD shall have full access to all Data for a period of 90 calendar days. Unless noted in the original contract, this period will be covered at no charge. This can, if specified within the contract, be carried out by providing application programmable interface or other such efficient electronic tools. During this period, the Contractor shall not take any action to erase and/or withhold any Data, except as directed by OPWDD. OPWDD shall have the right to specify a period in excess of 90 calendar days.

16.7. **Secure System Development Lifecycle and Specification:** Unless otherwise agreed to by OPWDD in writing, the contractor's current version of the solution must function as specified in the associated SoW in an environment comprised solely of components including, but not limited to, operating system and database platform versions that are in an active support phase (e.g., no requirement to run on End-of-Life software, such as Windows 7, etc.).

Unless otherwise agreed to by OPWDD in writing, the Contractor shall represent the below practices by providing the documentation of Contractor's adherence to the below policies available in a public website or secure portal that shall be provided to OPWDD upon request.

16.7.1. **Vulnerability Management:**

16.7.1.1. The Contractor shall make commercially reasonable efforts to ensure that components including but not limited to third party libraries, components and APIs are maintained at their most recent, stable version within the released application made available to OPWDD.

16.7.1.2. The Contractor shall follow a secure coding framework appropriate to the nature of its software components. For example, web application development teams may follow the Open Web Application Security Project's Secure Coding Practices

16.7.1.3. The Contractor shall document and execute a remediation plan for any vulnerability identified through dynamic or static analysis, vulnerability scans or penetration tests, where the vulnerability has a CVSS severity of 7.0 or higher.

16.7.1.4. The Contractor shall establish processes for monitoring and acting upon vulnerability notices published regarding components of the software development environment as well as components used in the solution provided to OPWDD.

16.7.1.5. The Contractor shall maintain publicly available mechanisms for receiving reports of vulnerabilities identified by its customers, security researchers and similar entities.

16.7.2. **Application Lifecycle Management:**

16.7.2.1. The Contractor shall ensure that any open-source licenses that apply to components used in the solution confer no obligations upon OPWDD, or that in the event of such obligation, OPWDD is aware of and agrees to same.

16.7.2.2. All applications released by the Contractor to OPWDD shall be signed by a publicly trusted code signing certificate so that OPWDD may verify the authenticity and integrity of the release. This code signing certificate shall be rotated on at least an annual basis.

16.7.2.3. The Contractor shall ensure that all implementation services and/or guides comprehensively address security hardening for the solution. Such hardening shall include, but not be limited to, the disabling of unnecessary features based on the SoW and the implementation of a "least privilege" access model for all users and service accounts.

16.7.2.4. The Contractor shall implement processes to ensure that all changes to the solution:

- Are made at the direction of its product managers or equivalent role.
- Are documented in a work management / issue tracking application.
- Maintain evidence of security checks and approvals.
- Include documented functional requirements and nonfunctional security requirements.
- Include a plan for notifying customers, including OPWDD, of any substantive changes upon release.

16.7.2.5. The Contractor shall provide ample notice, and in no case less than six months, should the solution version used by OPWDD reach End of Life, such that it will no longer receive security updates to address vulnerabilities.

16.7.3. **Security:**

16.7.3.1. Security Incidents

OPWDD and the Contractor must, in writing, determine a Security Incident Notification Policy prior to the finalization of OPWDD Agreement. If no such agreement is in place, then the default agreement shall be notification of all Security Incidents that may have a direct impact on OPWDD by phone immediately upon detection to OPWDD representative.

All notifications to OPWDD will be followed by a notification to the NYS Cyber Command Center by email to cycom@its.ny.gov, to the NYS Division of Homeland Security and Emergency Services (DHSES) Cyber Incident Response Team (CIRT) by email to cirt@dhses.ny.gov.

If requested in OPWDD agreement and agreed to by the Contractor, a written preliminary incident analysis report must be provided to OPWDD within 72 hours of discovery. Contractor representative must be available by phone and email for discussions with the NYS Cyber Command Center, DHSES CIRT, and OPWDD representative throughout incident response activity and must provide status updates at mutually agreed upon cadences. A written final incident analysis report, including a detailed technical section including root cause of incident, timeline, scope, impact, and corrective actions taken must be delivered to OPWDD at the conclusion of incident response.

16.7.3.2. Data Breach – Required Contractor Actions

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

- notify the OPWDD Chief Information Security Officer or the Chief Information Officer, the NYS Cyber Command Center, DHSES CIRT, by telephone as soon as possible from the time the Contractor confirms Data Breach. An OPWDD representative may specify a maximum notification time in their Request For Proposal/ Request for Quotes;

- consult with and receive authorization from OPWDD as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by OPWDD;

- coordinate all communication regarding the Data Breach with the NYS Cyber Command Center, DHSES CIRT, and OPWDD (including possible communications with third parties);

- cooperate with OPWDD, NYS Cyber Command Center, DHSES CIRT, and any Contractor working on behalf of OPWDD or the NYS Cyber Command Center in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and

- promptly take commercially reasonable steps to mitigate the effects and minimize any damage resulting from the Security Event Contractor shall provide Written notice to OPWDD as to all such corrective actions taken by the Contractor to remedy the Data Breach. Unless otherwise agreed to in OPWDD Agreement, if Contractor is unable to complete the corrective action within the required timeframe, the remedies provided in Section 28 shall apply and(i) OPWDD may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to OPWDD, or until OPWDD has completed a new procurement for a replacement service system; (ii) and the Contractor will be responsible for the reasonable cost of these services during this period.

Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General or other investigative or law enforcement entity to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit the Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules, or regulations.

16.7.3.3. Location of Data; Continental United States (CONUS)

All Data is to be located within CONUS.

When the Contractor is responsible for managing the Data and shall meet the following requirements:

- All Data shall remain in the Continental United States CONUS.
- Any Data stored, or acted upon, shall be solely located in Data Centers within CONUS.
- Any services that directly or indirectly access Data shall be performed only from locations within CONUS.
- All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section 25.g.
- All helpdesk, online and support services that may access Data shall be performed only from locations within CONUS.
- No Follow the Sun support shall be allowed to access Data directly or indirectly from locations outside CONUS.

When OPWDD is responsible for managing the Data, the Contractor shall provide OPWDD with the capability and the means or tools to meet the following requirements:

- All Data shall remain in the Continental United States CONUS.
- Any Data stored, or acted upon, shall be solely located in Data Centers within CONUS.
- Any services that directly or indirectly access Data shall be performed only from locations within CONUS.
- All Data in transit shall remain in CONUS and shall be encrypted in accordance with Section 25.g.
- All helpdesk, online and support services that may access Data shall be performed only from locations within CONUS.
- No Follow the Sun support shall be allowed to access Data directly or indirectly from locations outside CONUS.

The Contractor may not store, act upon, or access Data outside of the Continental United States (OCONUS) and may not perform support services that may access Data from OCONUS.

Notwithstanding the foregoing, all services must be performed within CONUS and may not be authorized to be performed from OCONUS.

16.7.3.4. Security Reports

The Contractor must log in accordance with NIST 800-92, or its successor. Upon request, the Contractor must provide OPWDD with security logs and reports (such as SOC2 Type 2, CAIQ, and ISO27001) to allow OPWDD to make an informed decision about the Contractor's security controls and their effectiveness.

The Contractor shall cooperate with all reasonable OPWDD requests for a Written description of the Contractor's physical/virtual security and/or internal control processes. OPWDD shall have the right to reject any contractor's RFQ response or terminate an OPWDD Agreement when such a request has been denied.

16.7.3.4.1. Requests for Data by Third Parties

Unless prohibited by law, the Contractor shall notify OPWDD in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than OPWDD, and the Contractor shall secure Written acknowledgement of such notification from OPWDD before responding to the request for Data.

Unless compelled by law, the Contractor shall not release Data without OPWDD's prior Written approval.

16.7.3.4.2. Security Policies

16.7.3.4.2.1. The Contractor must maintain records documenting adherence to the following security policies and must provide such records to an OPWDD, or to OGS/ITS/DHSES, upon request, through a public website or secure portal.

16.7.3.4.2.2. Policies that govern software development practices commensurate with the risk of the intended use of each software application.

16.7.3.4.2.2.1. Such policies shall define documented security roles for the software development team.

16.7.3.4.2.2.2. On no less than an annual basis, the contractor shall conduct a comprehensive review of software development policies and make changes where indicated to adequately address new or changed risk.

16.7.3.4.2.3. The Contractor shall deliver remote and/or on premises support only with approval of OPWDD and with the option for OPWDD to supervise/observe the support activity.

16.7.3.4.2.4. At no time during remote and/or on-premise support, or any other time, shall the Contractor transfer OPWDD's data from OPWDD's on-premise installation of the software application to a remote location without the express written permission of OPWDD.

16.7.3.4.2.5. The Contractor shall 1) utilize uniquely assigned credentials for each of its workforce members to be used in supporting OPWDD's software application or 2) notify OPWDD within 24 hours of the departure of a contractor's workforce member who had knowledge of credentials used to support OPWDD's software application.

16.7.3.4.2.6. Upon request and with reasonable notice, the contractor shall provide OPWDD with a list of its workforce members with knowledge of credentials used to access OPWDD's software application.

16.7.3.4.2.7. The Contractor shall make commercially reasonable efforts to ensure that components including but not limited to third party libraries, components and APIs are maintained at their most recent, stable version within the released application made available to OPWDD.

16.7.3.4.2.8. The Contractor shall follow a secure coding framework appropriate to the nature of its software application For example, web application development teams may follow the Open Web Application Security Project's Secure Coding Practices.

