



Department of Health

Request for Proposals

Office of Community Transitions New York State Department of Health

RFP # 16476

Pre-Admission Screen Resident Review (PASRR) Level II Evaluation

Issued: September 8, 2016

DESIGNATED CONTACT:

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contact to whom all communications attempting to influence the Department of Health's conduct or decision regarding this procurement must be made.

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PERMISSIBLE SUBJECT MATTER CONTACT:

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

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1.0 CALENDAR OF EVENTS

Pre-Admission Screen Resident Review (PASRR) Level II Evaluation RFP # 16476	
<u>EVENT</u>	<u>DATE</u>
Issuance of Request for Proposals	September 8, 2016
Deadline for Submission of Written Questions	September 27, 2016 4:00 p.m. ET
Responses to Written Questions Posted by DOH	On or About October 14, 2016
Deadline for Submission of Proposals	Proposals Due On Or Before November 4, 2016 4:00 p.m. ET
<i>Anticipated</i> Contract Start Date	March 1, 2017

Acronyms Used In This RFP

CFR	Code of Federal Regulations
CMS	Centers for Medicare and Medicaid Services
ID	Intellectual Disabilities
MI	Mental Illness
NF	Nursing Facility
NYS DOH	New York State Department of Health
OBRA	Omnibus Budget Reconciliation Act
OMH	Office of Mental Health
OPWDD	Office of Persons with Developmental Disabilities
PAS	Pre-admission Screening
PASRR	Pre-Admission Screening and Resident Review
PRI	Patient Review Instrument
RFP	Request for Proposal
RR	Resident Review
SLI	Services of a Lesser Intensity
SSA	Social Security Act
TBI	Traumatic Brain Injury

2.0 OVERVIEW

Through this Request for Proposal (“RFP”), the New York State (“State”) Department of Health (“DOH”) is seeking competitive proposals from qualified contractors to provide services and conduct Level II Pre-Admission Screening and Resident Review (PASRR) Evaluations as further detailed in [Section 3.0](#) (Scope of Work). It is the Department’s intent to award one (1) contract from this procurement.

2.1 **Introductory Background**

Congress enacted sweeping reform to nursing home provisions in the Omnibus Budget Reconciliation Act (“OBRA”) of 1987. Included in the legislation was a Medicaid provision that prohibits nursing facilities (“NF”) from admitting any person with mental illness (“MI”), intellectual disabilities (ID), or a related condition, unless the person has been evaluated by the State PASRR program and determined to need and desire placement in a nursing facility.

The PASRR program includes an evaluation of NF applicants and residents with MI/ID. Based on the data and evaluation, State Mental Health and Intellectual Disabilities authorities determine whether the person needs NF services or specialized services for their MI/ID beyond those that can be commonly provided by the NF. State Medicaid agencies are required to provide or arrange for needed specialized services. In NYS, specialized services may only be provided by an Institution for Mental Diseases (IMD) or a psychiatric hospital. Nursing facilities are prohibited from providing specialized services and may neither admit nor retain those individuals for whom a specialized services recommendation has been made.

The PASRR program was implemented in New York State in 1989. A year following State implementation, the OBRA of 1990 modified the PASRR obligation and added a requirement for states to annually report to the Centers for Medicare and Medicaid Services (CMS), the number and disposition (placement) of NF residents who, based on the PASRR evaluation, had to be discharged. The legislation also added a requirement for NFs to notify the State Mental Health and Intellectual Disabilities authorities promptly after a significant change in the physical or mental status of a resident with MI/ID. The appropriate State Authority was directed to conduct the resident’s review (RR) promptly after receiving such notification.

In 1995, a statutory change was enacted that resulted in the deletion of the annual resident review. To date, this statutory amendment has not been transferred into regulation under 42 CFR 483.114 (c).

Each state’s PASRR program must provide that all NF applicants or residents with MI/ID, regardless of the source of payment, be evaluated to determine the level of services to be provided; the most appropriate, least restricted setting in which those services can be provided; and if specialized services for MI/ID is required.

The New York State (NYS) Office of People with Developmental Disabilities (OPWDD) has the responsibility to ensure that PASRR reviews are conducted for NF applicants and residents with ID or a related diagnosis. The local Developmental Disabilities Services Offices (DDSO) maintains responsibility for conducting PASRR Level II Evaluations for those individuals with possible ID.

The NYS Office of Mental Health (OMH) is responsible for ensuring PASRR Level II Evaluations are conducted for:

- persons known or suspected of having mental illness (MI) and who are seeking admission to a nursing facility (NF) certified under the Medicaid program;
- residents of a NF who are newly diagnosed with a mental illness; and,
- residents of a NF who have been identified as having MI and have experienced a significant change in their physical or mental condition.

OMH delegated this function to DOH. This Request for Proposal (RFP) will result in a contract to comply with Federal Regulations 42 CFR Section 483.128 through 42 CFR Section 483.134.

For purposes of this RFP, a “significant change” in the resident’s physical or mental condition will affect the individual’s disability-specific needs. As described at *The PASRR Technical Assistance Center*, <http://www.pasrassist.org/resources/mds-30/what-considered-significant-change-condition>, a “significant change” is a decline or improvement in a resident’s status that:

- will not normally resolve itself without intervention by staff or by implementing standard disease-related clinical interventions, is not “self-limiting” (for declines only);
- impacts more than one area of the resident’s health status; and,
- requires interdisciplinary review and/or revision of the person-centered care plan.

The evaluator will examine the data that will allow for validation of a diagnosis of MI and will assist in determining whether a program of specialized psychiatric services is needed. If specialized psychiatric services are not needed, the evaluator will identify the need for mental health services of a lesser intensity (SLI), and provide a recommendation for placement in the least restricted, most integrated setting consistent with the resident’s desires and resident specific physical and behavioral health needs.

Federal PASRR legislative authority includes but is not limited to:

- Social Security Act § 1919, 42 U.S.C. § 1396r, as added by Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203 § 4211) as amended by OBRA '90 (Pub. L. 101-508, § 4801).
- Public Law 104-315 which amended § 1919(e)(7) of the Social Security Act.
- Federal Regulations 42 CFR Part 483, Subparts C and E.
- Medicaid State Operations Letter 96-30: Amendment of the PASRR Program

NYS PASRR legislative authority includes Social Service Law § 363a.

2.2 New York State PASRR Program

2.2.1 Level I Review

Federal regulations require the State PASRR program to identify all NF applicants and residents with a possible MI or ID diagnosis (i.e. all individuals who are required to be evaluated under PASRR). This function is completed through the Level I review process. Qualified personnel in hospitals, nursing facilities, certified home health agencies, long term home health care programs, and other community-based agencies perform the Level I review using the Department’s SCREEN instrument (Form DOH-695 (2/2009)), found at <http://www.health.ny.gov/forms/>, under “SCREEN/PASRR.”

The entity responsible for completing the Level I review will notify the Contractor of those NF applicants or residents with a MI for whom the Contractor must perform Level II Evaluations.

2.2.2 Level II Review

For those individuals requiring a Level II Evaluation, the Contractor determines the level and type of services needed following the evaluation. If the Contractor determines the applicant or resident requires specialized services for MI, NF placement will be deemed inappropriate. Recommendations for Specialized Services will only be made after the OMH Clinical Director determines the appropriateness of the recommendation. Therefore, the Contractor will be responsible to forward all applicable material reviewed during its evaluation to the OMH Clinical Director for review.

Determinations for both NF applicants and residents must be based on independent physical and mental evaluations performed by a person or entity other than OMH. The person or entity may not be a NF staff or have a direct or individual relationship with a NF. The determination must consider the need for NF services and specialized services beyond what a NF can provide. This responsibility has been delegated to DOH and its Contractor and therefore supports the necessity for this RFP.

Level II Evaluations are described in detail in Federal Regulations 42 CFR Section 483.128 through 42 CFR Section 483.134.

2.3 Important Information

The bidder is required to review, and is requested to have legal counsel review, Attachment E, the DOH Agreement as the Bidder must be willing to enter into an Agreement substantially in accordance with the terms of Attachment E should the bidder be selected for contract award. Please note that this RFP and the awarded bidder's proposal will become part of the contract as Appendix B and C, respectively.

It should be noted that Appendix A of Attachment E, "Standard Clauses for New York State Contracts", contains important information related to the contract to be entered into as a result of this RFP and will be incorporated, without change or amendment, into the contract entered into between DOH and the successful Bidder. By submitting a response to the RFP, the Bidder agrees to comply with all the provisions of Appendix A.

Note, Attachment A, the Bidder's Certifications/Acknowledgements, should be submitted and includes a statement that the bidder accepts, without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this RFP including any exhibits and attachments. It also includes a statement that the bidder acknowledges that, should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the DOH.

Any qualifications or exceptions proposed by a bidder to this RFP should be submitted in writing using the process set forth in [Section 5.2](#) (Questions) prior to the deadline for submission of written questions indicated in [Section 1.0](#) (Calendar of Events). Any amendments DOH makes to the RFP as a result of questions and answers will be publicized on the DOH web site.

2.4 Term of the Agreement

This contract term is expected to be for a period of five (5) years, commencing on the date shown on the Calendar of Events in [Section 1.0](#), subject to the availability of sufficient funding, successful contractor performance, and approvals from the New York State Attorney General (AG) and the Office of the State Comptroller (OSC).

3.0 SCOPE OF WORK

This Section describes the services that are required to be provided by the selected bidder. The selected bidder must be able to provide all of these services throughout the contract term.

PLEASE NOTE: Bidders will be required to provide responses that address all of the requirements of this RFP as part of its Technical Proposal.

For purposes of this RFP, the use of the terms “shall”, “must” and “will” are used interchangeably when describing the Contractor’s/Bidder’s duties. The terms bidders, vendors and proposers are also used interchangeably.

3.1 Performance Standards/Expectations

- The Contractor will be responsible for ensuring that all requirements of §§483.100-138 are met;
- Performing Level II Evaluations (Attachment L, Preadmission Screen Resident Review (PASRR) NYS Level II Adult Mental Health Evaluation Report, which is a DOH form), consistent with Federal and NYS PASRR requirements; and,
- Assuring that placement options comply with §§483.130(m) and 483.118 within the applicable timeframes described in Section 3.2.

These PASRR Level II Evaluations will be conducted for:

- persons known or suspected of having mental illness (MI) and who are seeking admission to a nursing facility (NF) certified under the Medicaid program;
- residents of a NF who are newly diagnosed with a mental illness; and,
- residents of a NF who have been identified as having MI and have experienced a significant change (improvement or decline) in their physical or mental condition.

3.2 Tasks

The contractor must perform the following consistent with the performance standards/expectations listed above:

- Evaluate all NF applicants or residents with a MI, or suspected to have a MI, who are referred to the Contractor, regardless of whether the applicant or resident is eligible for Medicaid as the source of payment for the NF services. The average number of reviews for 2015 was 162 per month.
- If an individual has both an MI and ID diagnosis, the initial referral should be based on the criteria identified in the Instruction Manual for SCREEN Form: DOH-695 (2/2009), and Revised Page 4 of Instruction Manual for SCREEN Form: DOH-695 (2/2009), which may be found on the DOH website at <http://www.health.ny.gov/forms/#S>, under “SCREEN/PASRR.”
- Evaluate the applicant or resident via an in-person meeting. The evaluation must be face-to-face in the hospital, NF, or other setting in which the NF applicant or resident is receiving care, or in the NF applicant’s home, if he or she is residing in the community. If the resident is a beneficiary of NYS Medicaid and residing in a facility outside NYS, the Contractor must make reasonable effort to complete such evaluation in-person. If the Contractor cannot conduct the in-person evaluation, the NYS DOH must be contacted. The DOH will retain express authority and will make the decision and provide the approval for any alternate means of conducting the Level II evaluation.
- Ensure that, for NF applicants for whom the Contractor is recommending specialized services, the Contractor completes Level II Evaluations and forward required documents to the OMH clinical director within five (5) business days after the day on which the entity that performed the Level I Screen referred the applicant to the Contractor for a Level II Evaluation; [Note: Level II Determinations must be made within an annual average of 7-9 working days after the notification of a referral from Level I [483.106(c)]].
- Ensure that, for NF residents, the Contractor completes Level II Evaluations within five (5) business days of receiving notice from a NF that there has been a significant change in a

resident's mental or physical condition. The NF will perform a Level I review for residents who have exhibited such changes, and/or those residents who are newly diagnosed, and will notify the Contractor when a Level II Evaluation is indicated.

