

## **APPENDIX W – REQUIRED CLAUSES FOR FEDERALLY FUNDED CONTRACTS**

The following terms and conditions apply to any contract for which any portion of the funding is derived from Special Supplemental Nutrition Program for Women, Infants, and Children Food and Nutrition Services and Administration grant funding made available by the United States Department of Agriculture Food and Nutrition Service or other Federal funding sources.

### **Terms and Conditions**

#### **Compliance with Federal Law, Regulations, and Executive Orders**

This is an acknowledgement that financial assistance provided by the United States Department of Agriculture Food and Nutrition Service and/or other Federal sources will be used to fund all or a portion of the contract. The CONTRACTOR will comply with all applicable Federal law, regulations, executive orders and United States Department of Agriculture Food and Nutrition Service and/or other Federal agency policies, procedures, and directives as applicable.

#### **Breach of Contract**

The STATE reserves the right to stop the work being performed under this Contract at any time that the STATE deems the CONTRACTOR to be unwilling or unable to perform the work to the satisfaction of the STATE. In the event of such cessation of work, and where the CONTRACTOR has been afforded an opportunity to cure its inability to adequately perform within a reasonable time as specified by the STATE, but not to exceed 30 days, and the CONTRACTOR has failed to remedy such defect of performance to the satisfaction of the STATE, the STATE shall have the right to terminate this Contract and to arrange for the completion of the work in such manner as the STATE may deem advisable; and if the cost of having the work completed by a replacement contractor exceeds the amount of the initially awarded Contract, the CONTRACTOR and its surety shall be liable to the STATE for any excess cost on account thereof.

#### **Termination**

**Cause:** In the event the CONTRACTOR, through any cause, fails to comply with the terms and conditions of this Contract including the attachments hereto, the STATE thereupon shall have the right to terminate this Contract by giving notice in writing to the CONTRACTOR. The STATE shall deliver written notice via registered or certified mail, return receipt requested or shall deliver same by hand-receiving CONTRACTOR'S receipt therefore, such written notice to specify the fact and date of such termination. The CONTRACTOR agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.

**Convenience:** The STATE, in its sole discretion, may terminate the Contract at any time by providing to the CONTRACTOR not less than 30 days written notice that on or after a date therein specified this Contract shall be deemed terminated and canceled.

The effective date of the termination shall be the later of (i) the date indicated in the notice or (ii) the date the notice is received by the CONTRACTOR, which shall be established as follows:

(i) if the notice is delivered by registered or certified mail, the date of receipt shall be established by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first-class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

## **APPENDIX W – REQUIRED CLAUSES FOR FEDERALLY FUNDED CONTRACTS**

(ii) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the CONTRACTOR or by affidavit of the individual making such hand delivery attesting to the date of delivery

Upon termination of this Contract, the following shall occur:

CONTRACTOR shall make available to the STATE for examination all data, records and reports relating to this Contract.

Except as otherwise provided in this Contract, the liability of the STATE for payments to the CONTRACTOR and the liability of the CONTRACTOR for services hereunder shall cease.

The CONTRACTOR shall receive equitable compensation for such services as shall have been satisfactorily performed by the CONTRACTOR prior to the effective date of termination of this Contract. Such compensation shall not exceed the total cost incurred for the work which the CONTRACTOR was engaged in at the time of termination.

### **Equal Employment Opportunity**

The CONTRACTOR will comply with the equal opportunity clause provided under 41 CFR 60-1.4, in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

The CONTRACTOR will include the equal opportunity clause under 41 CFR 60-14 in every subcontract, unless exempted, so that such provisions will be binding upon each subcontractor. The equal opportunity clause may be included by reference.

### **Clean Air Act and Federal Water Pollution Control Act**

The CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401-7671q and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

The CONTRACTOR shall report each violation to the New York State Department of Health and understands that the New York State Department of Health will, in turn, report each violation as required to assure notification to the United States Department of Agriculture Food and Nutrition Service, and the appropriate Environmental Protection Agency Regional Office.