16.7.3.4.2.9. The Contractor shall document and execute a remediation plan for any vulnerability identified through dynamic or static analysis, vulnerability scans or penetration tests, where the vulnerability has a CVSS severity of 4.0 or higher.

16.7.3.4.2.10. The Contractor shall establish processes for monitoring and acting upon vulnerability notices published regarding components of the software development environment as well as components used in the software application provided to OPWDD.

16.7.3.4.2.11. The Contractor shall maintain publicly available mechanisms for receiving reports of vulnerabilities identified by its customers, security researchers and similar entities.

16.7.3.4.2.12. The Contractor shall ensure that any open-source licenses that apply to components used in the software application confer no obligations upon OPWDD, or that in the event of such obligation, OPWDD is aware of and agrees to same.

16.7.3.4.2.13. All applications released by the Contractor to OPWDD shall be signed by a publicly trusted code signing certificate so that OPWDD may verify the authenticity and integrity of the release. This code signing certificate shall be rotated on at least an annual basis.

16.7.3.4.2.14. The Contractor shall ensure that all implementation guides and training comprehensively address security hardening for the application. Such hardening shall include, but not be limited to, the disabling of unnecessary features based on the SoW and the implementation of a "least privilege" access model for all users and service accounts.

16.7.3.4.2.15. The Contractor shall implement processes to ensure that all changes to the software application:

- Are made at the direction of its product managers or equivalent role.
- Are documented in a work management / issue tracking application.
- Maintain evidence of security checks and approvals.
- Include documented functional requirements and nonfunctional security requirements.
- Include a plan for notifying customers, including OPWDD, of any substantive changes upon release.

16.7.3.4.2.16. In no case shall the contractor knowingly release to OPWDD an application that contains a vulnerability with a CVSS severity of 7.0 or higher, without the direct written permission of OPWDD.

16.7.3.4.3. Secure Data Disposal

After 90 calendar days from expiration or termination of an OPWDD Contract, or at a time mutually agreed upon by OPWDD and the Contractor, the Contractor shall destroy Data in all its forms, including all backups. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) 800-88, or its successor, as designated by OPWDD, as applicable. If requested by OPWDD, certificates of destruction, in a form acceptable to OPWDD, shall be provided by the Contractor to OPWDD.

16.7.3.4.4. Authentication Tokens

If included in an RFQ, OPWDD Agreement may require authentication tokens for all systems in accordance with NIST 800-63B Authentication and Lifecycle Management, or its successor.

16.7.3.4.5. Contractor Portable Devices

The Contractor shall not place Data on any portable Device unless expressly authorized by OPWDD in writing.

OPWDD is subject to NYS security policies and standards, the Data, and/or the portable device containing the Data, shall be destroyed in accordance with applicable destruction policies (NYS S13-003 Sanitization / Secure Disposal and NYS-S14-003 Information Security Controls, or successor) when the Contractor is no longer contractually required to store the Data. For all other users, NIST 800-88 Media Sanitization guidelines must be followed unless specifically modified within OPWDD Agreement.

16.7.3.4.6. Security, Confidentiality and Privacy Policies and Laws

The Contractor shall comply with all applicable Federal, State, and OPWDD policies regarding compliance with various security, confidentiality and privacy laws, rules, regulations, and policies as set forth in the RFQ and agreed to by OPWDD and Contractor within OPWDD Agreement. At minimum, Contractor will comply with a NIST-aligned framework that will assure appropriate measures are in place to protect the confidentiality, integrity, and availability of data.

As part of such compliance, the Contractor shall execute written confidentiality/non-disclosure agreements as requested by the State or OPWDD.

17. OPWDD IT REQUIREMENTS

17.1. The Contractor or a qualified third party shall conduct vulnerability scanning against each proposed release of software.

17.2. The Contractor shall, on at least an annual basis and upon substantive change in software features or functionality, engage a qualified third party to perform a penetration test against the solution.

17.3. The Contractor shall, upon request and with reasonable notice of OPWDD, provide the Executive Summary, including number of vulnerabilities and associated severity, from its most recent vulnerability scan and penetration test performed against the software application and a remediation plan, including timeline.

17.4. The Contractor shall notify OPWDD via mutually agreed methods and within no more than 24 hours of any vulnerability identified within its released code with a CVSS severity of 4.0 or higher.

17.5. The Contractor shall implement hashing within its artifact repositories along with automated controls to ensure that releases are built only from approved artifacts. Hashing must be in accordance with NIST FIPS 180-4 Secure Hash Standard.

17.6. For software applications deemed mission critical by OPWDD, the Contractor shall maintain ISO27001 (27034), ISO9001 (90003) or BSA Framework for Secure Software compliance, or compliance with a similar framework mutually agreed with OPWDD.

17.7. The Contractor shall establish a core set of security requirements to be used in the acquisition of commercial and open-source components for the software development environment and software applications developed therein.

17.8. The Contractor shall develop code within an Integrated Development Environment application with built in error/security checking enabled.

17.9. The Contractor shall store all source and compiled code in code repositories with access limited to authorized personnel based on role.

17.10. The Contractor shall maintain separate environments for development and testing.

17.11. The Contractor shall perform adequate testing on software applications used by OPWDD including, but not limited to security testing, unit testing, integration testing, regression testing, load testing, and user acceptance testing.

17.12. The Contractor shall not perform application testing with unsanitized customer data without the express written permission of OPWDD.

17.13. The Contractor shall implement dynamic and static analysis in the software development environment to identify vulnerabilities.

17.14. The Contractor shall implement processes to identify and respond to any unauthorized changes in the software development environment, including but not limited to source code and artifact repositories, access management controls, etc.

17.15. The Contractor shall monitor the support status of all components of the software development environment, maintaining them at a supported level.

17.16. The Contractor shall implement access management controls such that all access to the software development environment by the workforce is made via uniquely assigned accounts.

17.17. The Contractor shall aggregate, protect, and analyze all logs generated by systems involved in the software development process.

17.18. The Contractor shall implement multifactor authentication for sensitive functions within the software development environment, as well as for all access to the software development environment from outside the Contractor organization.

17.19. The Contractor shall adequately protect the development environment from the rest of its business environment through strategies such as network layer segmentation, and the use of endpoint protection software and host-based firewalls on all development endpoints.

17.20. The Contractor shall utilize one or both of the following methods to ensure that no single workforce member can implement an unauthorized change to the software application.

17.21. Technically enforced separation of duties such that workforce members who write code may not compile code into a releasable software application.

17.22. Automation maintained within the software development environment that ensures that peer security code reviews are performed prior to commits to a source code repository, along with supporting controls to ensure that releases are built only from approved repositories that are not accessible to development personnel.

17.23. The Contractor shall provide a "Software Bill of Materials" to OPWDD detailing all third-party components included in the software. This SBOM shall be provided upon initial contracting and any material change to the components of the software thereafter.

17.24. Client installations of software intended for end users (i.e., not IT administrative applications), must deliver the functionality as specified in the associated SoW solely with “user-level” permissions, and not require “root-level” or “administrator-level” permissions for the end user.

17.25. The Contractor shall perform an independent audit of its Data Centers, at least annually, at Contractor. expense. The Contractor will provide a data owner facing audit report upon request by OPWDD.

17.26. OPWDD may require the separation of job duties, and that Contractor staff knowledge of Data be limited to that which is absolutely needed to perform job duties.

17.27. The Contractor shall provide a Business Continuity and Disaster Recovery plan specific to the entire Cloud Solution provided. The Contractor shall specify how the BC/DR plan will impact access to the required features and functionality of the Cloud Product associated with the Contract.

18. FEDERAL FUNDING CLAUSES [Reserved]

19. STATE/FEDERAL FALSE CLAIMS ACT AND CONTRACTOR COOPERATION

Federal False Claims Act (31 USC Sections 3729-3733) and the New York State False Claims Act (State Finance Law Article XIII, Sections 187-194) – the Contractor is bound by all the related laws. The law requires that OPWDD provide its contractors with information about the federal False Claims Act, the New York State False Claims Act, and other federal and State laws that play a role in preventing and detecting fraud, waste, and abuse in federal health care programs. This information must include the whistleblower protections that are in these laws. OPWDD must also provide its contractors with information about OPWDD's own policies and procedures for detecting and preventing waste, fraud, and abuse. One can find detailed descriptions of these laws, their whistleblower protections, and OPWDD's policies on the OPWDD website at www.opwdd.ny.gov. At the home page, select Providers at the top of the page, and then select Operating Information from the dropdown menu. Scroll down to the Benefits and Compliance section. Here you will select Deficit Reduction Act, which will bring you to the False Claims Recoveries – Medicaid Fraud and Abuse document. One can also visit the New York State Medicaid Inspector General website at: www.omig.ny.gov to obtain information about these laws. A paper copy of the detailed descriptions of the laws and of OPWDD policies and procedures related to waste, fraud and abuse is available from OPWDD Contract Management Unit, 5th Floor, 44 Holland Ave., Albany NY 12229-0001. All contractors with OPWDD are required to participate in the reviews and audits described in OPWDD's policies, and to abide by these policies with respect to funding for OPWDD services. Contractors are also required to make the information at the OPWDD website address listed above available to all their employees and to all subcontractors performing work under their contract with OPWDD.

20. ENVIRONMENTAL SUSTAINABILITY [Reserved]

21. PREVAILING WAGE COST ESCALATION [Reserved]

APPENDIX B
BUDGET

Subcontractors Cost: The prices/rates quoted include all direct and indirect costs of any subcontractors, including those used to meet any stated MWBE and SDVOB participation goals.