- Ensure that the person who performs the Level II Evaluation assesses whether the individual's total needs can be met in an appropriate community setting with the appropriate supports as documented on the NYS Level II Adult Mental Health Evaluation Report.
- Ensure that the person who performs the Level II Evaluation assesses whether a NF applicant or a resident with MI requires specialized services based on the definition of specialized services (Attachment L).
- Ensure that the person who performs the Level II Evaluation assesses whether a NF applicant or a resident with MI requires services of lesser intensity (SLI) rather than specialized services.
- Have a Quality Assurance/Process Improvement system in place to assure the appropriateness of evaluator recommendations and to take the appropriate corrective action, including but not limited to, individualized and periodic evaluator education and competency review (administrative and on-site reviews) necessary to support the goals of the PASRR process.
- Ensure that PASRR Reports are forwarded in accordance with federal regulations to the;
 - Evaluated individual and his/her legal representative (and interpreted [483.128(k)]);
 - State Mental Health Authority, as appropriate, within in required times; [483.112(c)]
 - Admitting or retaining NF; (or other placement);
 - Persons' attending physician;
 - The discharging hospital, if applicable; and
 - Filed in the resident's current medical records. [130(j)]
- The contractor shall provide technical and business process support as necessary and required by the Department to transition and assume contract requirements to the Department or another Department agent of the PASRR Level II Evaluation program should that be required during or at the end of the contract.
- The contractor is required to develop a plan to securely and smoothly transfer any records and databases referenced in this section to the Department or another Department agent should that be required during or upon expiration of its contract The plan shall include all documentation related to the applied solutions such as the database detailing the software used, the structure and format of all data in the databases, the field definitions and the identifiers, etc., if applicable. The plan and documentation must be submitted to the Department no later than four (4) months before the last day of its contract with the Department of Health or upon request of the Department.
- The contractor's organization, employees, subcontractors and volunteers will implement and maintain policies, an internal control process for oversight and monitoring and procedures to assure the confidentiality of personal identifiable data and protected health information.

3.3 Hearing and Appeal System

Each State must provide a hearing and appeal system for any individual who has a PASRR determination made in the context of either a pre-admission screening or resident review under subpart C of Part 483 to appeal that determination. The Contractor must ensure that a notice of determination must include notice of the individual's right to appeal the determination. In addition, the Contractor is responsible to furnish copies of all relevant material necessary for the hearing to both the Court and to the appellant at no additional cost to the appellant. The Contractor must make staff available to participate, either

telephonically or in person for each scheduled hearing. (There have been approximately 20-30 requests per year over the past 2 years.)

3.4 Quarterly Quality Assurance Review

The Contractor is required to conduct a quarterly quality assurance review to assure that the recommendations made by the PASRR Contractor are appropriate and conform to Federal and State requirements. The random sample must represent at least 10% of NF residents who have had a Level II evaluation performed, who have been determined to need mental health SLI rather than specialized services, and must include a random sample of the Contractor's evaluations

3.5 Staffing Requirements

The contractor will be responsible for recruiting and training an adequate number of appropriately trained and qualified individuals to perform the work in Section 3.0 Scope of Work. The contractor will submit resumes of staff hired under the terms of this contract for DOH review prior to the start of work. The Department reserves the right to approve or disapprove the contractor's proposed staffing.

3.5.1 Qualified Persons Allowed to Conduct Evaluations: The Contractor must ensure that only the following licensed persons perform Level II evaluations:

- A NYS licensed psychiatrist who is board-certified or board-eligible;
- A NYS licensed social worker who has a Master's Degree in social work and recent experience (within the past 3 years) in performing comprehensive psychiatric evaluations;
- A NYS licensed registered nurse who has recent experience (within the past 3 years) in performing comprehensive psychosocial or psychiatric evaluations; or
- A NYS licensed psychologist who has experience (within the past 3 years) in performing comprehensive psychiatric evaluations.

3.6 Reporting Requirements

Reporting: The Contractor is required to prepare and submit the following reports to DOH and OMH, within 30 days after the end of the reporting period:

3.6.1 Monthly Reports

3.6.1.1 Monthly Voucher: The voucher summarizes the number of reviews (average of 162 reviews conducted per month for 2015) and fair hearings (approximately 20-30 per year requested in past two years) the Contractor performed during the month, and provides the approved cost per review and fair hearing; and,

3.6.1.2 Monthly Activity Report: The Contractor will create reports on each month's activity. The reports will include, at a minimum:

- County and Out-of-State Activity
- The Level II Screening Entity Activity (if using subcontractors)- Detail and Summary to include:
 - Evaluator name;
 - Date of evaluation;
 - Location of evaluation

- Type of evaluation (PAS, RR, Initial Evaluation RR, or Significant Change)
- Evaluator recommendation (Level II not required, Community Setting, Specialized Services, Waiver Program, RHC Services of Lesser Intensity, Case Closure, or Special Services as recommended by the Clinical Director)
- Payer Activity – Detail and Summary
- Reviews conducted for:
 - Pre-Admission Screening (PAS)
 - Resident Review for Significant Change (RR)
 - All Conducted Recipients – PASRR Level II
- Fair hearing activities:
 - Number of fair hearing requests received, and,
 - The outcome of adjudicated hearings

3.6.2 Quarterly Reports

3.6.2.1 *Quality Assurance Report:* The Contractor will be responsible for providing a 10% quarterly quality assurance random sample of completed Level II Evaluations to the OMH Clinical Director for his/her review and concurrence;

3.6.2.2 *Community Placement Activity Report:* The Contractor will be responsible for providing a review of all residents recommended for community placement to determine if the resident was discharged and the discharge location,

3.6.2.3 *SLI Determinations Report:* The Contractor will be responsible for submitting a report identifying SLI determinations that have an additional recommendation for discharge to a NF with a specialty unit, such as neurobehavioral or enhanced psychosocial behavioral services in a nursing facility.

3.6.3 Annual Reports

3.6.3.1 *Annual Expenditure Summary:* The Contractor will be responsible for summarizing the yearly expenditures incurred for performing comprehensive psychiatric evaluations, including administrative costs; and,

3.6.3.2 *Fair Hearing Activities:* The Contractor will be responsible for preparing a report detailing the number of fair hearing requests received for that contract period, their participation at the hearings and the outcome of such hearings.

Additional information may be accessed through the *PASRR Technical Assistance Center's* website at www.PASRRassist.org.

3.7 Security Requirements

3.7.1 The contractor is required to maintain data confidentiality plans and procedures as well as a plan for meeting HIPAA requirements as they relate to the units within each component, including all plans as they relate to subcontractor work where applicable.

3.7.2 Within the first 60 days of the contract start date, the contractor must provide to the Department for approval a security plan that describes their security and compliance with all applicable New York State ITS security policies and standards (<http://its.ny.gov/eiso/policies/security>), including, but not limited to:

- NYS-P10-006 – Identity Assurance Policy
- NYS-S13-001 – Secure System Development Life Cycle Standard

- NYS-S13-002 – Secure Coding Standard (if applicable)
- NYS-S13-004 – Identity Assurance Standard
- NYS-S14-003 – Information Security Controls Standard
- NYS-S14-005 – Security Logging Standard
- NYS-S14-007 – Encryption Standard
- NYS-S14-013 – Account Management / Access Control Standard
- NYS-S15-001 – Patch Management Standard (if applicable)
- NYS-S15-002 – Vulnerability Scanning Standard

3.7.3 The winning bidder must submit completed Attachment M, Medicaid Agency Data Use Agreement upon contract award notification.

4.0 BIDDERS QUALIFICATIONS

4.1 Minimum Qualifications

NYSDOH will accept proposals from organizations with the following types and levels of experience as a prime contractor.

- A minimum of three (3) years' experience with the behavioral health population and an understanding of the Federal Regulations governing the PASRR process, the Supreme Court's decision in *Olmstead v. L.C.*, and the Americans with Disabilities Act (ADA).

For the purposes of this RFP, a prime contractor is defined as one who has the contract with the owner of a project or job and has full responsibility for its completion. A prime contractor undertakes to perform a complete contract and may employ (and manage) one or more subcontractors to carry out specific parts of the contract.

Failure to meet these Minimum Qualifications will result in a proposal being found non-responsive and eliminated from consideration.

5.0 ADMINISTRATIVE INFORMATION

The following administrative information will apply to this RFP. Failure to comply fully with this information may result in disqualification of your proposal.

5.1 Restricted Period

"Restricted period" means the period of time commencing with the earliest written notice, advertisement, or solicitation of a Request for Proposals ("RFP"), Invitation for Bids ("IFB"), or solicitation of proposals, or any other method for soliciting a response from Bidders intending to result in a procurement contract with DOH and ending with the final contract award and approval by DOH and, where applicable, final contract approval by the Office of the State Comptroller.

This prohibition applies to any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence this procurement. Violation of any of the requirements described in this Section may be grounds for a determination that the bidder is non-responsive and therefore ineligible for this contract award. Two violations within four years

of the rules against impermissible contacts during the “restricted period” may result in the violator being debarred from participating in DOH procurements for a period of four years.

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies a designated contact on face page of this RFP to whom all communications attempting to influence this procurement must be made.

5.2 Questions

There will be an opportunity available for submission of written questions and requests for clarification with regard to this RFP. All questions and requests for clarification of this RFP should cite the particular RFP Section and paragraph number where applicable and must be submitted via email to PASRRRFP2016@health.ny.gov. It is the bidder’s responsibility to ensure that email containing written questions and/or requests for clarification is received at the above address no later than the Deadline for Submission of Written Questions as specified in [Section 1.0](#) (Calendar of Events). Questions received after the deadline may **not** be answered.

Questions and answers, as well as any RFP updates and/or modifications, will be posted on NYSDOH’s website at <http://www.health.ny.gov/funding/>, on or around the date listed in Section 1.0 (Calendar of Events).

5.3 Right to Modify RFP

DOH reserves the right to modify any part of this RFP, including but not limited to, the date and time by which proposals must be submitted and received by DOH, at any time prior to the Deadline for Submission of Proposals listed in [Section 1.0](#) (Calendar of Events). Modifications to this RFP shall be made by issuance of amendments and/or addenda.

Prior to the Deadline for Submission of Proposals, any such clarifications or modifications as deemed necessary by DOH will be posted to the DOH website.

If the bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Bidder shall immediately notify DOH of such error in writing at PASRRRFP2016@health.ny.gov and request clarification or modification of the document.

If, prior to the Deadline for Submission of Proposals, a bidder fails to notify DOH of a known error or an error that reasonably should have been known, the bidder shall assume the risk of proposing. If awarded the contract, the bidder shall not be entitled to additional compensation by reason of the error or its correction.

5.4 Payment

The contractor shall submit invoices and/or vouchers to the State's designated payment office:

Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: AccountsPayable@ogs.ny.gov with a subject field as follows:

Subject: <<Unit ID: 345XXXX>> <<Contract #>>

Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health
Unit ID 345<<xxxx>>
c/o NYS OGS BSC Accounts Payable
Building 5, 5th Floor, 1220 Washington Ave.
Albany, NY 12226-1900**

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epayments@osc.state.ny.us or by telephone at 518-474-6019. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9 must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/epay>.

Completed W-9 forms should be submitted to the following address:

**NYS Office of the State Comptroller
Bureau of Accounting Operations
Warrant & Payment Control Unit
110 State Street, 9th Floor
Albany, NY 12236**

Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be:

Payment will be made monthly, upon receipt of voucher and supporting documentation of completion of Level II evaluations and any applicable reports (see Section 3.6 Reporting Requirements), as required by the State.

5.5 Minority & Woman-Owned Business Enterprise Requirements

Pursuant to New York State Executive Law Article 15-A, the New York State Department of Health ("DOH") recognizes its obligation to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of DOH contracts.

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

enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

5.5.1 Business Participation Opportunities for MWBEs

For purposes of this solicitation, DOH hereby establishes an overall goal of **0%** for MWBE participation, **0%** for Minority-Owned Business Enterprises (“MBE”) participation and **0%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs and outreach efforts to certified MWBE firms). A contractor (“Contractor”) on the subject contract (“Contract”) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that DOH may withhold payment pending receipt of the required MWBE documentation. For guidance on how DOH will determine “good faith efforts,” refer to 5 NYCRR §142.8.