The CONTRACTOR agrees to include these requirements in each subcontract, unless exempted, financed in whole or in part with Federal assistance provided by the United States Department of Agriculture Food and Nutrition Service and/or other Federal agency.

### **Anti-Lobbying Act**

The CONTRACTOR certifies, to the best of his or her knowledge and belief, that:

a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

## **APPENDIX W – REQUIRED CLAUSES FOR FEDERALLY FUNDED CONTRACTS**

b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c) The CONTRACTOR shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subaward recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

Any person who makes an expenditure prohibited by subsection (a) of this section shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

Any person who fails to file a declaration required to be filed under subsection (b) of this section shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure

By signing and/or submitting this application or contract agreement, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

### **Americans with Disabilities Act**

During the term of the agreement, the CONTRACTOR shall comply with subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131-12134), as amended by the ADA Amendments Act of 2008 (ADA Amendments Act) (Pub. L. 110-325, 122 Stat. 3553 (2008)), which prohibits discrimination on the basis of disability in public services, except public transportation services.

### **Drug-Free Workplace Statement**

1. By signing and/or submitting this application or contract agreement, the CONTRACTOR is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the STATE awards the contract. If it is later determined that the CONTRACTOR knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the STATE, in addition to any other remedies available to the Federal Government, may act as authorized under the Drug-Free Workplace Act.

The CONTRACTOR certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the CONTRACTOR's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

## APPENDIX W – REQUIRED CLAUSES FOR FEDERALLY FUNDED CONTRACTS

- (b) Establishing an ongoing drug-free awareness program to inform employees about:
- (1) The dangers of drug abuse in the workplace;
  - (2) The CONTRACTOR's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the contract, the employee will:
- (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the STATE in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer or other designee on whose contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected contract;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:
- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

### **Intangible Property: Ownership, Copyrights and Licensing**

The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and authorize others to use for Federal purposes the copyright in any intangible property and associated documentation developed under the resulting contract which includes the following:

- (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- (b) Any rights of copyright to which a grantee, sub-grantee or a contractor purchases ownership with grant support.

The CONTRACTOR certifies that all services, equipment, software, supplies, and any other products provided under this Agreement do not and will not infringe upon or violate any patent,

## **APPENDIX W – REQUIRED CLAUSES FOR FEDERALLY FUNDED CONTRACTS**

copyright, trade secret or any other proprietary right of any third party. In the event of any claim by a third party against the State, the State shall promptly notify the CONTRACTOR and the CONTRACTOR, at its expense shall defend, indemnify and hold harmless the State against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees.

The CONTRACTOR may not publish or copyright any data without the prior approval of the STATE. The State and Federal Government, if applicable, shall have the right to publish, duplicate, use and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

The STATE shall own all custom software. Such custom software shall include, but not be limited to, all source, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Contract.

The CONTRACTOR shall deliver to the STATE all ownership rights to the complete system, free of any claim or retention of rights thereto by the CONTRACTOR. The CONTRACTOR acknowledges that this system shall henceforth remain the sole and exclusive property of the STATE, and the CONTRACTOR shall not use or describe such software and materials without the written permission of the STATE. This obligation to transfer all ownership rights to the STATE on the part of the CONTRACTOR is not subject to any limitation in any respect.

### **Debarment and Suspension**

Certification statement

(1) This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR's principals (defined at 2 CFR §180.995) or its affiliates (defined at 2 CFR §180.905) are excluded (defined at 2 CFR §180.940) or disqualified (defined at 2 CFR §180.935).

(2) The CONTRACTOR must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction (e.g., subcontract) it enters into.

(3) This certification is a material representation of fact relied upon by the New York State Department of Health. If it is later determined that the CONTRACTOR did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the New York State Department of Health, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The CONTRACTOR shall comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.