Travel: The contractor agrees to comply with the directive of the New York State Comptroller regarding travel and lodging reimbursement. Travel expenses, if necessary, will be reimbursed in accordance with the travel allowances announced by the Office of the State Comptroller (OSC), which correspond to the rates provided by the Federal Government to its employees. Travel-related expenses shall be subject to the same limitations that apply to New York State employees. To access information related to travel, including the current reimbursement amounts refer to the following website: http://osc.state.ny.us/agencies/travel/travel.htm

Escalation: No escalation is allowed. All prices are fixed for the term of the contract.

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APPENDIX C
SCOPE OF WORK

All terms and conditions of Bid/Solicitation #: OPD-2025-54 apply to this contract, including all questions and answers.

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APPENDIX D
BILLING AND PAYMENT TERMS

The Contractor shall submit appropriate and properly prepared invoices for services rendered in accordance with, Appendix B, Budget and Appendix C, Scope of Work, for payments to be made under this Contract. Invoices shall have annexed such supporting documents as OPWDD may require, in a form prescribed by OPWDD.

OPWDD shall pay invoices submitted by the Contractor within thirty (30) calendar days (excluding legal holidays) from receipt by the designated payment office provided below, in accordance with New York State Finance Law Article 11-A. These payments may be adjusted by OPWDD to reflect only those expenditures that were made in accordance with the Contract.

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 OPWDD.

NONCOMPLIANCE: The Contractor shall provide complete and accurate billing invoices to OPWDD to receive payment. Billing invoices submitted to OPWDD must contain all information and supporting documentation required by the Contract, OPWDD, and the State Comptroller. If the Contractor submits an inaccurate or incomplete invoice, OPWDD may refuse to pay the invoice and may return it to the Contractor with a written explanation for the decision to refuse payment. The Contractor must submit a corrected invoice within 30 days. OPWDD reserves the right to deem the Contractor noncompliant and to terminate the contract if, after having been giving notice and an opportunity to cure, the Contractor fails to submit accurate and complete invoices on more than 3 occasions during the term of the contract.

ELECTRONIC PAYMENT: 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.

Payment for invoices submitted by the Contractor shall be rendered electronically, unless payment by paper check is expressly authorized by OPWDD, at its sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with OSC's procedures to authorize electronic payments. Authorization forms are available at OSC's website at www.osc.state.ny.us/epay/index.htm by email at epunit@osc.state.ny.us, or by telephone at (518) 474-4032. The CONTRACTOR acknowledges that it will not be eligible for payment on any invoices submitted under this Contract if it does not comply with OSC's electronic payment procedures, except where OPWDD has expressly authorized payment by paper checks.

INVOICES: Invoices billing for services provided under this Contract must not exceed the amount contained in the Budget, Appendix B of this Contract.

Monthly invoicing will be submitted in arrears by the Contractor. The Contractor must bill OPWDD on invoices satisfactory to OPWDD and the Office of the State Comptroller (OSC). Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by the laws of the State of New York.

To ensure the timely processing and payment of contract invoices, they must be submitted to the New York State Business Services Center (BSC) using one of the following methods:

1. **Preferred Method:** Email a pdf copy of the signed invoice and supporting documentation to the BSC:

   Email: accountspayable@ogs.ny.gov

   Subject Field: Business Unit ID: OPD01 Contract # Contract Number

   NOTE: Send only one (1) invoice per email. Do not send a paper copy in addition to the emailed invoice.

2. **Alternate Method:** Mail invoice and supporting documentation to the BSC at the following U.S. postal address:

APPENDIX D
BILLING AND PAYMENT TERMS

NYS Office for People With Developmental Disabilities
Business Unit: OPD01
Department ID: 3660200
c/o OGS BSC Accounts Payable
Building 5, 5th Floor
1220 Washington Ave.
Albany, NY 12226-1900

Consistent with NYS Finance Law §§ 109(1) and 179-e(5), Vendors/Contractor should only invoice an Agency once the goods, property or services have been delivered or rendered.

INVOICE DETAIL

A proper invoice is a written or electronic request for payment submitted by the Contractor that **must** contain the following:

- Contractor's Name
- Contractor's NYS Supplier/Vendor ID Number
- Contract Number
- Unique Invoice Number
- Invoice Date
- Dates of Service
- Business Unit ID#
- NYS Agency Name
- Description of Services
- Total amount billed for the invoice period

The Contractor shall provide complete and accurate billing invoices to the BSC to receive payment. Invoices that do not comply with these guidelines will be returned to the Contractor for corrections.

The Contractor acknowledges that payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by OPWDD, at OWPDD's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices as established by OSC.

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APPENDIX E
INSURANCE REQUIREMENTS

Prior to the start of work the ***Contractor*** shall maintain in force, at its sole cost and expense, policies of insurance as required by this Appendix. All insurance required by this Appendix shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better, or the equivalent rating from a nationally recognized rating firm with OPWDD's prior written approval. In addition, companies writing insurance intended to comply with the requirements of this Appendix should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OPWDD at 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 affidavit or other document(s) demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," or the equivalent rating from a nationally recognized rating firm, 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 OPWDD 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.

1. General Conditions

1.1. Conditions Applicable to Insurance: All policies of insurance required by this agreement must meet the following requirements:

1.1.1. **Coverage Types and Policy Limits:** The types of coverage and policy limits required from the **Contractor are** specified herein.

1.1.2. **Policy Forms:** Except as may be otherwise specifically provided herein or agreed in writing by OPWDD, policies must be written on an **occurrence** basis. Under certain circumstances, OPWDD may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase at its sole expense Discovery Clause coverage sufficient to complete the three-year period after completion of the Contract. Written proof of this extended reporting period must be provided to OPWDD prior to the policy's expiration or cancellation.

1.1.3. **Certificates of Insurance / Notices:** Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OPWDD, before commencing any work under this contract. Certificates shall reference the Contract number and shall name as the certificate holder the New York State Office for People With Developmental Disabilities, 44 Holland Ave., Albany, NY, 12229.

Certificates of Insurance shall:

- Be in the form approved by 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 any exclusion to the policy that materially changes the coverage required by the contract;
- Specify the Additional Insureds and Named Insureds as required herein;
- Refer to this Contract by number, the Supplemental Certificate, and any other attachments on the face of the certificate;
- When coverage is provided by a non-admitted carrier, be accompanied by a completed Affidavit, and be signed by an authorized representative of the insurance carrier or producer, 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 noncontributory basis. A waiver of subrogation is granted in favor of the additional insureds, unless prohibited by law.

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, OPWDD generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OPWDD reserves the right to request other proof of insurance. Contractors are requested to refrain from submitting entire insurance policies, unless specifically requested by OPWDD. If an entire insurance policy is submitted but not requested, 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 OPWDD does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

1.1.4. **Forms and Endorsements**. For Data Breach and Privacy / Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), the Contractor shall provide 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.

1.1.5. **Primary Coverage:** All insurance policies (except cyber/professional) shall provide or provided as endorsement via request that the required coverage shall be primary and noncontributory 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.

1.1.6. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Appendix 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.

1.1.7. **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 from 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.

1.1.8. **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 Appendix, or alternatively, policies of insurance that are commensurate with the risk exposure presented by such subcontractors, if any, in their performance of services under contract or agreement, and maintain the same in force during the term of any work performed by that subcontractor.

1.1.9. **Waiver of Subrogation:** For the Commercial General Liability Insurance and 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, unless prohibited by law. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to OPWDD upon written request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

1.1.10. **Additional Insured:** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Vendor 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 insured: The People of 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. Additional Insured Endorsements shall be provided upon request to:

Contract Management Unit
Office for People With Developmental Disabilities
44 Holland Avenue, 5th Floor
Albany, New York 12229

A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insured with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Appendix had the Contractor obtained such insurance policies.

As clarification, "The People of the State of New York" means the State of New York and its subsidiary governmental entities. This is the name in which the State, as a governmental entity, enters into contracts, takes title to property, and initiates legal actions. Using the term "People" does not mean that the insurer is ensuring all residents of New York State; rather, that the State government is being insured.

1.1.11. **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 written request.

1.1.12. **Notice of Cancellation or Nonrenewal:** Policies shall be written to include the requirements for notice of cancellation or nonrenewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or nonrenewal of insurance, the Contractor shall provide 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.

1.1.13. **Policy Renewal/Expiration:** At least two (2) weeks prior to the expiration of any policy required by this contract, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Contract shall be delivered to 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 OPWDD, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OPWDD.

1.1.14. **Deadlines for Providing Insurance Documents after Renewal or Upon Written Request:** As set forth herein, certain insurance documents must be provided to OPWDD Procurement Services contact identified in the Contract Award Notice after renewal or upon written request. This requirement means

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

- For certificates of insurance: five (5) business days;
- For information on self-insurance or self-retention programs: fifteen (15) calendar days;
- For additional insured and waiver of subrogation endorsements: thirty (30) calendar days;
- For schedules of forms and endorsements and all forms and endorsements: sixty (60) calendar days.

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

1.2. Insurance Requirements: Throughout the term of this Contract, the Contractor shall obtain and maintain in full force and effect, at their own expense, 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.

1.2.1. **Commercial General Liability:** Commercial General Liability Insurance, (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract. The limits under such policy shall not be less than the following:

COMMERCIAL GENERAL LIABILITY MINIMUM INSURANCE 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 writing by OPWDD.