5.6 Equal Employment Opportunity (EEO) Reporting

By submission of a bid in response to this solicitation, the Bidder agrees with all of the terms and conditions of Attachment E Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. Additionally, the successful bidder will be required to certify they have an acceptable EEO (Equal Employment Opportunity) policy statement in accordance with Section III of Appendix M in Attachment E.

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

The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the “Work”), except where the Work is for the beneficial use of the Contractor, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

To ensure compliance with this Section, the Bidder should submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Attachment F, Form #4) identifying the anticipated work force to be utilized on the Contract. Additionally, the Bidder should submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement (Attachment F, Form # 5), to DOH with their bid or proposal.

5.7 Sales and Compensating Use Tax Certification (Tax Law, § 5-a)

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Tax and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors’ sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors

whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF 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 an offerer meeting the registration requirements but who is not so registered in accordance with the law.

The successful Bidder must file a properly completed Form ST-220-CA with the Department of Health and Form ST-220-TD with the DTF. These requirements must be met before a contract may take effect. Further information can be found at the New York State Department of Taxation and Finance's website, available through this link: <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>. Forms are available through these links:

- ST-220 CA: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf
- ST-220 TD: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

5.8 Workers' Compensation and Disability Benefits Certifications

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that DOH shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with DOH, successful Bidders will be required to verify for DOH, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed below. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518) 486-6307. Failure to provide verification of either of these types of insurance coverage by the time contracts are ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

The successful Bidder must submit the following documentation to the department before a contract may take effect.

ONE of the following forms as Workers' Compensation documentation:

A. Proof of Workers' Compensation Coverage:

1. **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carrier (or Form U-26.3 issued by the State Insurance Fund); or
2. **Form SI-12** – Certificate of Workers' Compensation Self-Insurance (or Form GSI-105.2 Certificate of Participation in Workers' Compensation Group Self-Insurance); or
3. **Form CE-200** – Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

ONE of the following forms as Disability documentation:

B. Proof of Disability Benefits Coverage:

1. **Form DB-120.1** – Certificate of Disability Benefits Insurance; or
2. **Form DB-155** – Certificate of Disability Benefits Self-Insurance; or
3. **Form CE-200** – Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

Further information is available at the Workers' Compensation Board's website, which can be accessed through this link: <http://www.wcb.ny.gov>.

5.9 Subcontracting

Bidders may propose the use of a subcontractor. The Contractor shall obtain prior written approval from NYSDOH before entering into an agreement for services to be provided by a subcontractor. The Contractor is solely responsible for assuring that the requirements of the RFP are met. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of the prime contract, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the agreement between the DOH and the Contractor. DOH reserves the right to request removal of any bidder's staff or subcontractor's staff if, in DOH's discretion, such staff is not performing in accordance with the Agreement. Subcontractors whose contracts are valued at or above \$100,000 will be required to submit the Vendor Responsibility Questionnaire upon selection of the prime contractor.

5.10 DOH's Reserved Rights

The Department of Health reserves the right to:

1. Reject any or all proposals received in response to the RFP;
2. Withdraw the RFP at any time, at the agency's sole discretion;
3. Make an award under the RFP in whole or in part;
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
5. Seek clarifications and revisions of proposals;
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
7. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
13. Conduct contract negotiations with the next responsible bidder, should the Department be unsuccessful in negotiating with the selected bidder;
14. Utilize any and all ideas submitted in the proposals received;
15. Every offer shall be firm and not revocable for a period of three hundred and sixty-five days from the bid opening, to the extent not inconsistent with section 2-205 of the uniform commercial code. Subsequent to such three hundred and sixty-five days, any offer is subject to withdrawal communicated in a writing signed by the offerer; and
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

5.11 Freedom of Information Law ("FOIL")

All proposals may be disclosed or used by DOH to the extent permitted by law. DOH may disclose a proposal to any person for the purpose of assisting in evaluating the proposal or for any other lawful purpose. All proposals will become State agency records, which will be available to the public in accordance with the Freedom of Information Law. **Any portion of the proposal that a Bidder believes constitutes proprietary information entitled to confidential handling, as an exception to the Freedom of Information Law, must be clearly and specifically designated in the proposal as directed in [Section 6.1.4](#) of the RFP.** If DOH agrees with the proprietary claim, the designated portion of the proposal will be withheld from public disclosure. Blanket assertions of proprietary material will not be accepted, and failure to specifically designate proprietary material may be deemed a waiver of any right to confidential handling of such material.

5.12 Lobbying

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, made significant changes as it pertains to development of procurement contracts with governmental entities. The changes included:

- a) made the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b) required the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c) required governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d) authorized the New York State Commission on Public Integrity, (now New York State Joint Commission on Public Ethics), to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e) directed the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f) required the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment; (Bidders responding to this RFP should submit a completed and signed [Attachment G](#), "Prior Non-Responsibility Determination".)
- g) increased the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and,
- h) established the Advisory Council on Procurement Lobbying.

Subsequently, Chapter 14 of the Laws of 2007 amended the Lobbying Act of the Legislative Law, particularly as it related to specific aspects of procurements as follows: (i) prohibiting lobbyists from entering into retainer agreements on the outcome of government grant making or other agreement involving public funding; and (ii) reporting lobbying efforts for grants, loans and other disbursements of public funds over \$15,000.

The most notable, however, was the increased penalties provided under Section 20 of Chapter 14 of the Laws of 2007, which replaced old penalty provisions and the addition of a suspension option for lobbyists engaged in repeated violations. Further amendments to the Lobbying Act were made in Chapter 4 of the Laws of 2010.

Questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Joint Commission on Public Ethics.

5.13 State Finance Law Consultant Disclosure Provisions

In accordance with New York State Finance Law Section 163(4)(g), State agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract.

The successful bidder for procurements involving consultant services must complete a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

The successful winning bidder must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" for each state fiscal year included in the resulting contract. This report must be submitted annually to the Department of Health, the Office of the State Comptroller, and Department of Civil Service. State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at:

State Consultant Services Form A

<http://www.osc.state.ny.us/agencies/forms/ac3271s.doc>

State Consultant Services Form B

<http://www.osc.state.ny.us/agencies/forms/ac3272s.doc>

5.14 Debriefing

Once an award has been made, bidders may request a debriefing of their proposal. Please note the debriefing will be limited only to the strengths and weaknesses of the bidder's proposal, and will not include any discussion of other proposals. Requests must be received no later than ten (10) business days from date of award or non-award announcement.

5.15 Protest Procedures

In the event unsuccessful bidders wish to protest the award resulting from this RFP, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found in Chapter XI Section 17 of the Guide to Financial Operations (GFO). Available on-line at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

5.16 Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies 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" list ("Prohibited Entities List") posted on the OGS website (currently found at this address: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>) and further certifies that it will not utilize on such

Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

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

5.17 Piggybacking

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.ny.gov/purchase/snt/sflxi.asp>) allows the Commissioner of the NYS Office of General Services to consent to the use of this contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the Contractor's consent.

5.18 Encouraging Use of New York Businesses in Contract Performance

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers 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. All bidders should complete Attachment H, Encouraging Use of New York Businesses in Contract Performance, to indicate their intent to use/not use New York Businesses in the performance of this contract.

5.19 Diversity Practices Questionnaire

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs. All bidders should complete Diversity Practices Questionnaire, Attachment K.

6.0 PROPOSAL CONTENT

The following includes the requested format and information to be provided by each Bidder. Bidders responding to this RFP should satisfy all requirements stated in this RFP. All Bidders are requested to submit complete Administrative, Technical, and Cost proposals. A proposal that is incomplete in any material respect will be rejected.

To expedite review of the proposals, Bidders are requested to submit proposals in separate Administrative, Technical, and Cost packages inclusive of all materials as summarized in Attachment B, Proposal Documents. This separation of information will facilitate the review of the material requested. No information beyond that specifically requested is required, and Bidders are requested to keep their

submissions to the shortest length consistent with making a complete presentation of qualifications. Evaluations of the Administrative, Technical, and Cost Proposals received in response to this RFP will be conducted separately. Bidders are therefore cautioned not to include any Cost Proposal information in the Administrative or Technical Proposal documents.

DOH will not be responsible for expenses incurred in preparing and submitting the Administrative, Technical, or Cost Proposals. Such costs should not be included in the Proposal.

6.1 Administrative Proposal

The Administrative Proposal should contain all requirements listed below. A proposal that is incomplete in any material respect may be eliminated from consideration. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP will be subject to verification for accuracy. Please provide the forms in the same order in which they are requested.

6.1.1 M/WBE Forms

Submit completed Form #4 and Form #5 as directed in [Attachment F](#), “Guide to New York State DOH M/WBE RFP Required Forms.”

6.1.2 Bidder’s Disclosure of Prior Non-Responsibility Determinations

Submit a completed and signed [Attachment G](#), “Prior Non-Responsibility Determination.”

6.1.3 Vendor Responsibility Questionnaire

Complete, certify, and file a **New York State Vendor Responsibility Questionnaire**. DOH recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions at www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the OSC Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website, www.osc.state.ny.us/vendrep, or may contact the Office of the State Comptroller’s Help Desk for a copy of the paper form.

Bidders should complete and submit the Vendor Responsibility Attestation [Attachment J](#).

6.1.4 Freedom of Information Law – Proposal Redactions

Bidders must clearly and specifically identify any portion of the proposal that a Bidder believes constitutes proprietary information entitled to confidential handling as an exception to the Freedom of Information Law. See [Section 5.11](#), (Freedom of Information Law).

6.1.5 Bidder’s Certified Statements

Submit [Attachment A](#), **Bidder’s Certified Statements**, which includes information regarding the Bidder. Attachment A must be signed by an individual authorized to bind the Bidder contractually.

Please indicate the title or position that the signer holds with the Bidder. DOH reserves the right to reject a proposal that contains an incomplete or unsigned Attachment A or no Attachment A.

6.1.6 Encouraging Use of New York Businesses in Contract Performance

Submit Attachment H, Encouraging Use of New York State Businesses in Contract Performance to indicate which New York Businesses you will use in the performance of the contract.

6.1.7 References

Submit references using Attachment D, "references" for the last three (3) engagements specifically related to the scope of work. Include a full description of the engagement including duration, number of staff assigned and the products delivered as a result of the engagement. Provide firm names, addresses, contact names, telephone numbers, and email addresses.

6.1.8 Medicaid Agency Data Use Agreement

Winning bidder must submit completed Attachment M, Medicaid Agency Data Use Agreement upon contract award notification.

6.1.9 Diversity Practices Questionnaire

Submit Attachment K, Diversity Practices Questionnaire. The Department has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents of this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement should include as part of their response to this procurement, Attachment K "Diversity Practices Questionnaire". Responses will be formally evaluated and scored.

6.1.10 Security Requirements

Bidder should describe how their proposed solution will comply with any applicable NYS ITS policies and standards (<http://its.ny.gov/eiso/policies/security>), including but not limited to:

- NYS-P10-006 – Identity Assurance Policy,
- NYS-S13-001 – Secure System Development Life Cycle Standard,
- NYS-S13-002 – Secure Coding Standard (if applicable),
- NYS-S13-004 – Identity Assurance Standard,
- NYS-S14-003 – Information Security Controls Standard,
- NYS-S14-005 – Security Logging Standard,
- NYS-S14-007 – Encryption Standard,
- NYS-S14-013 – Account Management / Access Control Standard
- NYS-S15-001 – Patch Management Standard (if applicable) and
- NYS-S15-002 – Vulnerability Scanning Standard;

6.2 Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the Bidder to perform the services contained in this RFP. The Technical Proposal should demonstrate the qualifications of the Bidder and of the staff to be assigned to provide services related to the services included in this RFP.

A Technical Proposal that is incomplete in any material respect may be eliminated from consideration. The following outlines the required information to be provided, in the following order, by Bidders. The information requested should be provided in the prescribed format. Responses that do not follow the

prescribed format may be eliminated from consideration. All responses to the RFP will be subject to verification for accuracy.

While additional data may be presented, the following should be included. Please provide the information in the same order in which it is requested. Your proposal should contain sufficient information to assure DOH of its accuracy. Failure to follow these instructions may result in disqualification.

Cost information can not be included in the Administrative Proposal or Technical Proposal documents.

6.2.1 Title Page

Submit a Title Page providing the RFP subject and number; the Bidder's name and address, the name, address, telephone number, and email address of the Bidder's contact person; and the date of the Proposal.