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 under this contract;
- Defense and/or indemnification obligations, including obligations assumed under this contract;
- Cross liability for additional insureds; and
- Explosion, collapse, and underground hazards,

The following ISO forms must be endorsed to the policy:

- CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form

- CG 20 10 11 85, or an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B)

1.2.2. **Workers' Compensation:** 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.

For work to be performed in New York State, the Contractor shall provide and maintain full New York State (NYS listed in item 3a of the policy's Information Page) coverage during the life of the contract for the benefit of such employees as are required to be covered by the New Yor State Workers' Compensation Law.

If the contract involves work on or near a shoreline, or navigable waters (e.g., work in adjoining areas customarily used in the loading, unloading, repairing, or building of a vessel), a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Acts policy as applicable must be provided. Any waiver of this requirement must be approved by the Agency and will only be granted in unique or unusual circumstances.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chair of the New York State Workers' Compensation Board:

- C-105.2 (September 2007, or most current version) – Certificate of Workers' Compensation Insurance
- U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund
- GSI-105/SI-12 – Certificate of Workers' Compensation Self-Insurance.
- CE-200 – Attestation of Exemption – When Contractor meets the requirements.

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

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 at www.wcb.ny.gov;

- Form C-105.2 (9/07), Certificate of Workers' Compensation Insurance, sent to 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 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.

1.2.3. **Disability Benefits Coverage:** Proof of disability benefits coverage, or proof of exemption, must be submitted to 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 Disability Benefits insurance coverage.**

For work to be performed in New York State, the Contractor shall provide and maintain coverage during the life of the contract for the benefit of such employees as are required to be covered by the New York State

Disability Benefits Law. Any waiver of this requirement must be approved by the Agency and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chair of the Workers' Compensation Board:

- DB-120.1(May 2006 or most current version) – Certificate of Insurance Coverage under the New York State Disability Benefits Law;
- DB-155 – Certificate of Disability Self-Insurance; or
- CE-200 – Certificate of Attestation of Exemption.

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

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 at www.wcb.ny.gov;

- Form DB-120.1, Certificate of Disability Benefits Insurance, sent to 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 at www.wcb.ny.gov. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

1.2.4. **Comprehensive Business Automobile Liability Insurance: [Reserved]**

1.2.5. **Professional Liability Insurance / Errors and Omissions Liability Insurance:** The Contractor and any subcontractor retained by the Contractor to work on the contract shall procure and maintain during and for a period of three (3) years after completion of the contract, Professional Liability Insurance / Errors and Omissions Liability Insurance in the amount of one million dollars or more, issued to and covering damage for liability imposed on the Contractor by the contract or law arising out of any negligent act, error, or omission in the rending of or failure to render professional services required by the contract. The Professional Liability Insurance / Errors and Omissions Liability Insurance may be issued on a Claims-Made Policy form, in which case the Contractor shall purchase, at its sole expense, Tail Coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

1.2.6. **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 OPWDD's systems due to the actions of the Contractor that result in unauthorized access to OPWDD's or their data. Said insurance shall be maintained in the following limits, as applicable:

APPENDIX E
INSURANCE REQUIREMENTS

DATA BREACH AND PRIVACY / CYBER LIABILITY		
CATEGORY		**MINIMUM INSURANCE COVERAGE**
Software		$1,000,000
Hardware		$1,000,000
	Moderate Risk	$5,000,000
Implementation		$1,000,000
* 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.		
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.		

The Contractor must maintain minimum insurance coverage for the level of risk for which the Contractor provides Products and submit documentation in accordance with the terms of this Contract.

Said insurance shall provide coverage for damages arising from 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.

If the policy is written on a claims-made basis, the Contractor must submit to 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 (1) year after work is completed if coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

1.2.7. **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 and can be shared with the Cyber Coverage, as applicable:

TECHNOLOGY ERRORS AND OMISSIONS		
CATEGORY		**MINIMUM INSURANCE COVERAGE**
Software		$1,000,000
Hardware		$1,000,000
	Moderate Risk	$5,000,000
Implementation		$1,000,000

APPENDIX E
INSURANCE REQUIREMENTS

* 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.
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.

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.

Said insurance shall provide coverage for damages arising from computer-related services, including:

- Technology Consulting
- Data processing
- Computer Programming
- System integration
- Computer Hardware or software development
- Computer Systems, Computer Networks, Electronic Systems Installation
- Systems analysis or design
- Software Training Manufactured, distributed, licensed, marketed, or sold cloud-computing services.

If the policy is written on a claims-made basis, the Contractor must submit to 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 (1) year after work is completed if coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

1.2.8. **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	
RISK	**MINIMUM INSURANCE COVERAGE**
Low Risk	$2,000,000
* 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.	
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.	

APPENDIX E
INSURANCE REQUIREMENTS

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.

Crime Insurance 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 (1) 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 Solicitation 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 Solicitation.
- The policy shall include coverage for third party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the People of 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 as OPWDD and their officers, agents, and employees as “Loss Payees” for all Third-Party coverage secured. An Endorsement naming as Loss Payees “The People of 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 as OPWDD 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.

1.2.9. **Railroad Protective Liability Insurance: [Reserved]**

1.2.10. **Environmental Liability Insurance: [Reserved]**

1.2.11. **Builder’s Risk Insurance / Installation Floater: [Reserved]**

1.2.12. **Owners and Contractors Protective: [Reserved]**

1.2.13. **Marine Protection & Indemnity, Hull & Machinery, Jones Act and United States**, **Longshore and Harbor Workers’ Compensation Act Coverage: [Reserved]**

1.2.14. **Garage Liability Insurance: [Reserved]**

1.2.15. **Excess and Umbrella Liability: [Reserved]**

1.2.16. **Construction Manager’s Professional Liability Insurance / Errors and Omissions Liability Insurance: [Reserved]**

1.2.17. **Unmanned Aircraft System (“UAS”) Liability: [Reserved]**

1.2.18. **Commercial Property Insurance: [Reserved]**

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APPENDIX G
OPWDD HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
BUSINESS ASSOCIATE AGREEMENT (BAA)

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

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

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

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

NOW, THEREFORE, the parties agree as follows:

1. Definitions

1.1. Catch-all definition: The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1.2. Specific definitions:

- "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the specific Business Associate listed in the first paragraph of this Agreement.
- "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean OPWDD.
- "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligation and Activities of Business Associate

2.1. Business Associate agrees to:

2.1.1. Not use or further disclose Protected Health Information other than as Required by Law, or as otherwise permitted or as required by this Agreement.

2.1.2. Use appropriate safeguards to prevent use or disclosure of the Protected Health Information, other than as provided for by this Agreement, and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity pursuant to this Agreement in accordance with 45 CFR 164 (the HIPAA Security Rule). Business Associate agrees to comply fully with the responsibilities of Business Associates as set forth in sections 13401 and 13404 of the HITECH Act.

2.1.3. To report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware. Further, Business Associate agrees to report to Covered entity any security, incident, including a breach of Unsecured Protected Health Information as defined by the Security Rule, of which it becomes aware. In the event of such a breach:

2.1.3.1. Business Associate shall promptly notify Covered Entity of the breach when it is discovered. A breach is considered discovered on the first day on which Business Associate knows or should have known of such breach. Such notification shall identify the Individuals, and their

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

2.1.3.2. Covered Entity or Business Associate, as determined by Covered Entity, shall notify individuals promptly about a breach of their Unsecured Protected Health Information, as soon as possible but not later than 60 calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Notification shall be in a form and format prescribed by Covered Entity and shall meet the requirements of section 13402 of the HITECH Act.

2.1.4. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

2.1.5. To ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

2.1.6. To provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

2.1.7. To make any amendments to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

2.1.8. To make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

2.1.9. To document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

2.1.10. To provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section (2)(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

2.2. Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that it is required to comply with the confidentiality, disclosure, and re-disclosure requirements of Mental Hygiene Law Sections 33.13 and 33.16, 10 NYCRR Part 63, 14 NYCRR 633.19, and 42 CFR Part 2 to the extent such requirements may be applicable.

2.3. Business Associate hereby agrees to ensure that any agent, including a subcontractor, to whom MCD/PHI is provided, agrees to the same restrictions and conditions that apply throughout this Agreement. Further, Business Associate agrees to state in any such agreement, contract or document that the party to whom MCD/PHI is being provided may not further disclose it without the prior written approval of the New York State Department of Health. Business Associate agrees to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that

that involves MCD/PHI.

2.4. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule and the Security Rule to the same extent that Covered Entity is responsible for compliance with such Rules. Business Associate acknowledges that it is subject to civil and criminal penalties for violations of such provisions in the same manner as if Covered Entity violated such provisions.

3. Permitted Uses and Disclosures by Business Associate

3.1. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information:

- To perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to the Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- For the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- To provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B). Data aggregation includes the combining of protected information created or received by a business associate through its activities under this contract with other information gained from other sources.
- To report violations of law to appropriate Federal and State authorities, consistent with New York State Mental Hygiene Law and 45 CFR 164.502(j)(1).

4. Third Party Contracts

The federal Center for Medicare and Medicaid Services (CMS) requires that all contracts and/or agreements executed between the Department of Health and any second party that will receive Medicaid Confidential Data must include contract language that will bind such parties to ensure that contractor(s) abide by the regulations and laws that govern the protection of individual, Medicaid confidential level data. This notification requires that the following language is included in this contract and all future contracts that will govern the receipt and release of such confidential data:

Medicaid Confidential Data / Protected Health Information includes all information about a recipient or applicant, including enrollment information, eligibility data and protected health information.