6.2.2 Table of Contents

The Table of Contents should clearly identify all material (by section and page number) included in the proposal.

6.2.3 Documentation of Bidder Qualifications Responsive to Section 4.0 of RFP

Minimum Qualification

A minimum of three (3) years' experience with the behavioral health population and an understanding of the Federal Regulations governing the PASRR process, the Supreme Court's decision in *Olmstead v. L.C.*, and the Americans with Disabilities Act (ADA).

6.2.4 Technical Proposal Narrative

The technical proposal should provide satisfactory evidence of the Bidder's ability to meet, and expressly respond to, each requirement and information requested in this RFP in Section 3.0 of the Scope of Work. Bidder should respond to each element below and label each section by its corresponding letter/number.

6.2.5 Tasks/Work Plan

1. Bidder should describe how they will evaluate all NF applicants or residents with a MI, or suspected to have a MI, who are referred to the Contractor, regardless of whether the applicant or resident is eligible for Medicaid as the source of payment for the NF services. The average number of reviews for 2015 was 162 per month.
 - If an individual has both an MI and ID diagnosis, the initial referral should be based on the criteria identified in the Instruction Manual for SCREEN Form: DOH-695 (2/2009), and Revised Page 4 of Instruction Manual for SCREEN Form: DOH-695 (2/2009), which may be found on the DOH website at <http://www.health.ny.gov/forms/#S>, under "SCREEN/PASRR."
2. Bidder should submit a plan and describe how they will evaluate the applicant or resident via an in-person meeting. The evaluation must be face-to-face in the hospital, NF, or other setting in which the NF applicant or resident is receiving care, or in the NF applicant's home, if he or she is residing in the community. If the resident is a beneficiary of NYS Medicaid and residing in a facility outside NYS, the Contractor must make reasonable effort to complete such evaluation in-person. If the Contractor cannot conduct the in-person evaluation, the NYS DOH must be contacted. The DOH will retain express authority and will make the decision and provide the approval for any

alternate means of conducting the Level II evaluation.

3. Bidder should submit a plan and describe how they will evaluate a NF applicant or resident upon request. The Contractor must ensure that those NF applicants or residents who are the fiscal responsibility of NYS's Medicaid program receive Level II Evaluations when requested/required. This responsibility extends to out-of-state residents who are the fiscal responsibility of NYS Medicaid and who experience a significant change in condition, and will require an evaluation. In these out-of-state instances, the Contractor should work with the resident's out of state healthcare professionals and placement coordinator to collect and review all of the necessary documents. The anticipated number of reviews conducted for out of state NYS Medicaid recipients is approximately 15 per year. The Contractor may, on rare occasions complete a phone interview, only upon express permission from the DOH.
4. Bidder should submit a plan and describe how they will ensure that, for NF applicants who are recommended for specialized services, the Contractor completes Level II Evaluations and forward required documents to the OMH clinical director within five (5) business days after the day on which the entity that performed the Level I Screen referred the applicant to the Contractor for a Level II Evaluation; [Note: Level II Determinations must be made within an annual average of 7-9 working days after the notification of a referral from Level I [483.106(c)]].
5. Bidder should submit a plan and describe how they will ensure that, for NF residents, the Contractor completes Level II Evaluations within five (5) business days of receiving notice from a NF that there has been a significant change in a resident's mental or physical condition. The NF will perform a Level I review for residents who have exhibited such changes, and/or those residents who are newly diagnosed, and will notify the Contractor when a Level II Evaluation is indicated.
6. Bidder should submit a plan and describe how they will ensure that the person who performs the Level II Evaluation assesses whether the individual's total needs can be met in an appropriate community setting with the appropriate supports as documented on the NYS Level II Adult Mental Health Evaluation Report.
7. Bidder should submit a plan and describe how they will ensure that the person who performs the Level II Evaluation assesses whether a NF applicant or a resident with MI requires specialized services based on the definition of specialized services (Attachment L).
8. Bidder should submit a plan and describe how they will ensure that the person who performs the Level II Evaluation assesses whether a NF applicant or a resident with MI requires services of lesser intensity (SLI) rather than specialized services.
9. Bidder should describe their Quality Assurance/Process Improvement system in place to assure the appropriateness of evaluator recommendations and to take the appropriate corrective action, including but not limited to, individualized and periodic evaluator education and competency review (administrative and on-site reviews) necessary to support the goals of the PASRR process.
10. Bidder should submit a plan and describe how they will ensure that PASRR Reports are forwarded in accordance with federal regulations to the:
 - i. Evaluated individual and his/her legal representative (and interpreted [483.128(k)]);
 - ii. State Mental Health Authority, as appropriate, within in required times [483.112(c)];

- iii. Admitting or retaining NF; (or other placement);
 - iv. Persons' attending physician;
 - v. The discharging hospital, if applicable; and,
 - vi. Filed in the resident's current medical records [130(j)].
11. Bidder should describe their plan to provide technical and business process support as necessary and required by the Department to transition and assume contract requirements to the Department or another Department agent of the PASRR Level II Evaluation program should that be required during or at the end of the contract.
 12. Bidder should provide a description of how their organization, employees, subcontractors and volunteers will implement and maintain policies, an internal control process for oversight and monitoring and procedures to assure the confidentiality of personal identifiable data and information or records pertaining to the patient.
 13. Bidder should provide data confidentiality plans and procedures as well as a plan for meeting HIPAA requirements as they relate to the RFP, including all plans as they relate to subcontractor work where applicable. Describe procedures the bidder will use to ensure the confidentiality of all information collected by the bidder or subcontractors.

6.2.6 Hearing and Appeal System:

The bidder should describe how they will meet the following:

Each State must provide a hearing and appeal system for any individual who has a PASRR determination made in the context of either a pre-admission screening or resident review under subpart C of Part 483 to appeal that determination. The Contractor must ensure that a notice of determination must include notice of the individual's right to appeal the determination. In addition, the Contractor is responsible to furnish copies of all relevant material necessary for the hearing to both the Court and to the appellant at no additional cost to the appellant. The Contractor must make staff available to participate, either telephonically or in person for each scheduled hearing. (There have been approximately 20-30 requests per year over the past 2 years)

6.2.7 Quarterly Quality Assurance Review:

The bidder should describe how they will meet the following:

The Contractor is required to conduct a quarterly quality assurance review to assure that the recommendations made by the PASRR Contractor are appropriate and conform to Federal and State requirements. The random sample must represent at least 10% of NF residents who have had a Level II evaluation performed, who have been determined to need mental health SLI rather than specialized services, and must include a random sample of the Contractor's evaluations.

6.2.8 Staffing Requirements

The bidder should provide a staffing plan and description of how they will perform the work in Section 3.0 Scope of Work and which includes the following:

- title;
- functional responsibilities;
- number and type of staff available and physical location of Bidder's staff to be engaged in performance of the Level II comprehensive psychiatric evaluations statewide;
- recruit and train an adequate number of appropriately trained and qualified individuals;
- Bidder's ability to adjust resources to accommodate fluctuation in evaluations by

- geographic regions; and,
- bidder's ability to provide staff to carry out the projected workload during each contract year and how they will provide staff to meet the scope of work over the entire contract period.

The bidder should provide a description of how they will ensure that only the following licensed persons perform Level II evaluations:

- A NYS licensed psychiatrist who is board-certified or board-eligible;
- A NYS licensed social worker who has a Master's Degree in social work and recent experience (within the past 3 years) in performing comprehensive psychiatric evaluations;
- A NYS licensed registered nurse who has recent experience (within the past 3 years) in performing comprehensive psychosocial or psychiatric evaluations; or,
- A NYS licensed psychologist who has experience (within the past 3 years) in performing comprehensive psychiatric evaluations.

NOTE: Resumes are not required and will not be evaluated.

6.2.9 Reporting Requirements

Reporting: The bidder should provide examples of reports prepared for similar purposes as per Section 3.6 Reporting Requirements with a description of how they will prepare, and submit each report to DOH and OMH, within 30 days after the end of the reporting period.

6.2.10 Organization Summary

The bidder should provide a brief description of the Bidder's organization which includes an organizational chart showing:

- organizational structure;
- areas of responsibility;
- key individuals; and,
- the relationship of the organization to performance of the Level II comprehensive psychiatric evaluations (including any subcontractor).

Describe the Bidder's experience with Level II comprehensive psychiatric evaluations and similar MI/DD examinations. Specify any experience in these areas which was related to the long term care system. Describe governmental experience, documented program development and service delivery targeting special needs population. Detail any special techniques, skills and abilities the organization considers necessary to accomplish the RFP requirements.

6.3 Cost Proposal

Submit a completed and signed **Attachment C – Cost Proposal**. The Cost Proposal shall comply with the format and content requirements as detailed in this document and in Attachment C. Failure to comply with the format and content requirements may result in disqualification.

The bid price is to cover the cost of furnishing all of the said services, including but not limited to materials, equipment, profit, training and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.

7.0 PROPOSAL SUBMISSION

A proposal consists of three distinct parts: (1) the Administrative Proposal, (2) the Technical Proposal, and (3) the Cost Proposal. The table below outlines the required format and volume for submission of each part. Proposals should be submitted in all formats as prescribed below.

	Electronic Submission	Paper Submission
Administrative Proposal	2 dedicated flash drives or CDs labeled “Administrative Proposal” containing a standard searchable PDF file with copy/read permissions only.	3 Originals 6 Copies
Technical Proposal	2 dedicated flash drives or CDs labeled “Technical Proposal” containing a standard searchable PDF file with copy/read permissions only.	3 Originals 6 Copies
Cost Proposal	2 dedicated flash drives or CDs labeled “Cost Proposal” containing standard searchable PDF file(s) with copy/read permissions only.	3 Originals 6 Copies

- All hard copy proposal materials should be printed on 8.5” x 11” white paper (two-sided) and **be clearly page numbered on the bottom of each page with appropriate header and footer information.** A type size of eleven (11) points or larger should be used. The Technical Proposal materials should be presented in three-ring binder(s) separate from the sealed Cost Proposal. The sealed Cost Proposal should also be presented in separate three-ring binder(s);
- Where signatures are required, the proposals designated as originals should have a handwritten signature and be signed in ink.
- The NYSDOH discourages overly lengthy proposals. Therefore, marketing brochures, user manuals or other materials, beyond that sufficient to present a complete and effective proposal, are not desired. Elaborate artwork or expensive paper is not necessary or desired. In order for the NYSDOH to evaluate proposals fairly and completely, proposals should follow the format described in this RFP to provide all requested information. The Bidder should not repeat information in more than one section of the proposal. If information in one section of the proposal is relevant to a discussion in another section, the Bidder should make specific reference to the other section rather than repeating the information.
- Audio and/or videotapes are not allowed. Any submitted audio or videotapes will be ignored by the evaluation team.
- In the event that a discrepancy is found between the electronic and hardcopy proposal, the original hardcopy will prevail.

The proposal must be received by the NYSDOH, no later than the Deadline for Submission of Proposals specified in [Section 1.0](#), (Calendar of Events). Late bids will not be considered.

Proposals should be submitted in three (3) separate, clearly labeled packages: (1) Administrative Proposal, a (2) Technical Proposal and (3) Cost Proposal, prepared in accordance with the requirements stated in this RFP. Mark the outside envelope of each proposal as “RFP# 16476 Pre-Admission Screen Resident Review (PASSR) Level II Evaluation (Administrative) (Technical) or (Cost) Proposal submitted by (Bidder’s name)”. The three sealed proposals may be combined into one mailing, if desired.

Proposals must be submitted, by U.S. Mail, by courier/delivery service (e.g., FedEx, UPS, etc.) or by hand as noted below, in a sealed package to:

Department of Health RFP # 16476
Attention: Heidi Seney

**Address: 875 Central Avenue
Albany, NY 12206**

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

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

7.1 No Bid Form

Bidders choosing not to bid are requested to complete the No-Bid form [Attachment I](#).

8.0 EVALUATION PROCESS/CRITERIA

8.1 General Information

DOH will evaluate each proposal based on the “Best Value” concept. This means that the proposal that best “optimizes quality, cost, and efficiency among responsive and responsible offerers” shall be selected for award (State Finance Law, Article 11, §163(1)(j)).

DOH at its sole discretion, will determine which proposal(s) best satisfies its requirements. DOH reserves all rights with respect to the award. All proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost. Proposals failing to meet the requirements of this document may be eliminated from consideration. The evaluation process will include separate technical and cost evaluations, and the result of each evaluation shall remain confidential until both evaluations have been completed and a selection of the winning proposal is made.

The evaluation process will be conducted in a comprehensive and impartial manner, as set forth herein, by an Evaluation Committee. The Technical Proposal and compliance with other RFP requirements (other than the Cost Proposal) will be weighted **70%** of a proposal’s total score and the information contained in the Cost Proposal will be weighted **30%** of a proposal’s total score.

Bidders may be requested by DOH to clarify the contents of their proposals. Other than to provide such information as may be requested by DOH, no Bidder will be allowed to alter its proposal or add information after the Deadline for Submission of Proposals listed in [Section 1.0](#) (Calendar of Events).

In the event of a tie, the determining factors for award, in descending order, will be: (1) lowest cost and (2) experience.

8.2 Submission Review

DOH will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in [Section 6.0](#) (Proposal Content) and [Section 7.0](#) (Proposal Submission), and include the proper documentation, including all documentation required for the Administrative Proposal, as stated in this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of DOH, may be rejected.

8.3 Technical Evaluation (70%)

The evaluation process will be conducted in a comprehensive and impartial manner. A Technical Evaluation Committee comprised of program staff of DOH will review and evaluate all proposals.

The Technical Evaluation Committee members will independently score each Technical Proposal that meets the submission requirements of this RFP. The individual Committee Member scores will be averaged to calculate the Technical Score for each responsive Bidder. The scores will be normalized by using the following formulas:

$$Z = (X/Y) * 70\%$$

X is the average raw technical score of the proposal being scored;

Y is the average raw technical score of the highest raw Technical Proposal; and

Z is the Technical score.

The technical evaluation is **70%** of the final score.

8.4 Cost Evaluation (30%)

The Cost Evaluation Committee will examine the Cost Proposal documents. The Cost Proposals will be opened and reviewed for responsiveness to cost requirements. If a cost proposal is found to be non-responsive, that proposal may not receive a cost score and may be eliminated from consideration.

Each proposal that meets the submission requirements, and meets the cost proposal requirements will receive a cost score. The Cost Proposals will be scored based on a maximum cost score of 30 points. The maximum cost score will be allocated to the proposal with the lowest all-inclusive not-to-exceed maximum price. All other responsive proposals will receive a proportionate score based on the relation of their Cost Proposal to the proposals offered at the lowest final cost, using this formula:

$$C = (A/B) * 30\%$$

A is Total price of lowest cost proposal;

B is Total price of cost proposal being scored; and

C is the Cost score.

The cost evaluation is **30%** of the final score.

8.5 Composite Score

A composite score will be calculated by the DOH by adding the Technical Proposal points and the Cost points awarded. Finalists will be determined based on composite scores.

8.6 Reference Checks

The Bidder should submit references using [Attachment D](#) (References). At the discretion of the Evaluation Committee, references may be checked at any point during the process to verify bidder qualifications to propose (Section 4.0).

8.7 Best and Final Offers

NYSDOH reserves the right to request best and final offers. In the event NYSDOH exercises this right, all bidders that submitted a proposal that met the minimum mandatory requirements and are susceptible to award will be asked to provide a best and final offer. Bidders will be informed that should they choose not to submit a best and final offer, the offer submitted with their proposal will be construed as their best and final offer.

8.8 Award Recommendation

The Evaluation Committee will submit a recommendation for award to the Finalist(s) with the highest composite score(s) whose experience and qualifications have been verified.

The Department will notify the awarded Bidder(s) and Bidders not awarded. The awarded Bidder(s) will enter into a written Agreement substantially in accordance with the terms of **Attachment E**, DOH Agreement, to provide the required services as specified in this RFP. The resultant contract shall not be binding until fully executed and approved by the New York State Office of the Attorney General and the Office of the State Comptroller.

9.0 ATTACHMENTS

- A.** Bidder's Certified Statements
- B.** Proposal Document Checklist
- C.** Cost Proposal
- D.** References
- E.** DOH Agreement
- F.** Guide to New York State DOH M/WBE Required Forms & Forms
- G.** Bidder's Disclosure of Prior Non-Responsibility Determination
- H.** Encouraging Use of New York Businesses in Contract Performance
- I.** No-Bid Form
- J.** Vendor Responsibility Attestation
- K.** Diversity Practices Questionnaire
- L.** Preadmission Screen Resident Review (PASRR) NYS Level II Adult Mental Health Evaluation Report
- M.** Medicaid Agency Data Use Agreement

ATTACHMENT A

RFP# 16476

BIDDER'S CERTIFIED STATEMENTS

(To be completed and included in the Administrative Proposal documents)

RFPXX-XX – TITLE OF RFP
1. Information with regard to the Bidder
A. Provide the Bidder's name, address, telephone number, and fax number.
Name: <input type="text"/>
Address: <input type="text"/>
City, State, ZIP Code: <input type="text"/>
Telephone Number (including area code): <input type="text"/>
Fax Number (including area code): <input type="text"/>
B. Provide the name, address, telephone number, and email address of the Bidder's Primary Contact with DOH with regard to this proposal.
Name: <input type="text"/>
Address: <input type="text"/>
City, State, ZIP Code: <input type="text"/>
Telephone Number (including area code): <input type="text"/>
Email Address: <input type="text"/>
2. By submitting the bid the Bidder acknowledges and agrees to all of the following: [Please note: alteration of any language contained in this section may render your proposal non-responsive.]
Bidder certifies that either there is no conflict of interest or that there are business relationships and /or ownership interests for the organization for the above named organization that may represent a conflict of interest for the organization as a bidder and attached to this form is a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided.
The Bidder certifies that it can and will provide and make available, at a minimum, all services as described in the RFP if selected for award.
Bidder acknowledges that, should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the DOH.
Bidder accepts, without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this RFP including any exhibits and attachments.

The bidder is either registered to do business in NYS, or if formed or incorporated in another jurisdiction than NYS, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available, and if selected, the vendor will register to do business in NYS.

A. The Bidder is (check as applicable):

- A New York State Certified Minority-Owned Business Enterprise
- A New York State Certified Woman-Owned Business Enterprise
- A New York State Certified Minority and Woman-Owned Business Enterprise (Dual Certified)
- None of the above

B. Provide the name, title, address, telephone number, and email address of the person authorized to receive Notices with regard to the contract entered into as a result of this procurement. See Section ___ of the DOH Agreement (Attachment E), NOTICES.

Name: Click here to enter text.

Title: Click here to enter text.

Address: Click here to enter text.

City, State, ZIP Code: Click here to enter text.

Telephone Number (including area code): Click here to enter text.

Email Address: Click here to enter text.

C. Bidder's Taxpayer Identification Number:

Click here to enter text.

D. Bidder's NYS Vendor Identification Number as discussed in Section 6.1.3, if enrolled:

Click here to enter text.

By my signature on this Attachment A, I certify to the statements made above in Section 2 and that I am authorized to bind the Bidder contractually. Furthermore, I certify that all information provided in connection with its proposal is true and accurate.

Typed or Printed Name of Authorized Representative of the Bidder

Title/Position of Authorized Representative of the Bidder

Signature of Authorized Representative of the Bidder

Date

ATTACHMENT B

RFP# 16476

PROPOSAL DOCUMENT CHECKLIST

Please reference Section 7.0 for the appropriate format and quantities for each proposal submission.

RFPXX-XX – TITLE OF RFP		
FOR THE ADMINISTRATIVE PROPOSAL		
RFP §	Submission	INCLUDED
§ 6.1.1	M/WBE Participation Requirements:	<input type="checkbox"/>
	Attachment F Form 4	<input type="checkbox"/>
	Attachment F Form 5	<input type="checkbox"/>
§ 6.1.2	Attachment G – Disclosure of Prior Non-Responsibility Determinations, completed and signed.	<input type="checkbox"/>
§ 6.1.3	Attachment J Vendor Responsibility Attestation.	<input type="checkbox"/>
§ 6.1.4	Freedom of Information Law – Proposal Redactions (If Applicable)	<input type="checkbox"/>
§ 6.1.5	Attachment A - Bidder's Certified Statements, completed & signed.	<input type="checkbox"/>
§ 6.1.7	Attachment D (References)	<input type="checkbox"/>
§ 6.1.6	Attachment H - Encouraging Use of New York Businesses in Contract Performance	<input type="checkbox"/>
§ 6.1.9	Attachment K - Diversity Practices Questionnaire	<input type="checkbox"/>
§ 6.1.8	Attachment M – Medicaid Agency Data Use Agreement	
§ 6.1.10	Security Requirements	
FOR THE TECHNICAL PROPOSAL		
RFP §	Submission	INCLUDED
§ 6.2.1	Title Page	<input type="checkbox"/>
§ 6.2.2	Table of Contents	<input type="checkbox"/>
§ 6.2.3	Documentation of Bidder's Qualifications	<input type="checkbox"/>
§ 6.2.4	Technical Proposal Narrative	<input type="checkbox"/>
FOR THE COST PROPOSAL REQUIREMENT		
RFP §	Requirement	INCLUDED
§ 6.3	Attachment C- Cost Proposal	<input type="checkbox"/>

ATTACHMENT C

RFP #16476

COST PROPOSAL

Pre-Admission Screen Resident Review (PASRR) Level II Evaluation

Please use this form to detail the total cost of contract by developing a price per Level II Screen and total annual cost for each year.

The bidder must submit a price for each Level II Screen. The cost per screen should then be multiplied by the projected annual number of Level II Screens for each contract year (Years 1 -5). The price per screen is an all-inclusive price and must include the total cost of carrying out all the components of this statewide program RFP 16476 (see Section 3.0 Scope of Work and Section 5.4 Payment).

Once you have determined the Total Annual Cost for each year please combine the five (5) years for a Total Cost of Contract and enter that in the field below.

CONTRACT YEAR	PRICE PER LEVEL II SCREEN		Number of Level II Screens Annually*		TOTAL ANNUAL COST
YEAR 1		X	2,000	=	
YEAR 2		X	2,000	=	
YEAR 3		X	2,000	=	
YEAR 4		X	2,000	=	
YEAR 5		X	2,000	=	

***This number is based on historical numbers and is not a guarantee of the actual quantities expected annually. The actual number of Level II Screens may be higher or lower. NYS DOH payment will be based on actual completed quantities only per Section 5.4.**

TOTAL COST OF CONTRACT	
SUM OF ANNUAL COST FOR YEARS 1-5	\$ _____

Notes:

Bidders MUST provide a bid price for EACH contract year. Proposals failing to provide prices for each year will be considered non-responsive.

By signing this Cost Proposal Form, bidder agrees that the prices included above are binding for 365 days from the proposal due date.

Signature

Date

Printed Name and Title

ATTACHMENT D

REFERENCES

Submit a total of **THREE (3)** references (Section 6.1.7) using this form.
Expand fields and duplicate this page as necessary.

RFPXX-XX – TITLE OF RFP	
BIDDER:	
Provide the following information for each reference submitted. Fields will expand as you type.	
Reference Company #1:	Click here to enter text.
Contact Person:	Click here to enter text.
Address:	Click here to enter text.
City, State, Zip:	Click here to enter text.
Telephone Number:	Click here to enter text.
Email Address:	Click here to enter text.
Number of years Bidder provided services to this entity:	Click here to enter text.
Brief description of the services provided:	Click here to enter text.
Reference Company #2:	Click here to enter text.
Contact Person:	Click here to enter text.
Address:	Click here to enter text.
City, State, Zip:	Click here to enter text.
Telephone Number:	Click here to enter text.
Email Address:	Click here to enter text.
Number of years Bidder provided services to this entity:	Click here to enter text.
Brief description of the services provided:	Click here to enter text.
Reference Company #3:	Click here to enter text.
Contact Person:	Click here to enter text.
Address:	Click here to enter text.
City, State, Zip:	Click here to enter text.
Telephone Number:	Click here to enter text.
Email Address:	Click here to enter text.
Number of years Bidder provided services to this entity:	Click here to enter text.
Brief description of the services provided:	Click here to enter text.