Business Associate must comply with the following state and federal laws and regulations:

- Section 367b(4) of the NY Social Services Law
- New York State Social Services Law Section 369 (4)
- Article 27-F of the New York Public Health Law & 18 NYCRR 360-8.1
- Social Security Act,42 USC 1396a (a)(7)
- Federal regulations at 42 CFR 431.302, 42 C.F.R. Part 2
- The Health Insurance Portability and Accountability act (HIPAA), at 45 CFR Parts 160 and 164
- NYS Mental Hygiene Law Section 33.13
- NY Civil Rights Law 79-L

Please note that MCD released to Business Associate may contain AIDS- and/or HIV-related confidential information as defined in Section 2780(7) of the New York Public Health Law. As required by New York Public Health Law Section 2782(5), the following notice is provided to you:

APPENDIX G
OPWDD HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
BUSINESS ASSOCIATE AGREEMENT (BAA)

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for the release for further disclosure."

Alcohol and Substance Abuse Related Confidentiality Restrictions:

Alcohol and substance abuse information is confidential pursuant to 42 C.F.R. Part 2. General authorizations are ineffective to obtain the release of such data. The federal regulations provide for a specific release for such data.

Business Associate agrees to ensure that it and any agent, including a subcontractor, to whom Business Associate provides MCD/PHI, agrees to the same restrictions and conditions that apply throughout this Agreement. Further, Business Associate agrees to state in any such agreement, contract or document that the party to whom Business Associate is providing the MCD/PHI may not further disclose it without the prior written approval of the New York State Department of Health. Business Associate agrees to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that Business Associate enters into that involves MCD/PHI.

ANY AGREEMENT, CONTRACT OR DOCUMENT WITH A SUBCONTRACTOR MUST CONTAIN ALL OF THE ABOVE PROVISIONS PERTAINING TO CONFIDENTIALITY. IT MUST CONTAIN THE HIV/AIDS NOTICE AS WELL AS A STATEMENT THAT THE SUBCONTRACTOR MAY NOT USE OR DISCLOSE THE MCD WITHOUT THE PRIOR WRITTEN APPROVAL OF THE NYS OPWDD.

5. Obligations of Covered Entity

5.1. Covered Entity shall notify Business Associate of any:

- Limitation(s) in the Notice of Privacy Practices Covered Entity produces in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- Changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's permitted or required uses or disclosures of Protected Health Information.
- restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

6. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. Covered Entity may permit Business Associate to use or disclose Protected Health Information for data aggregation or management and administrative activities of business Associate, if the Agreement includes provisions for same.

7. Remedies in Event of Breach

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

APPENDIX G
OPWDD HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
BUSINESS ASSOCIATE AGREEMENT (BAA)

8. Consideration

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

9. Term and Termination

9.1. Term. The Term of this Agreement shall be effective as of the Effective Date of this agreement and shall not terminate until all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of the Covered Entity is destroyed or returned to the Covered Entity or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the termination provisions in this section.

9.2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide Business Associate with an opportunity to cure the breach and then terminate this Agreement and any other agreement between Covered Entity and Business Associate if Business Associate does not cure the breach within the time period specified by the Covered Entity

9.3. Effect of Termination

9.3.1. Except as provided in paragraph 2 of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

9.3.2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protection of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

10. Miscellaneous

10.1. Regulatory References: A reference in this Agreement to a section in the Privacy Rule means the section as in effect, or as amended, and for which compliance is required.

10.2. Agreement: The Parties agree to take such action to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191, and any other applicable law.

10.3. Survival: The respective rights and obligations of Business Associate under Sections 6 and 8 of this Agreement shall survive the termination of this Agreement, as shall the rights of access and inspection of Covered Entity.

10.4. Interpretation: Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

11. Material Breach

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

APPENDIX G
OPWDD HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
BUSINESS ASSOCIATE AGREEMENT (BAA)

12. Law Governing Conflicts

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

New York State Office for People With Developmental Disabilities

By:

_____
Signature

_____
Name (print)

_____
Title

_____
Date signed

Business Associate

By:

_____
Signature

_____
Name (print)

_____
Title

_____
Date signed

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APPENDIX H
STANDARD CLAUSES FOR ON-SITE CONSULTANT SERVICES OR WHERE CONSULTANT HAS ACCESS TO OPWDD'S INFRASTRUCTURE SECURITY, NONDISCLOSURE, CONFIDENTIALITY AND PRESS RELEASES

By signing this Contract, the Contractor agrees to the terms and conditions expressed within this document.

The Contractor shall maintain the security, nondisclosure, and confidentiality of all information in accordance with the following clauses in performance of its activities under this Agreement:

SECURITY PROCEDURES: The Contractor agrees to comply fully with all security procedures of the State in relation to providing services and agrees that its officers, agents, employees, and subcontractors shall be required to undergo the same security clearances as are required of the employees of OPWDD.

NONDISCLOSURE and CONFIDENTIALITY: Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors have access. This representation shall survive termination of this Agreement. For purposes of this Agreement, all State information of which the Contractor, its officers, agents, employees, and subcontractors become aware while 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:

1. information that is previously rightfully known to the receiving party without restriction on disclosure;

2. 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; and

3. information that is independently developed by the Contractor without use of Confidential Information of the State.

The Contractor shall 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.

PRESS RELEASES: The Contractor agrees that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding this Agreement shall be disseminated in any way to the public, nor shall any presentation be given regarding this Agreement without the prior written approval by the undersigned or the undersigned's designee from OPWDD, which written approval shall not be unreasonably withheld or delayed provided, however, that the Contractor shall be authorized to provide copies of this Agreement 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.

PUBLIC INFORMATION: Disclosure of items related to this Agreement shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Section 87 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are otherwise exempt from disclosure under that statute. Information constituting trade secrets, for purposes of FOIL, must be clearly marked and identified as such upon submission. If the Contractor intends to seek an exemption from disclosure of these materials under FOIL, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to the availability of the identified information will be made in accordance with FOIL at the time a request for such information is received by the State.

FEDERAL OR STATE REQUIREMENTS: If it becomes necessary for the Contractor to receive Confidential Information that Federal or State statute or regulation prohibits from disclosure, the Contractor hereby agrees to return or destroy all such Confidential Information that has been received from the State when the purpose that necessitated its receipt by the Contractor has been completed. In addition, the Contractor agrees not to retain any Confidential Information that Federal or State statute or regulation prohibits from disclosure after termination of the Agreement. Notwithstanding the

foregoing, if the return or destruction of the Confidential Information is not feasible, the Contractor agrees to extend the protections of the Agreement for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If the Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the Contractor same and notify the State accordingly. The Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information that Federal or State statute or regulation prohibits from disclosure. The Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information. The Contractor shall also report 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 this Agreement if it determines that the Contractor has violated a material term of this section. The terms of this section shall apply equally to the Contractor and any and all of its subcontractors and agents. The Contractor agrees that all subcontractors and agents shall be made aware of and shall agree to the terms of this section.

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APPENDIX I
Consultant Disclosure Form B Instructions

In 2006 the NYS State Finance Law was amended to require State contractors who co-provide consulting services to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor.

In order to comply with this law, the contractor must complete the attached **Form B, State Consultant Services Contractor's Annual Employment Report annual employment information required by State Finance Law. This form will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Submit Form B to OPWDD (as the contracting Agency), the Department of Civil Service (DCS), and to the Consultant Reporting Section of the Bureau of Contracts at OSC at the addresses listed below. Form B** should be completed for contracts for consulting services in accordance with the following:

Scope of Contract: a general classification of the single category that best fits the predominate nature of the services provided under the contract.

Employment Category: the specific occupation(s), as listed in the O*NET occupational classification system, that best describe 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 https://www.onetonline.org/ to find a list of occupations.)

Number of Employees: 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.

Number of hours (to be) worked: the total number of hours worked during the Report Period by the employees in the employment category.

Amount Payable under the Contract: the total amount paid or payable 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.

Submit the completed Form B annually by May 15th for each State fiscal year (or portion thereof) the contract is in effect, as follows:

To OPWDD (as the contracting Agency):

By email (preferred method):
Send a signed, scanned copy to procurement@opwdd.ny.gov with "Consultant Disclosure Form B" in the subject line.

By mail:
Contract Management Unit
NYS OPWDD
44 Holland Avenue, 5th Fl.
Albany, NY 12229

To the Consultant Reporting Section of the Bureau of Contracts at OSC:

By email (preferred method):
Send a signed, scanned copy to CDMOST@osc.ny.gov with "Consultant Disclosure Form B" in the subject line.

By mail:
Attn: Consultant Reporting
NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236

APPENDIX I
Consultant Disclosure Form B Instructions

To (DCS):

By email (preferred method):

Send a signed, scanned copy to submitformB@cs.ny.gov with “Consultant Disclosure Form B” in the subject line.

By mail:

Attn: Executive Office
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239

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APPENDIX I
Consultant Disclosure Form B

FORM B

OSC Use Only:
Reporting Code:
Category Code:

State Consultant Services
Contractor's Annual Employment Report

Report Period: April 1, to March 31,

Contracting State Agency Name: Agency Code:
Contract Number:
Contract Term: / / to / /
Contractor Name:
Contractor Address:
Description of Services Being Provided:

Scope of Contract (Choose one that best fits):
Analysis ☐ Evaluation ☐ Research ☐ Training ☐
Data Processing ☐ Computer Programming ☐ Other IT consulting ☐
Engineering ☐ Architect Services ☐ Surveying ☐ Environmental Services ☐
Health Services ☐ Mental Health Services ☐
Accounting ☐ Auditing ☐ Paralegal ☐ Legal ☐ Other Consulting ☐

*Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page			$
Grand Total			

Name of person who prepared this report:
Preparer's Signature:_____
Title: Phone #:
Date Prepared: / /

(Use additional pages if necessary) Page of

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

APPENDIX J
SOLICITATION DOCUMENTS

1. Cover letter w/ changes
2. Changes made / amendments to the solicitation (all documents with changes)
3. Original solicitation
4. Q&A

APPENDIX K
CONTRACTOR'S PROPOSAL

Combine in this order:

Technical
Cost
Administrative
Any Clarifications

APPENDIX L
SUPPLIER DIVERSITY REQUIREMENTS

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS

1. GENERAL PROVISIONS

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.