ATTACHMENT E
DOH AGREEMENT
MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):
Department of Health
Corning Tower
Albany, NY 12237

NYS COMPTROLLER'S NUMBER: C#

ORIGINATING AGENCY GLBU: DOH01
DEPARTMENT ID: 345XXXX

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:
TO:

CONTRACTOR HAS () HAS NOT () TIMELY
FILED WITH THE ATTORNEY GENERAL'S
CHARITIES BUREAU ALL REQUIRED
PERIODIC OR ANNUAL WRITTEN REPORTS

FUNDING AMOUNT FOR CONTRACT TERM:

FEDERAL TAX IDENTIFICATION NUMBER:
ENTITY

STATUS:
CONTRACTOR IS () IS NOT () A SECTARIAN

NYS VENDOR IDENTIFICATION NUMBER:
PROFIT

CONTRACTOR IS () IS NOT () A NOT-FOR-
ORGANIZATION

MUNICIPALITY NO. (if applicable)

CONTRACTOR IS () IS NOT () A N Y STATE
BUSINESS ENTERPRISE

() IF MARKED HERE, THIS CONTRACT IS RENEWABLE FOR ___ ADDITIONAL ONE-YEAR
PERIOD(S) AT THE SOLE OPTION OF THE STATE AND SUBJECT TO APPROVAL OF THE OFFICE
OF THE STATE COMPTROLLER.

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

Precedence shall be given to these documents in the order listed below.

- | | | |
|----------|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>X</u> | APPENDIX A | Standard Clauses as required by the Attorney General for all State Contracts. |
| <u>X</u> | APPENDIX X | Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods) |
| — | APPENDIX Q | Modification of Standard Department of Health Contract Language |
| <u>X</u> | STATE OF NEW YORK AGREEMENT | |
| <u>X</u> | APPENDIX D | General Specifications |
| <u>X</u> | APPENDIX B | Request For Proposal (RFP) |
| <u>X</u> | APPENDIX C | Proposal |
| <u>X</u> | APPENDIX E-1 | Proof of Workers' Compensation Coverage |
| <u>X</u> | APPENDIX E-2 | Proof of Disability Insurance Coverage |
| <u>X</u> | APPENDIX H | Federal Health Insurance Portability and Accountability Act Business Associate Agreement |
| <u>X</u> | APPENDIX G | Notices |
| <u>X</u> | APPENDIX M | Participation by Minority Group Members and Women with respect to State Contracts: Requirements and Procedures |

Contract No.: C#

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

CONTRACTOR

STATE AGENCY

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."

STATE OF NEW YORK)
)SS.:
County of _____)

On the ___ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his

office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

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

forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby

the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal

employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of

Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

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

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West

Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

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

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the

agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>
Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default. The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

APPENDIX X

GLBU: DOH01

Contract Number: _____ Contractor: _____

Amendment Number X- _____ BSC Unit ID: 345<XXXX> _____

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through NYS Department of Health, having its principal office at Albany, New York, (hereinafter referred to as the STATE), and _____ (hereinafter referred to as the CONTRACTOR), having its mailing address at _____, for amendment of this contract.

This amendment makes the following changes to the contract (check all that apply):

- _____ Modifies the contract period at no additional cost
- _____ Modifies the contract period at additional cost
- _____ Modifies the budget or payment terms
- _____ Modifies the work plan or deliverables
- _____ Replaces appendix(es) _____ with the attached appendix(es) _____
- _____ Adds the attached appendix(es) _____
- _____ Other: (describe) _____

This amendment *is* / *is not* a contract renewal as allowed for in the existing contract.

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

Additionally, Contractor certifies that it is not included on the prohibited entities list published at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> as a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Contractor (or any assignee) also certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Prior to this amendment, the contract value and period were:

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____.
(Value before amendment) (Initial start date)

This amendment provides the following modification (complete only items being modified):

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____.

This will result in new contract terms of:

\$ _____ From ____ / ____ / ____ to ____ / ____ / ____.
(All years thus far combined) (Initial start date) (Amendment end date)

Signature Page for:

Contract Number: _____ Contractor: _____

Amendment Number: X- _____ BSC Unit ID: 345<XXXX> _____

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

CONTRACTOR SIGNATURE:

By: _____ Date: _____
(signature)

Printed Name: _____

Title: _____

STATE OF NEW YORK)
) SS:
County of _____)

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature and office of the individual taking acknowledgement)

STATE AGENCY SIGNATURE

"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."

By: _____ Date: _____
(signature)

Printed Name: _____

Title: _____

ATTORNEY GENERAL'S SIGNATURE

By: _____ Date: _____

STATE COMPTROLLER'S SIGNATURE

By: _____ Date: _____

STATE OF NEW YORK
AGREEMENT

This AGREEMENT is hereby made by and between the State of New York Department of Health (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has formally requested contractors to submit bid proposals for the project described in Appendix B for which bids were opened on the date noted on the face pages of this AGREEMENT; and

WHEREAS, the STATE has determined that the CONTRACTOR is the successful bidder, and the CONTRACTOR covenants that it is willing and able to undertake the services and provide the necessary materials, labor and equipment in connection therewith;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations moving to each party hereto from the other, the parties hereto do hereby agree as follows:

I. Conditions of Agreement

- A. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- B. The maximum compensation for the contract term of this AGREEMENT shall not exceed the amount specified on the face page hereof.
- C. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- D. To exercise any renewal option of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT. The modification agreement is subject to the approval of the Office of the State Comptroller.
- E. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- F. For the purposes of this AGREEMENT, the terms "Request for Proposals" and "RFP" include all Appendix B documents as marked on the face page hereof.
- G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:

- 1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: accountspayable@ogs.ny.gov with a subject field as follows:
Subject: <<Unit ID: 345XXXX>> <<Contract #>>

(Note: **do not** send a paper copy in addition to your emailed voucher.)

2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health
Unit ID 345<<xxxx>>
Building 5, 5th Floor
1220 Washington Ave.
Albany, NY 12226-1900**

- B. Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.ny.gov/epay/index.htm, by email at helpdesk@sfs.ny.gov or by telephone at 1-855-233-8363. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9, must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.ny.gov/vendors/vendorguide/guide.htm>.

III. Term of Contract

- A. Upon approval of the Commissioner of Health, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

IV. Proof of Coverage

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

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
 - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - 2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
 - 3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
 - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - 2. DB-120.1 – Certificate of Disability Benefits Insurance OR
 - 3. DB-155 – Certificate of Disability Benefits Self-Insurance

V. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.

- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status.

APPENDIX D

GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that all specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specifications, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.
- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, e-mail, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department, and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable, and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety shall be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowance or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful bidder will be required to complete the entire work or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. CONTRACTOR will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- I. Non-Collusive Bidding By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
 - a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
 - b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
 - c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every bid made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the bidder and affirmed by such bidder as true under penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

Any bid made to the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods, sold or to be sold, where competitive bidding is required by statute, rule or regulation and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

- J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed for use in the application software provided to the Department as a part of this contract.
- M. Technology Purchases Notification --The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"
 - 1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
 - 2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
 - 3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.
- N. Date/Time Warranty
 - 1. Definitions: For the purposes of this warranty, the following definitions apply:

"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.

- a. "Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. "Third Party Product" does not include product where vendor is : (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

2. Date/Time Warranty Statement

CONTRACTOR warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a CONTRACTOR proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where CONTRACTOR is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), CONTRACTOR warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of CONTRACTOR's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. CONTRACTOR shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the CONTRACTOR's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

- O. No Subcontracting: Subcontracting by the CONTRACTOR shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.
- P. Superintendence by Contractor: The CONTRACTOR shall have a representative to provide supervision of the work which CONTRACTOR employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the CONTRACTOR.
- Q. Sufficiency of Personnel and Equipment: If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the CONTRACTOR to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.
- R. Experience Requirements: The CONTRACTOR shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The CONTRACTOR shall submit at least two references to substantiate these qualifications.
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- S. Contract Amendments: This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

The CONTRACTOR shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.

T. Provisions Upon Default

1. In the event that the CONTRACTOR, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the CONTRACTOR.
2. If, in the judgment of the Department of Health, the CONTRACTOR acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the CONTRACTOR. In such case the CONTRACTOR shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the CONTRACTOR up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the CONTRACTOR was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. Upon termination of this agreement, the following shall occur:

1. CONTRACTOR shall make available to the State for examination all data, records and reports relating to this Contract; and
2. Except as otherwise provided in the Contract, the liability of the State for payments to the CONTRACTOR and the liability of the CONTRACTOR for services hereunder shall cease.

V. Conflicts If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the CONTRACTOR shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the CONTRACTOR supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. Contract Insurance Requirements

1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:

- a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).

- b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
 - i. CONTRACTOR's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
 - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
 - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

- X. Certification Regarding Debarment and Suspension: Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1. APPENDIX B TO PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from

participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
 - g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
 - h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
 - a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
 - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Y. Confidentiality Clauses

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.

3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

Z. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
 - a. The NYS Department of Health, at the following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237 ; and
 - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting -or via fax at (518) 474-8030 or (518) 473-8808; and
 - c. The NYS Department of Civil Service, Albany NY 12239, ATTN: Consultant Reporting.

AA. Provisions Related to New York State Procurement Lobbying Law: The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

BB. Provisions Related to New York State Information Security Breach and Notification Act: CONTRACTOR shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.

CC. Lead Guidelines: All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension

order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

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

EE. Provisions Related to Iran Divestment Act: As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract. During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default.

New York State Department of Health reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

APPENDIX B

REQUEST FOR PROPOSAL

To be added upon award

APPENDIX C

PROPOSAL OF BIDDER

To be added upon award.

APPENDIX H

HIPAA CONFIDENTIALITY

for CONTRACTOR that creates, receives, maintains or transmits individually identifiable health information on behalf of a New York State Department of Health HIPAA-Covered Program

- I. Definitions. For purposes of this Appendix H of this AGREEMENT:
 - A. "Business Associate" shall mean CONTRACTOR.
 - B. "Covered Program" shall mean the STATE.
 - C. Other terms used, but not otherwise defined, in this AGREEMENT shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH") and implementing regulations, including those at 45 CFR Parts 160 and 164.
- II. Obligations and Activities of Business Associate:
 - A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT or as Required By Law.
 - B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this AGREEMENT and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart C. Business Associate agrees 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.
 - C. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this AGREEMENT of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
 1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
 5. Contact procedures for Covered Program to ask questions or learn additional information.
 - D. Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
 - E. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
 - F. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
 - G. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to

respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528; and Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.

- H. Business Associate agrees, to the extent the Business Associate is to carry out Covered Program's obligation under 45 CFR Part 164, Subpart E, to comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Program in the performance of such obligation.
 - I. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- III. Permitted Uses and Disclosures by Business Associate
- A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.
 - B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
 - C. Business Associate may disclose Protected Health Information as Required By Law.
- IV. Term and Termination
- A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, 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 Appendix H of this AGREEMENT.
 - B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if Business Associate has breached a material term of this AGREEMENT and cure is not possible.
 - C. Effect of Termination.
 - 1. Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - 2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections 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.

V. Violations

- A. Any violation of this AGREEMENT may cause irreparable harm to the STATE. Therefore, the STATE may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the STATE harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this AGREEMENT. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

VI. Miscellaneous

- A. Regulatory References. A reference in this AGREEMENT to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.
- B. Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this AGREEMENT from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.
- C. Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix H of this AGREEMENT shall survive the termination of this AGREEMENT.
- D. Interpretation. Any ambiguity in this AGREEMENT shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- E. HIV/AIDS. If HIV/AIDS information is to be disclosed under this AGREEMENT, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.

APPENDIX G

NOTICES

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

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

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

State of New York Department of Health

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

[Insert Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

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

The parties may, 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 representative 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.

APPENDIX M

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

I. General Provisions

- A. The New York State Department of Health is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State New York State Department of Health (the “New York State Department of Health”), to fully comply and cooperate with the New York State Department of Health in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this Contract, the New York State Department of Health hereby establishes an overall goal of **0%** for Minority and Women-Owned Business Enterprises (“MWBE”) participation, **0%** for Minority-Owned Business Enterprises (“MBE”) participation and **0%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:
<https://ny.newnycontracts.com/>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor

shall be liable to the New York State Department of Health for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
 - 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 2. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
 - 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 - 4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. Form #4 - Staffing Plan

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

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

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

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

- A. For Waiver Requests Contractor should use Form #2 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Department of Health shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the New York State Department of Health may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

- A. Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract. Data should be submitted via the online compliance system at <https://ny.newnycontracts.com>.

VII. Liquidated Damages - MWBE Participation

- A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such

requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.

ATTACHMENT F

NEW YORK STATE DOH M/WBE RFP REQUIRED FORMS

All DOH procurements have a section entitled “**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE REQUIREMENTS.**” This section of procurement sets forth the established DOH goal for that particular procurement and also describes the forms that should be completed with their bid. Below is a summary of the forms used in the DOH MWBE Participation Program by a bidder for this procurement which has 0% overall M/WBE goal.

Form #4 – MWBE Staffing Plan- This form should be completed based on the composition of staff working on the project. Enter the numbers or counts in the corresponding boxes and add up the totals in each column. This form is for diversity research purposes only and has no bearing on MWBE goal achievement.

Form #5 – EEO and MWBE Policy Statement -This is a standard EEO policy that needs to be signed and dated and submitted. If Bidder has their own EEO policy it may be submitted instead of endorsing this document.

**- M/WBE Form #4 -
New York State Department of Health
M/WBE STAFFING PLAN**

For project staff, consultants and/or subcontractors working on this grant complete the following plan. This has no impact on MWBE utilization goals, or the submitted Utilization Plan - Form#1. This is for diversity research purposes.

Contractor Name _____

Address _____

—

—

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Executive/Senior level Officials							
Managers/Supervisors							
Professionals							
Technicians							
Administrative Support							
Craft/Maintenance Workers							
Laborers and Helpers							
Service Workers							
Totals							

(Name and Title)

(Signature)

Date

- M/WBE Form #5 -

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

M/WBE AND EEO POLICY STATEMENT

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

M/WBE

This organization will and will cause subcontractors to take good faith

EEO

its contractors and actions to achieve the M/WBE

contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.

Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof.

Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

Name & Title

Signature & Date

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

(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.

ATTACHMENT G

BIDDER'S DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Procurement Title:[Type text]

RFP #: [Type text]

Bidder Name: [Type text]

Bidder Address: [Type text]

Bidder SFS Vendor ID #: [Type text]

Bidder Federal ID#: [Type text]

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

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

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

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

No

Yes

If yes, please answer the next questions:

1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please check):

No

Yes

1b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

1c. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: [Type text]

Date of Finding of Non-responsibility: [Type text]

Basis of Finding of Non-Responsibility: [Type text]

(Add additional pages as necessary)

2a. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

2b. If yes, please provide details below.

Governmental Entity: [Type text]

Date of Termination or Withholding of Contract: [Type text]

Basis of Termination or Withholding: [Type text]

(Add additional pages as necessary)

Offerer/Bidder certifies that all information provided to the Department of Health with respect to State Finance Law §139-k is complete, true and accurate.

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(e-mail Address)

ATTACHMENT H

ENCOURAGING USE OF NEW YORK BUSINESSES IN CONTRACT PERFORMANCE

I. Background

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers 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.

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

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

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/ proposers 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.

II. Required Identifying Information

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

Will New York State Businesses be used in the performance of this contract?

YES

NO

If yes, identify New York State businesses that will be used and attach identifying information. Information should include at a minimum: verifiable business name, New York address and business contact information.

New York Business Identifying Information Business Name	Business Address	Contact Name	Contact Phone	Contact Email Address

ATTACHMENT I

NO-BID FORM

PROCUREMENT TITLE: _____ RFP # _____

Bidders choosing not to bid are requested to complete the portion of the form below:

- We do not provide the requested services. Please remove our firm from your mailing list
- We are unable to bid at this time because:

- Please retain our firm on your mailing list.

(Firm Name)

(Officer Signature) _____ (Date)

(Officer Title) _____ (Telephone)

(e-mail Address)

FAILURE TO RESPOND TO BID INVITATIONS MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST FOR THIS SERVICE.

ATTACHMENT J

VENDOR RESPONSIBILITY ATTESTATION

To comply with the Vendor Responsibility Requirements outlined in Section 6.1 Administrative Proposal, 6.1.3. Vendor Responsibility Questionnaire, I hereby certify:

Choose one:

- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.

- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.

- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: _____

Print/type Name: _____

Title: _____

Organization: _____

Date Signed: _____

ATTACHMENT K

DIVERSITY PRACTICES QUESTIONNAIRE

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

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

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

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

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

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

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? Yes or No

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

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

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

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

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

¹ Do not include onsite project overhead.

¹ Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

Signature _____ of _____
Printed Name _____ of _____
Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

ATTACHMENT L follows

**PREAMISSION SCREEN RESIDENT REVIEW (PASRR)
NYS LEVEL II ADULT MENTAL HEALTH EVALUATION REPORT**

The Evaluator must send a copy of this Evaluation Report to the individual and his/her legal representative, the New York State Office of Mental Health, the admitting or retaining Residential Health Care Facility (RHCF), the individual's attending physician and the discharging hospital if the individual is seeking RHCF admission from a hospital. The state may convey its determination verbally to the RHCF and the individual, and confirm the determination in writing.

Individual's Name: _____

Medicaid Number: _____ **PASRR Case Number:** _____

Current Location: _____

Telephone Number: _____

Name of Evaluator (Please Print): _____

Evaluator Signature: _____

Professional Title of Evaluator: _____

Date of Evaluation: _____

It has been determined that this individual does not require a PASRR Level II Evaluation at this time.

Summary Findings:

This Evaluation Report is based on a comprehensive history of the individual; a physical examination, functional assessment, psychosocial evaluation and psychiatric evaluation of the individual; the individual's H/C PRI and SCREEN; social service and discharge planning documentation for the individual; interviews and other information as needed.

Summary of the Medical History:

Summary of the Social History, including positive traits, or developmental strengths and weaknesses, or developmental needs of the evaluated individual:

**RECOMMENDATION FOR COMMUNITY SETTING, NURSING FACILITY LEVEL
OF CARE, OR NURSING FACILITY SERVICES**

After assessing the individual's total needs, mark the recommended placement option below with an X.

1. The individual's total needs are such that his or her needs can be met in the appropriate community setting.

You may qualify for Office of Mental Health housing including/but not limited to: apartment housing (living alone or with others); congregate housing (living with other people); or family care (living with a family care provider in their home).

Services you may qualify for include/but are not limited to: health services at your home (nurses, home health aides and physical therapists); personal care (help with bathing, dressing and grocery shopping); Adult Day Health Care; specialty health (audiology, dental, optometry and podiatry); transportation to medical appointments; home delivered meals; peer support; vocational rehabilitation; and continuing mental and/or behavioral health services. **Your Social Worker will work with you to initiate these services and obtain appropriate housing to provide you with a safe discharge.**

2. The individual's total needs are such that they can be met through placement in a home and community-based waiver program, and such a program is available to the individual. A waiver program provides support and services to assist individuals with disabilities and seniors toward successful inclusion in the community, when otherwise inpatient care would be required.
3. The individual's total needs are such that placement in a home and community-based waiver program was considered, but determined not to be appropriate or feasible at this time. Inpatient care is appropriate and desired, and the nursing facility is an appropriate setting for meeting the individual's needs.

If placement option #3 is marked with an "X", explain the rationale for that recommendation, and describe the specific services required below:

RECOMMENDATION FOR MENTAL HEALTH SERVICES OF LESSER INTENSITY

If placement option #3 is marked with an “X”, and mental health services of lesser intensity (SLI) are recommended, mark the level below:

Level 1

- Psychiatric and medication evaluation by a psychiatrist or MD, with psychiatric consultation within 1 week after admission.
- Development of a written, person-centered, psychiatric plan of care.
- Ongoing psychiatric consultation and medication management by a psychiatrist or licensed prescriber every 2 weeks to monitor side effects of medication and to attain the highest efficacy with the lowest toxicity.
- Weekly recovery oriented clinical counseling focused on goal achievement by overcoming barriers due to the individual's mental illness.
- Therapeutic group interventions at least twice weekly that will assist in addressing the emotional, cognitive and behavioral symptoms of a mental health disorder.

Level 2

- Psychiatric and medication evaluation by a psychiatrist or MD, with psychiatric consultation within 1 week after admission.
- Development of a written, person-centered, psychiatric plan of care.
- Ongoing psychiatric consultation and medication management by a psychiatrist or licensed prescriber every 4 weeks to monitor side effects of medication and to attain the highest efficacy with the lowest toxicity.
- Bi-monthly recovery oriented clinical counseling focused on goal achievement by overcoming barriers due to the individual's mental illness.
- Therapeutic group interventions at least weekly that will assist in addressing the emotional, cognitive and behavioral symptoms of a mental health disorder.

Level 3

- Psychiatric and medication evaluation by a psychiatrist or MD, with psychiatric consultation within 1 week after admission.
- Development of a written, person-centered, psychiatric plan of care.
- Ongoing psychiatric consultation and medication management by a psychiatrist or licensed prescriber every 8 weeks to monitor side effects of medication and to attain the highest efficacy with the lowest toxicity.
- Bi-monthly recovery oriented clinical counseling focused on goal achievement by overcoming barriers due to the individual's mental illness.
- Therapeutic group interventions at least bi-monthly that will assist in addressing the emotional, cognitive and behavioral symptoms of a mental health disorder.

RECOMMENDATION FOR SPECIALIZED SERVICES

If Specialized Services are recommended mark with an "X", and describe below:

_____ Inpatient care is appropriate and desired but the nursing facility is not the appropriate setting for meeting the individual's needs. Another setting, such as an Institution For Mental Diseases (IMD), providing services to individuals aged 65 and older, or a psychiatric hospital, is an appropriate institutional setting for meeting those needs. Specialized Services (Active Treatment) are recommended and described below. For mental illness, specialized services means the services specified by the State Mental Health Authority which result in an individualized plan of care that demands hospitalization.

The referring entity interpreted and explained this PASRR Level II Evaluation Report to the individual and where applicable, the individual's legal representative on:

Date: _____

Signature of the Referring Entity Representative: _____

A copy of this Evaluation Report was sent to:

The individual: _____ Date: _____

Legal representative: _____ Date: _____

NYSOMH: _____ Date: _____

RHCF: _____ Date: _____

Attending physician: _____ Date: _____

Discharging hospital: _____ Date: _____

Please read the next page concerning your right to appeal this determination.

You have a right to appeal your PASRR determination.

Right to a Fair Hearing: If you believe that this determination is wrong, you may request a State Fair Hearing by contacting the New York State Office of Temporary and Disability Assistance (OTDA).

1. Telephone: You may call the statewide toll-free number: **800-342-3334**. (Please have this Report with you when you call.); OR
2. Fax: First, fill in the information below and then send a copy of this page to fax number: **(518) 473-6735**; OR
3. On-line: Complete and send the online request form at **<http://www.otda.ny.gov/oah/forms.asp>**; OR
4. Write: First, complete the information below and then send copy of this page to the Fair Hearing Section, New York State Office of Temporary and Disability Assistance, P.O. Box 1930, Albany, New York, 12201. Please keep a copy for yourself.

You have 60 days from the date of this Report to request a fair hearing.

I want a Fair Hearing. This determination is wrong because:

Print Name: _____ PASRR Case Number: _____

Address: _____ Telephone: _____

If you request a Fair Hearing, the OTDA will send you a Notice of Fair Hearing that tells you when and where the hearing will be held and provides additional information about your rights.

You have the right to be represented by an attorney, a relative, a friend or other person. If your representative is not a lawyer, they must bring to the hearing a written letter, signed by you, saying that you want that person to represent you.

If you need free legal help, you may be able to obtain that help by contacting your local Legal Aid Society or other legal advocate group. You may locate the nearest Legal Aid Society or other legal advocate group in the yellow pages of your phone book.

At the hearing, you, your attorney or your representative will have a chance to explain why you think this determination is wrong, to present written and oral evidence to demonstrate why it is

wrong, as well as an opportunity to question any people who appear at the hearing. Also, you have a right to bring witnesses to the hearing to speak in your favor. You should bring to the hearing any documents that might be helpful in presenting your case, such as medical records.

You have a right to look at documents from your case file to the extent consistent with state or federal law or regulation. You or your representative may be asked to submit an Authorization for Release of Information Form. To ask for documents or find out how to look at your file, call **1-800-633-9441** or write to: IPRO, PASRR Department, 1979 Marcus Avenue, Lake Success, NY 11042-1002, Attn: Diane Thorp, Assistant Director. Documents will not be sent to you unless you make a specific request for them.

You have the right to have a language or sign interpreter provided to you at no cost at the hearing. To secure an interpreter, call OTDA at **800-342-3334** or write to OTDA at the address above.