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.

Failure to comply with all 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 9 of this Appendix and such other remedies are available to OPWDD pursuant to the Contract and applicable law.

OPWDD's agency MWBE goals are: an overall goal of **30** percent for MWBE participation, **17** percent for New York State-certified minority-owned business enterprise ("MBE") participation and **13** percent for New York State-certified women-owned business enterprise ("WBE") participation (collectively, "MWBE Contract Goals").

2. CONTRACT GOALS

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.

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

For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in the first paragraph of this section 2, the Contractor should reference the directory of MWBEs at 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.

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.

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:

- Evidence of outreach to MWBEs;
- Any responses by MWBEs to the Contractor's outreach;
- Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority- or women-oriented publications;

- The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OPWDD with MWBEs; and,
- Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

3. EQUAL EMPLOYMENT OPPORTUNITY ("EEO")

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.

3.1. In performing the Contract, the Contractor shall:

3.1.1. 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.

3.1.2. 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.

3.1.2.1. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, OPWDD may require the Contractor or subcontractor to adopt a model statement (see Equal Employment Opportunity Policy Statement).

3.1.2.1.1. The Contractor's EEO policy statement shall include the following language:

- 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.

- 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.

- 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.

- The Contractor will include the provisions of 3.1.2.1.1 and 5.1 of this Appendix L, 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.

APPENDIX L
SUPPLIER DIVERSITY REQUIREMENTS

4. ATTACHMENT 11 - STAFFING PLAN (COMPLETE ONLY IF CONTRACT VALUE EXCEEDS $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.

5. EXHIBIT 7 - WORKFORCE EMPLOYMENT UTILIZATION REPORT ("WORKFORCE UTILIZATION REPORT")

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 QUARTERLY basis during the term of the Contract.

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

5.1. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional nondiscrimination 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 regarding nondiscrimination on the basis of prior criminal conviction and prior arrest.

6. MWBE UTILIZATION PLAN

In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100, Attachment 12, with their bid. At such time as shall be requested by OPWDD, the Utilization Plan may be submitted through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newnycontracts.com/.

The Contractor agrees to adhere to the submitted MWBE Utilization Plan in the performance of the Contract. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, and the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OPWDD.

By entering into the Contract, Bidder/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.

OPWDD will review the submitted MWBE Utilization Plan and advise the Bidder of OPWDD acceptance or issue a notice of deficiency within 30 days of receipt.

If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OPWDD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OPWDD to be inadequate, OPWDD shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OPWDD, a request for a partial or total waiver of MWBE participation goals on the MWBE Application for Waiver (Attachment 12A of the RFP). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

OPWDD may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:

- If a Bidder fails to submit an MWBE Utilization Plan;
- If a Bidder fails to submit a written remedy to a notice of deficiency;

- If a Bidder fails to submit a request for waiver; or
- If OPWDD determines that the Bidder has failed to document good faith efforts.

If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in the first paragraph of Section 2 above.

7. WAIVERS

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.

If OPWDD, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described below in Section 8, 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 regard to such noncompliance, 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.

8. 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.

9. LIQUIDATED DAMAGES - MWBE PARTICIPATION

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.

9.1. 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.

9.2. In the event a determination has been made that requires the payment of liquidated damages and such identified sums have not been withheld by OPWDD, the Contractor shall pay such liquidated damages to OPWDD within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

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APPENDIX L
SUPPLIER DIVERSITY REQUIREMENTS

EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

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

MWBE

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

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

EEO

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

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

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

(d) The Contractor shall comply with the provisions of the Human Rights Law, 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 regarding 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.

APPENDIX L
SUPPLIER DIVERSITY REQUIREMENTS

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

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. OPWDD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OPWDD contracts.

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

1. CONTRACT GOALS

OPWDD hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: https://ogs.ny.gov/veterans/Docs/CertifiedNYS_SDVOB.pdf.

Questions regarding compliance with SDVOB participation goals should be directed to the minority.women.business.enterprise@opwdd.ny.gov.

Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at (518) 474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see Section 4 below).

2. SDVOB UTILIZATION PLAN

In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit with their bid a completed SDVOB Utilization Plan on Attachment 13 from the RFP.

The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OPWDD.

2.1. OPWDD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OPWDD acceptance or issue a notice of deficiency within 20 days of receipt. If a notice of deficiency is issued, the Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OPWDD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OPWDD to be inadequate, OPWDD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five (5) business days of notification by OPWDD, a request for a partial or total waiver of SDVOB participation goals on Attachment 13A Application for Waiver from the RFP. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

2.2. OPWDD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:

- If a Bidder fails to submit an SDVOB Utilization Plan;
- If a Bidder fails to submit a written remedy to a notice of deficiency;
- If a Bidder fails to submit a request for waiver; or
- If OPWDD determines that the Bidder has failed to document good faith efforts.

2.3. If awarded a Contract, the Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB Contract goals set forth above.

2.4. The Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OPWDD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

3. REQUEST FOR WAIVER

Prior to submission of a request for a partial or total waiver, the Bidder/Contractor shall contact OPWDD's SDVOB Administrator at mwbe@opwdd.ny.gov for guidance.

In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OPWDD at that time, the provisions outlined above in Sections 2.1 and 2.2 will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OPWDD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

The Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OPWDD but must be made no later than prior to the submission of a request for final payment on the Contract.

If OPWDD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101 – see Exhibit 6 below), determines that the Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued regarding such noncompliance, 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 SDVOB Contract goals. Waiver requests should be sent to OPWDD.

4. REQUIRED GOOD FAITH EFFORTS

4.1. In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- Copies of solicitations to SDVOBs and any responses thereto.
- Explanation of the specific reasons each SDVOB that responded to the Bidders/Contractors' solicitation was not selected.
- Dates of any pre-bid, pre-award or other meetings attended by the Contractor, if any, scheduled by OPWDD with certified SDVOBs whom OPWDD determined were capable of fulfilling the SDVOB goals set in the Contract.
- Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- Other information deemed relevant to the waiver request.

APPENDIX L
SUPPLIER DIVERSITY REQUIREMENTS

5. MONTHLY SDVOB CONTRACTOR COMPLIANCE REPORT

In accordance with 9 NYCRR § 252.2(q), the Contractor is required to report Monthly SDVOB Contractor Compliance to OPWDD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 (Exhibit 6) available on the Office of General Services' Division of Service-Disabled Veterans' Business Development's website at https://ogs.ny.gov/veterans/ and should be completed by the Contractor and submitted to OPWDD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to OPWDD's SDVOB Administrator at minority.women.business.enterprise@opwdd.ny.gov.

6. BREACH OF CONTRACT AND DAMAGES

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the Contract and the Contractor shall pay damages as set forth therein.

All forms are available at: https://ogs.ny.gov/veterans/.

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APPENDIX X

Modification Agreement Form

Dept ID: _____ Contract No. Enter Contract Number Contract Description: Enter brief description

Entire Contract Term (including amendment period): _____ Entire Contract Amount for Term: _____

Amendment # _____ Amendment Period: _____ Amendment Amount for Period: _____

This is an AGREEMENT between The State of New York, acting by and through the NYS Office for People With Developmental Disabilities , having its principal office at 44 Holland Avenue, Albany, NY, 12229 (hereinafter referred to as OPWDD), and Contractor Name (hereinafter referred to as the CONTRACTOR), for modification of the contract as amended for (check all that apply):

☐ Modification of Appendices: Appendix ☐ Addition of Funds ☐ Extension for Time ☐ Other: Describe

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR: Contractor Name

Printed Name: _____ Title: _____

Signature: _____ Date: _____

STATE AGENCY: NYS Office for People With Developmental Disabilities

Printed Name: _____ Title: _____

Signature: _____ Date: _____

State Agency Certification

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

"No information that may negatively impact the contractor's responsibility has come to the agency's attention and OPWDD has reasonable assurance that the contractor continues to be responsible.

CIVIL SERVICE APPROVAL (If Required)

☐ DATE: _____

STATE COMPTROLLER'S APPROVAL

DATE: _____

ATTORNEY GENERAL'S APPROVAL

☐ DATE: _____

STATE OF ( ) SS:

COUNTY OF ( )

On this _____ day of _____ 20__, before me personally came _____, to me known and known to me to be the same person described in and who executed the foregoing instrument; and that he/she duly acknowledged to me that he/she executed the same.

_____

Notary Public

EXHIBIT 1
MWBE UTILIZATION PLAN

MWBE UTILIZATION PLAN ☐ Initial Plan ☐ Revised plan **Solicitation#**

INSTRUCTIONS: This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS Certified Minority and Women-owned Business Enterprises (MWBE) under the contract. By submission of this Plan, the Bidder/Contractor commits to good faith efforts in the utilization of MWBE subcontractors and suppliers as required by the MBE/WBE goals contained in the Solicitation/Contract. Making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward MWBE utilization. Attach additional sheets if necessary.