If you are homebound and unable to travel to the hearing, you may appear at the hearing through a representative. If you have no representative or wish to participate directly in the hearing, a telephone hearing may be scheduled for you. At the time you request a Fair Hearing, you should tell the interviewer at OTDA or explain in your letter or fax that you are homebound. You will then be contacted by OTDA with more information. You will be asked to provide medical documentation that states that you cannot travel to the regular hearing location.

If you have questions about the Fair Hearing process, contact OTDA at **800-342-3334**, or go to **www.otda.ny.gov/oah**.

ATTACHMENT M follows

INSTRUCTIONS FOR COMPLETING THE MEDICAID AGENCY DATA USE AGREEMENT (DUA)

This agreement, which ensures compliance with the requirements of the Privacy Act, is required for a State Medicaid Agency to receive LTC/MDS data deriving from Medicare and private pay residents, and must be completed prior to the release of these files to the Medicaid Agency. No DUA is needed for release of LTC/MDS data derived exclusively from Medicaid residents; however, see the instruction below for item #5 in regard to this. Note that all data releases to the Medicaid Agency, including releases for Medicaid-only residents, must be electronically tracked for purposes of HIPAA compliance.

Instructions for the completion of the agreement follow:

Before completing the DUA, please note that the language contained in this agreement cannot be altered in any form.

- First paragraph, enter the name of the State.
- Item #1, enter the name of the State.
- Item #5, “Files,” is pre-completed to show “LTC/MDS Resident Assessment Data File(s).” This wording is general and covers all MDS data. This all-inclusive language will reliably guide the technical staff who must retrieve the data. Item #5, “Year(s):” The Medicaid Agency may choose the time period for which it wishes to receive data, from a point in the past through up to 10 years into the future (see the Item #6 discussion of retention date). Examples are: “1998-2000;” “2001;” and “From 1998 through [insert date 10 years in the future].”
- Medicaid Agencies must remain aware that the use of all the MDS data, regardless of program source, is limited to the purpose indicated in Item #4, i.e., for Medicaid program use. In addition, Medicaid Agencies must abide by all the restrictions regarding the MDS data, regardless of source, that are based on the Privacy Act and other law and regulation, and as expressed throughout this DUA.
- Item #6 says that the group of data files indicated in Item #5 may be retained by the Medicaid Agency for a period of 10 years after the approval date (CMS’ signature date) of the DUA. This date, which is 10 years in the future, is called the “retention date.” For cases in which the Medicaid Agency receives data in an ongoing manner, the retention date does not move forward with each data release. For example, data released two months prior to the retention date (9 years and 10 months after the DUA approval date) may only be kept by the Medicaid Agency for two months. If it wishes to continue receiving data beyond the 10 year point, the Medicaid Agency must contact CMS at least 30 days prior to the retention date (and preferably 3-4 months prior) to request another DUA covering the period following the 10 year retention date.
- Item #14 is to be completed by the State Medicaid Agency.
- Item #15 is to be completed by the State Medicaid Agency Custodian. Enter the Custodian’s name, the State Medicaid Agency organizational unit, Address, Phone Number (including area code), and E-Mail Address (if applicable). The Custodian of files is defined as that person who will have actual possession of and responsibility for the data files. This will typically be the manager of the Medicaid agency unit with responsibility for the data files. If the person signing for the Medicaid agency as User is the same person as the Custodian, that person can appear and sign in both places.

If there are additional Custodians who are not direct Medicaid agency employees, such as academic or other consulting contractors, who assist the Medicaid agency in its use of the data for the purposes indicated in Item #4, an appropriate lead or managerial person from each such organization must complete and sign the Multi-Signature Addendum form.

INSTRUCTIONS FOR COMPLETING THE DATA USE AGREEMENT (DUA)

Additional Custodian individuals or organizations can be included as necessary over the life of the primary DUA. To include a new Custodian under an existing Medicaid agency DUA, submit the following to the CMS Regional Office: a letter from the Medicaid agency describing the activities planned for the new Custodian and the length of time over which the Custodian will serve; and a Multi-Signature Addendum completed and signed by an appropriate lead or managerial person from the Custodian organization. The Multi-Signature Addendum must show the DUA number of the existing primary Medicaid agency DUA.

- Item #16 will be completed by the RO MDS Representative.
- Item #17 will be completed by the CMS Regional and Central Office.

MEDICAID AGENCY DATA USE AGREEMENT

DUA #

AGREEMENT FOR USE OF CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS) DATA CONTAINING INDIVIDUAL-SPECIFIC INFORMATION

In order to secure Medicare data that resides in a CMS Privacy Act System of Records, and in order to ensure the integrity, security, and confidentiality of information maintained by CMS, and to permit appropriate disclosure and use of such data as permitted by law, CMS and the State of _____ enter into this agreement to comply with the following specific paragraphs.

1. This Agreement is by and between CMS, a component of the U.S. Department of Health and Human Services (DHHS), and the State of _____, hereinafter termed "User."
2. This Agreement addresses the conditions under which CMS will disclose and the User will obtain and use the Medicare Long Term Care Minimum Data Set (LTC/MDS) in section 5. This Agreement supersedes any and all agreements between the parties with respect to the use of the LTC/MDS and preempts and overrides any instructions, directions, agreements or other prior communication from the Department of Health and Human Services with respect to the data specified herein. Further, the terms of this Agreement can be changed only by a written modification to this Agreement, or by the parties adopting a new agreement. The parties agree further that instructions or interpretations issued to the User concerning this Agreement or the data specified herein, shall not be valid unless issued in writing by the CMS point-of-contact specified in section 16, or the CMS signatory to this Agreement shown in section 16. CMS reserves the right to terminate this agreement at any time if there is evidence that: (1) the agreement is not being complied with; (2) there is a violation of law in the manner of compliance; or (3) the agreement no longer complies with changes to statutory or regulatory requirements. Upon such notice, CMS will cease releasing data to the User under this Agreement and will notify the User either to return all previously released data files to CMS at the User's expense or destroy such data.
3. The parties mutually agree that CMS retains all ownership rights to the data file(s) referred to in this Agreement, and that the User does not obtain any right, title, or interest in any of the data furnished by CMS.
4. The User represents, and in furnishing the Medicare LTC/MDS, CMS relies upon such representation, that this file(s) will be used solely for the purpose(s) outlined below.

To facilitate the administration of a Federal health program for the purposes of determining participation requirements, evaluating and/or assessing cost effectiveness, and/or the quality of health care services provided, and/or for setting long term care Nursing Facility reimbursement rates in the State that are directly related to the administration of the State Medicaid Program. To facilitate State compliance with the requirements of the Americans with Disabilities Act.

The User shall not, unless explicitly provided for under contract, disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement to any person(s). The User agrees that, within the User organization, access to the data covered by this Agreement shall be limited to the minimum number of individuals necessary to achieve the purpose stated in this section. The User may issue reports, based on data covered by this Agreement, that are directly related to the administration of the State Medicaid Program to the specific long term care Nursing Facility that has submitted the data.

5. The following file(s) and timeframe are covered under this Agreement:

File	Year(s)
LTC/MDS Resident Assessment Data Files(s)	

6. The parties mutually agree that the aforesaid file(s) (and/or any derivative file(s), including any file that maintains or continues identification of individuals) may be retained by the User for a maximum period of 10 years from the effective date of this agreement, hereinafter known as the retention date. The User agrees to notify CMS at least 30 days prior to the expiration of the aforementioned retention date in order to renegotiate this agreement. The User acknowledges that stringent adherence to the aforementioned retention date is required.
7. The User agrees to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of the data, and to prevent its unauthorized use or access. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established by the Office of Management and Budget (OMB) in OMB Circular No. A-130, Appendix III—Security of Federal Automated Information Resources (<http://www.whitehouse.gov/omb/circulars/a130/a130.html>), which sets forth guidelines for security plans for automated information systems in Federal agencies. The User acknowledges that the use of unsecured telecommunications, including the Internet, to transmit individually identifiable or deducible information derived from the file(s) specified in section 5 is strictly prohibited. Further, the User agrees that the data must not be physically moved or transmitted in any way without written approval from CMS.
8. The User agrees that the authorized representatives of CMS, DHHS Office of the Inspector General or Comptroller General, will be granted access to premises where the aforesaid file(s) are kept for the purpose of inspecting security arrangements confirming whether the User is in compliance with the security requirements specified in section 7.
9. The User agrees that no findings, listing, or information derived from the file(s) specified in section 5, with or without identifiers, may be released if such findings, listing, or information contain any combination of data elements that might allow the deduction of a beneficiary's identification without first obtaining written authorization from the appropriate System Manager or the person designated in item number 16 of this Agreement unless the information derived from the files specified in section 5 are being used for purposes outlined in section 4. The User will notify any entity to which the data is transferred of the need to maintain the confidentiality of the data provided. Examples of such data elements include but are not limited to geographic indicator, age, sex, diagnosis, procedure, admission/discharge date(s), or date of death. The User agrees further that CMS shall be the sole judge as to whether any finding, listing, information, or any combination of data extracted or derived from CMS's files identifies or would, with reasonable effort, permit one to identify an individual or to deduce the identity of an individual to a reasonable degree of certainty.
10. The User agrees that in the event CMS determines or has a reasonable belief that the User has made or may have made disclosure of the aforesaid file(s) that is not authorized by this Agreement, or other written authorization from the appropriate Systems Manager or the person designated in section 16, CMS in its sole discretion may require the User to: (a) promptly investigate and report to CMS the User's determinations regarding any alleged or actual unauthorized disclosure, (b) promptly resolve any problems identified by the investigation; (c) if requested by CMS, submit a formal written response to an allegation of unauthorized disclosure; (d) if requested by CMS, submit a corrective action plan with steps designed to prevent any future unauthorized disclosures; and (e) if requested by CMS, return data files to CMS immediately. The User understands that as a result of CMS's determination or reasonable belief that unauthorized disclosures have taken place, CMS may refuse to release further CMS data to the User for a period of time to be determined by CMS.
11. The User hereby acknowledges that criminal penalties under §1106(a) of the Social Security Act (42 U.S.C. §1306(a)), the Privacy Act (5 U.S.C. §552a(i)(3)), and 18 U.S.C. §641, which govern the use of these data, may apply to disclosures of information that are covered by this agreement.
12. By signing this Agreement, the User agrees to abide by all provisions set out in this Agreement for protection of the data file(s) specified in section 5.

13. The disclosure provision(s) that allow the discretionary release of CMS data for the purpose(s) stated in paragraph 4 follow(s).

Long Term Care Minimum Data Set, System of Records #09-70-1517, routine use #2(c)

14. On behalf of the User, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

Name of User *(typed or printed)*

State Agency/Organization

Street Address

City

State

ZIP Code

Office Telephone *(Include Area Code)*

E-Mail Address *(If applicable)*

Signature

Date

15. The parties mutually agree that the following named individual is designated as “Custodian” of the file(s) on behalf of the User, and will be responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this Agreement to prevent unauthorized use. The User agrees to notify CMS within fifteen (15) days of any change of custodianship. The parties mutually agree that CMS may disapprove the appointment of a custodian, or may require the appointment of a new custodian at any time.

The Custodian hereby acknowledges his/her appointment as custodian of the aforesaid file(s) on behalf of the User, and agrees to comply with all of the provisions of this Agreement on behalf of the User.

Name of Custodian *(typed or printed)*

Company/Organization

Street Address

City

State

ZIP Code

Office Telephone *(Include Area Code)*

E-Mail Address *(If applicable)*

Signature

Date

16. The parties mutually agree that the following named individual will be designated as “point-of-contact” for the Agreement on behalf of CMS.

Name of CMS Contact <i>(typed or printed)</i>		
Title/Component		
Street Address		
City	State	ZIP Code
Phone Number <i>(Include Area Code)</i>	E-Mail Address	

17. The parties mutually agree that the following named individual will be designated as point-of-contact for the Agreement on behalf of CMS.

On behalf of CMS the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

Name of CMS Representative <i>(typed or printed)</i>		
Title/Component		
Street		Mail Stop
City	State	ZIP Code
Office Telephone <i>(Include Area Code)</i>	E-Mail Address <i>(If applicable)</i>	
A. Signature		Date
B. Concur/Nonconcur — Signature of CMS System Manager or Business Owner		Date
C. Concur/Nonconcur — Signature of CMS Protocol or Project Review Representative		Date