BIDDER/CONTRACTOR INFORMATION		MWBE Goals In Contract
Bidder/Contractor Name:	NYS Vendor ID:	MBE %
Bidder/Contractor Address (Street, City, State and Zip Code):		WBE %
Bidder/Contractor Telephone Number:	Contract Work Location/Region:	
Contract Description/Title:		

CONTRACTOR INFORMATION			
Prepared by (Signature):	Name and Title of Preparer:	Telephone Number:	Date:
Email Address:			

IF UNABLE TO MEET THE MBE AND WBE GOALS SET FORTH IN THE SOLICITATION/CONTRACT BIDDER/CONTRACTOR MUST SUBMIT A REQUEST FOR WAIVER (FORM BDC 333)

MWBE Subcontractor/Supplier Name:	MWBE Certification: ☐ MBE ☐ WBE (If firm is dual certified please select one only)	
Please identify the person you contacted:	Federal Identification	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): $_____ or _____%		

MWBE Subcontractor/Supplier Name:	MWBE Certification: ☐ MBE ☐ WBE (If firm is dual certified, please select one only)	
Please identify the person you contacted:	Federal Identification	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): $_____ or _____%		

Submit Completed Plan To:

NYS Office for People With Developmental Disabilities
Division of Fiscal Policy and Management
44 Holland Ave, 5th Floor
Albany NY 12229
email: mwbe@opwdd.ny.gov

EXHIBIT 1
MWBE UTILIZATION PLAN

ADDITIONAL SHEET

Bidder/Contractor Name:	**Solicitation#** _____

MWBE Subcontractor/Supplier Name:	MWBE Certification: ☐ MBE ☐ WBE (**If firm is dual certified please select one only**)	
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): $_____ or _____%		
MWBE Subcontractor/Supplier Name:	MWBE Certification: ☐ MBE ☐ WBE (**If firm is dual certified please select one only**)	
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): $_____ or _____%		
MWBE Subcontractor/Supplier Name:	MWBE Certification: ☐ MBE ☐ WBE (**If firm is dual certified please select one only**)	
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): $_____ or _____%		
MWBE Subcontractor/Supplier Name:	MWBE Certification: ☐ MBE ☐ WBE (**If firm is dual certified please select one only**)	
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): $_____ or _____%		
MWBE Subcontractor/Supplier Name:	MWBE Certification: ☐ MBE ☐ WBE (**If firm is dual certified please select one only**)	
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be determined put estimated % of work under the contract or value TBD based on contractual spending): $_____ or _____%		

EXHIBIT 2
SDVOB UTILIZATION PLAN

SDVOB UTILIZATION PLAN

☐ **Initial Plan** ☐ **Revised plan** **Solicitation#** _____

INSTRUCTIONS: This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS **Certified** Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Bidder/Contractor commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. Making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.

BIDDER/CONTRACTOR INFORMATION		**SDVOB Goals In Contract**
Bidder/Contractor Name:	NYS Vendor ID:	%
Bidder/Contractor Address (Street, City, State and Zip Code):		
Bidder/Contractor Telephone Number:	Contract Work Location/Region:	
Contract Description/Title:		

CONTRACTOR INFORMATION			
Prepared by (Signature):	Name and Title of Preparer:	Telephone Number:	Date:
Email Address:			

If unable to meet the SDVOB goals set forth in the solicitation/contract, bidder/contractor must submit a request for waiver on the SDVOB Waiver Form.

SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): $_____ or _____%		

SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): $_____ or _____%		

FOR OPWDD USE ONLY				
OPWDD Authorized Signature:		☐ **Accepted**	☐ **Accepted as Noted**	☐ **Notice of Deficiency**
NAME (Please Print):	**SDVOB %/$** ____	____	**Date Received:**	**Date Processed:**
Comments:				

NYS CERTIFIED SDVOB SUBCONTRACTOR/SUPPLIER INFORMATION: The directory of New York State Certified SDVOBs can be viewed at: Division of Service-Disabled Veterans' Business Development (ny.gov)

Note: All listed Subcontractors/Suppliers will be contacted and verified by OPWDD.

EXHIBIT 2
SDVOB UTILIZATION PLAN

ADDITIONAL SHEET

Bidder/Contractor Name:	**Solicitation#** _____

SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): $_____ or _____%		
SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): $_____ or _____%		
SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): $_____ or _____%		
SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform)): $_____ or _____%		
SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When $ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): $_____ or _____%		

EXHIBIT 3

MWBE REQUEST FOR WAIVER

Application for Waiver of MWBE Participation Goals

This form must be submitted for review and approval by the NYS Office of People With Developmental Disabilities MWBE liaison and the Governor's staff. Waiver approval must be received prior to the completion of the contract and a prerequisite for full and final payment.

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.	
Offeror/Contractor Name:	**Federal Identification No.:**
Address:	**Solicitation/Contract No.:**
City, State, Zip Code:	**MWBE Goals: MBE % WBE %**
By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote MWBE participation pursuant to the MWBE requirements set forth under the contract.	
Contractor is requesting a: **1. ☐ MBE Waiver – A waiver of the MBE Goal for this procurement is requested. ☐ Total ☐ Partial** **2. ☐ WBE Waiver – A waiver of the WBE Goal for this procurement is requested. ☐ Total ☐ Partial** **3. ☐ Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified MWBE, but an application for certification has been filed with Empire State Development.) Date of such filing with Empire State Development:_____**	
PREPARED BY (Signature): **SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.**	**Date:**
Name and Title of Preparer (Printed or Typed):	**Telephone Number:** / **Email Address:**
Submit with the bid or proposal or if submitting after award submit to: **mwbe@opwdd.ny.gov or** **New York State Office for People With Developmental Disabilities** **Division of Fiscal and Policy Management** **MWBE Program Management Unit** **44 Holland Avenue, 5th Floor** **Albany, New York 12229**	********************* FOR MWBE USE ONLY ********************* **REVIEWED BY:** / **DATE:** **Waiver Granted: ☐ YES MBE: ☐ WBE: ☐** **☐ Total Waiver ☐ Partial Waiver** **☐ ESD Certification Waiver ☐ *Conditional** **☐ Notice of Deficiency Issued _____** ***Comments:**

EXHIBIT 3
MWBE REQUEST FOR WAIVER
Requirements and Document Submission Instructions

Article 15-A of the New York State Executive Law and 5 NYCRR 140-145 require State Agencies to increase participation by Minority and Women-Owned Business Enterprises (MWBEs) on State contracts. All solicitations are reviewed and have goals established for them for both MBE and WBE utilization. The goals are expressed as a percentage of the anticipated payments made under the contract. A state agency shall not grant any automatic waivers of goal requirements on a State contract. A State agency may grant a partial or total waiver of goal requirements upon submission and approval of a waiver application documenting a contractor's good faith efforts. Governor's Office Executive Chamber approval is also a requirement of a State Agency waiver approval. Failure to make good faith efforts may result in a State contract being awarded to another bidder, or, if the contract is already in progress, may result in financial penalties.

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.

2. The names of general circulation, trade association, and MWBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.

3. A list identifying the date(s) that all solicitations for certified MWBE participation were published in any of the above publications.

4. A list of all certified MWBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified MWBE participation levels.

5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified MWBEs.

6. Provide copies of responses made by certified MWBEs to your solicitations.

7. Provide a description of any contract documents, plans, or specifications made available to certified MWBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.

8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the MWBEs undertaken for purposes of complying with the certified MWBE participation goals.

9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.

10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.

11. Copy of notice of application receipt issued by Empire State Development (ESD).

Note: Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by OPWDD, to determine MWBE compliance.

EXHIBIT 4
SDVOB REQUEST FOR WAIVER

Application for Waiver of SDVOB Participation Goals

(must be submitted before requesting final payment on the Contract)

Section 1:	**Basic Information**
Contractor's Name:	Federal Identification Number:
Street Address:	E-Mail Address:
City, State, Zip Code:	Telephone: ( ) -

Contract Number:	SDVOB CONTRACT GOALS
	%

Section 2: Type of SDVOB Waiver Requested

☐ Total	☐ Partial	If partial waiver, please enter the revised SDVOB percentage:	%

Please explain the reason for the waiver request:

Section 3: Supporting Documentation

Provide the following documentation as evidence of your good faith efforts to meet the SDVOB goals set forth in the contract and in support of your waiver application:

- ❑ **Attachment A.** Copies of solicitations to SDVOBs and any responses thereto.
- ❑ **Attachment B.** Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- ❑ **Attachment C.** Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OPWDD with certified SDVOBs whom OPWDD determined were capable of fulfilling the SDVOB goals set forth in the contract.
- ❑ **Attachment D.** Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- ❑ **Attachment E.** Other information deemed relevant to the request.

Section 4: Signature and Contact Information

By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote SDVOB participation pursuant to the SDVOB requirements set forth under the solicitation or Contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.

Prepared By: (Signature)	Date:

Name and Title of Preparer (Print or Type)

EXHIBIT 5
CONTRACTOR QUARTERLY MWBE COMPLIANCE REPORT

Beginning FIVE (5) DAYS following the end of the first calendar quarter after a contract is awarded; quarterly compliance reports will be due for the preceding quarter's activity.

Instructions: *List all MWBEs used during the quarter, providing all requested information in appropriate columns. In the event that an MWBE is used more than one time during the quarter, list the MWBE only once for each expenditure category. Use the Expenditure Code below to indicate the category of expenditures for which the MWBE was used.*

Beginning FIVE (5) DAYS following the end of the first calendar quarter after a contract is awarded; quarterly compliance reports will be due for the preceding quarter's activity.

Instructions: *List all MWBEs used during the quarter, providing all requested information in appropriate columns. In the event that an MWBE is used more than one time during the quarter, list the MWBE only once for each expenditure category. Use the Expenditure Code below to indicate the category of expenditures for which the MWBE was used.*

Expenditure Code:	**C – Commodities**	**SC – Services**	**CC – Construction Consultants**	**CN – Construction**
Grants Expenditure Code:	**GM – Materials/Equipment**		**GC – Construction**	**GS – Services/Consultants**

Contract Number:	**Reporting Period:** ☐ **Q1: April 1 – June 30** ☐ **Q3: Oct. 1 – Dec. 31** ☐ **Q2: July 1 – Sept. 30** ☐ **Q4: Jan. 1 – March 30**	**MWBE Goal:** **%** **% MBE**
Contractor Name:		

A	**B**	**C**
Amount of Actual Expenditures in Reporting Period	**MBE Subcontracting Expenditures in Reporting Period**	**WBE Subcontracting Expenditures in Reporting Period**
$ (if none enter 0)	**$** (if none enter 0)	**$** (if none enter 0)

MWBE FEIN/SFS VENDOR ID	MWBE Vendor Name	Certification	Work Status This Report	Expenditure Code	Product Code	Amount
FEIN: SFS ID:		☐ MBE ☐ WBE ☐ Dual	☐ Active ☐ Inactive ☐ Complete			$
FEIN: SFS ID:		☐ MBE ☐ WBE ☐ Dual	☐ Active ☐ Inactive ☐ Complete			$
FEIN: SFS ID:		☐ MBE ☐ WBE ☐ Dual	☐ Active ☐ Inactive ☐ Complete			$
FEIN: SFS ID:		☐ MBE ☐ WBE ☐ Dual	☐ Active ☐ Inactive ☐ Complete			$
						Total: $

Name and Title of Preparer (Print or Type):	**Telephone No:**	**Email Address:**
Signature:	**Date:**	**FOR AGENCY USE ONLY**
		Reviewed By: / **Date:**
Quarterly Reports should be submitted to: mwbe@opwdd.ny.gov		

Column A:	**Total Amount of Actual Expenditures in Report Period:** Enter the amount ($) expended in total for the Reporting Period.
Column B:	**MBE Subcontracting Expenditures:** Enter the total amount ($) of expenditures with certified Minority owned businesses made during the report period under the contract.
Column C:	**WBE Subcontracting Expenditures:** Enter the total amount ($) of expenditures with certified Women owned businesses made during the report period under the contract.

Expenditure: An actual payment that is made by an agency, either through the Office of the State Comptroller or by the agency's finance office directly, including subcontractor/supplier payments made by a prime contractor and verified by the agency.

Grants: For the purposes of this report, grants are monies dispensed by a contracting governmental agency to a person or institution to accomplish a public purpose authorized by law. According to Article 15-A, grants are considered State contracts. For compliance reporting, the recipient of the grant is considered to be the "contractor". These contracts are subject to MWBE goals and reported in the same fashion as any other contractor.

EXHIBIT 5
CONTRACTOR QUARTERLY MWBE COMPLIANCE REPORT

Not-for-Profit: According to Article 15-A, Not-for-Profit entities are considered to be "contractors". These contracts are subject to MWBE goals and reported in the same fashion as any other contractor.

Use the following codes in the Product Code column to indicate the category of work for which the MWBE was utilized.

PRODUCT CODE KEY:

A	Agriculture/Landscaping (all forms of landscaping services)
B	Mining (e.g., Geological investigations)
C	Construction
C15	Building Construction – General Contractors
C16	Heavy Construction (e.g., highway, pipe laying)
C17	Special Trade Contractors (plumbing, heating, electrical, carpentry)
D	Manufacturing (production of goods
E	Transportation, Communication, Sanitary Services (e.g., delivery services, warehousing, broadcasting, and cable systems)
F/G	Wholesale/Retail Goods (e.g., gravel, hospital supplies, food stores, computer stores, office supplies)
G52	Construction Materials (e.g., lumber, paint, lawn supplies
H	Financial, Insurance and Real Estate Services
I	Services
I73	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services or equipment, computer programming, security services
I80	Health Services
I81	Legal Services
I82	Educational Services (e.g., AIDS education, automobile safety, tutoring, public speaking
I83	Social Services (e.g., counselors, vocational training, childcare)
I87	Engineering, architectural, accounting, research, management and related services

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EXHIBIT 6
CONTRACTOR MONTHLY SDVOB COMPLIANCE REPORT

CONTRACTOR'S MONTHLY SDVOB COMPLIANCE REPORT (DUE ON THE 10TH DAY OF EACH MONTH FOR THE PRECEDING MONTHS ACTIVITY AS EVIDENCE TOWARDS ACHIEVEMENT OF THE SDVOB GOALS ON THE CONTRACT)

Contract No.: Contract Number

Contractor/Vendor Name, Address and Phone No.:	Contractor/Vendor Federal ID No.:	**SDVOB Goals**	**Reporting Period**	
	Description of Project:	%	Month	Year

Firm Name, Address and Phone Number (List All Firms)	Description of Work or Supplies Provided	Designation		Payment This Month	Contract Amount
Federal ID No.:		☐ SDVOB ☐ Sub ☐ Broker ☐ Joint Venture ☐ Written Contract	☐ Supplier ☐ Team ☐ Other ☐ No Written Contract	☐ No Payment This Month	
Federal ID No.:		☐ SDVOB ☐ Sub ☐ Broker ☐ Joint Venture ☐ Written Contract	☐ Supplier ☐ Team ☐ Other ☐ No Written Contract	☐ No Payment This Month	
Federal ID No.:		☐ SDVOB ☐ Sub ☐ Broker ☐ Joint Venture ☐ Written Contract	☐ Supplier ☐ Team ☐ Other ☐ No Written Contract	☐ No Payment This Month	
Federal ID No.:		☐ SDVOB ☐ Sub ☐ Broker ☐ Joint Venture ☐ Written Contract	☐ Supplier ☐ Team ☐ Other ☐ No Written Contract	☐ No Payment This Month	

Signature _____ Print Name and Title _____ Date _____

Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.

For OPWDD Use Only	
Reviewed By:	Date:

EXHIBIT 7
EQUAL EMPLOYMENT OPPORTUNITY
WORKFORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT

Contract No.: Contract Number	**Reporting Entity:** □ Contractor □ Subcontractor	**Reporting Period:** □ January 1, 20___ - March 31, 20___ □ April 1, 20___ - June 30, 20___ □ July 1, 20___ - September 30, 20___ □ October 1, 20___ - December 31, 20___
Contractor/Subcontractor Name:		**Report includes:** □ Work force to be utilized on this contract □ Contractor/Subcontractor's total work force
Contractor/Subcontractor Address:		

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

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

PREPARED BY (Signature): _____	**TELEPHONE NO.:** **EMAIL ADDRESS:**	**DATE:**

EXHIBIT 7

EQUAL EMPLOYMENT OPPORTUNITY
WORK FORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT

Instructions for Submitting the Workforce Utilization Report

The Workforce Utilization Report ("Report") is to be submitted on a monthly basis for construction contracts[1], and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total workforce, information on the contractor's and/or subcontractor's total workforce may be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to OPWDD within ten (10) days following the end of each month or quarter, whichever is applicable.

Instructions for Completing the Workforce Utilization Report

1. REPORTING ENTITY: Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. FEDERAL EMPLOYER IDENTIFICATION NUMBER: Enter the Federal Employer Identification Number (FEIN) assigned by the IRS. Contractors utilizing their social security number in lieu of an FEIN should leave this field blank.
3. CONTRACTOR NAME and CONTRACTOR ADDRESS: Enter the primary business address for the entity completing the Report.
4. CONTRACT NUMBER: Enter the number of the contract to which the Report applies.
5. REPORTING PERIOD: Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report. Only select one box.
6. WORKFORCE IDENTIFIED IN REPORT: Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor's or subcontractor's total workforce.
7. OCCUPATION CLASSIFICATIONS and SOC JOB TITLE: Select the occupation classification and job title that best describes each group of employees performing work on the state contract under columns A and B.
8. EEO JOB TITLE and SOC CODE: These fields will populate automatically based upon the Occupation Classifications and SOC Job Titles selected. Do not modify the results generated in these fields.
9. NUMBER OF EMPLOYEES and NUMBER OF HOURS: Enter the number of employees and total number of hours worked by such employees for each job title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
10. TOTAL GROSS WAGES: **[TO BE REPORTED QUARTERLY]** Enter the total gross wages paid to all employees for each job code, and each gender and racial/ethnic group, identified in the Report. Contractors and subcontractors should report only gross wages for work on the contract paid to employees during the period covered by the Report. "Gross wages" are those reported by employers to employees on their wage statements. Gross wages are defined more specifically by 20 NYCRR § 2380.4 and typically include every form of compensation for employment paid by an employer to his, her or its employees, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, tips, and the reasonable value of board, rent, housing, lodging, or similar advantage received.
11. PREPARER'S INFORMATION: Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

Race / Ethnic Identification

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group with which he or she most closely identifies. No person may be counted in more than one race / ethnic group. In determining an employee's race or ethnicity, a contractor may rely upon an employee's self-identification, employment records, or, in cases where an employee refuses to identify his or her race or identity, observer identification. The race/ethnic categories for this Report 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 / AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN, NATIVE HAWAIIAN, OR OTHER 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 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.

[1] The Gross Wages column is required to be completed only on a quarterly basis commencing 1/1/2018.