



# SUNY DOWNSTATE Medical Center

DATE: July 6, 2015

**TO: Prospective Vendor**

**SUBJECT: Invitation for Bid No. 15-14 (“IFB”)  
LINAC Radiation Therapy System, Installation, and Maintenance Package**

Dear Vendor:

The State University of New York – Downstate Medical Center (“SUNY-DMC”) hereby issues the attached Invitation for Bid # 15-14 (“IFB”) to prospective Vendors (each a “Vendor” or “Proposer”) that may be interested in the provision of the following items to SUNY-DMC: (1) LINAC Radiation Therapy System, conforming to the technical specifications contained in the IFB; and (2) a Maintenance, Installation, and Support Package for all components of the Radiation Therapy System.

Proposals in response to this IFB are due Wednesday, August 12, 2015 at the address below. Please note that a mandatory pre-bid conference has been scheduled for Tuesday, July 28, 2015 at 10:00 AM.

Any Vendor intending to submit a proposal in response to this solicitation should submit a completed copy of the (1) “Intention To Bid” form; and (2) Procurement Lobbying Law Affirmation, annexed to the IFB as **Exhibit “B”**, to SUNY-DMC at the following address:

SUNY - Downstate Medical Center  
Department of Contracts  
450 Clarkson Avenue, MSN 63  
Brooklyn, NY 11203-2908  
Attention: Maureen Crystal, Director of Contracts  
Email: Maureen.Crystal@downstate.edu  
Fax: (718) 270-3342

Should your firm not wish to submit a proposal in response to this IFB, please complete the attached “No Proposal Response Form,” and submit the completed form to the foregoing address. Failure to submit an “Intention To Bid” form or a “No Proposal Response Form” may result in removal of your firm from SUNY-DMC’s solicitation list for future procurement opportunities.

Your compliance herewith is greatly appreciated

Sincerely,

Maureen Crystal  
Director of Contracts

**NO PROPOSAL RESPONSE FORM**

**Attention: Maureen Crystal, Director of Contracts**

Vendor Name:		
Address:		
City, State and Zip Code:		
Federal ID No.	Phone No.	Fax No.
<b>IFB No. and Title: Invitation for Bid No. 15-14 (“IFB”) LINAC Radiation Therapy System, Installation and Maintenance Package</b>		

**REASONS FOR NOT PROPOSING ON THE REFERENCED CONTRACT:**

(Check all that apply)

- Only interested as a potential sub Vendor.
- Size of this contract is not within the interest of the Vendor.
- Vendor has insufficient amount of time to prepare a proposal. Please indicate in the comment section below the date that the Vendor received the IFB.
- Contract work not within the specialty of the Vendor.
- Other (Please explain in the comment section below):

Comments - Please use additional sheets if necessary.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

If your firm does not intend to submit a proposal in response to this IFB, please complete this form and submit a completed copy of the same either via mail to: **SUNY-DMC, Dept of Contracts, 450 Clarkson Ave., MSN 63, Brooklyn, NY 11203**, or via email to **Maureen.Crystal@downstate.edu**, attention: **Maureen Crystal, Director of Contracts**

**INTENTION TO BID**  
**IFB # 15-14**

Date

We invite vendors to submit proposals in accordance with the requirements, terms, and conditions of the attached Invitation for Bid (IFB) for the provision of a **LINAC Radiation Therapy System, Installation, and Maintenance Package**. This IFB sets forth the requirements for all services and solicits a detailed response from vendors to include pricing and service descriptions in the specified format.

By filling in and returning this Intention to Bid as specified below, your company will be expected to complete a bid, which shall be considered if satisfactorily completed. Please replace text in the boxes below with your information to complete this form.

**Attention: Maureen Crystal, Director of Contracts**

<i>Enter Vendor's Name and Address Here</i>	
Company's Name:	
Address:	
City, State, ZIP:	
Phone Number(s)	

<i>Enter Vendor Representative's Name Here</i>	<i>Enter Rep Email Address Here</i>
Name	Email
<i>Additional Rep Contact (if applicable)</i>	<i>Additional Rep Email (if applicable)</i>
Name	Email
<i>Additional Rep Contact (if applicable)</i>	<i>Additional Rep Email (if applicable)</i>
Name	Email

If your firm intends to submit a proposal in response to this IFB, please complete this form and submit a completed copy of the same either via mail to: **SUNY-DMC, Dept of Contracts, 450 Clarkson Ave., MSN 63, Brooklyn, NY 11203**, or via email to **Maureen.Crystal@downstate.edu**, attention: **Maureen Crystal, Director of Contracts**



**SUNY**  
**D**OWNSTATE  
Medical Center

**INVITATION FOR BID**

**SUNY DOWNSTATE MEDICAL CENTER**

**IFB 15-14**

**LINAC Radiation Therapy System, Installation and Maintenance Package**

**Issued: Monday, July 6, 2015**

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Exhibit A	SUNY Standard Contract Clauses
Exhibit A-1	SUNY Standard Contract Clauses- Affirmative Action
Exhibit B	Vendor's SFL Sections 139(j) & (k) Affirmation of Understanding and Adherence
Exhibit C	Cost Proposal Documents (10 pages)
Exhibit D	Construction Contract Terms and Conditions
Exhibit E	Reference(s) Form
Exhibit F	Business Associates Agreement
Exhibit G	System Requirements: Equipment and Maintenance Detailed Specifications (8 pages)
Exhibit H	Installation Requirements: Design and Construction Related Documents (27 pages)
Exhibit I	Mandatory Procurement Checklist
Exhibit J	Prevailing Wage Job PRC #

Attachment: State Required Forms: (1) Vendor Responsibility Questionnaire (Non-Construction and Construction); (2) Tax Forms ST-220TD and ST-220CA; (3) G-226; (4) Proof of NYS Worker's Compensation Insurance Form DB120.1; and (5) Proof of Disability Benefits Insurance Form C105.2,(6) MWBE Documents (Forms 104 and 107);  
Deficit Reduction Act Appendix

## SECTION I.

### INTRODUCTION AND BACKGROUND

#### **A. SUNY-Downstate Medical Center's Need – Purpose of this Invitation for Bid**

State University of New York – Downstate Medical Center (“SUNY-DMC”) on behalf of its component University Hospital of Brooklyn (“UHB”) hereby seeks proposals from qualified firms for the provision of the following items: (1) a LINAC Radiation Therapy System (“System”), consisting of all the components contained in the IFB; (2) a Maintenance and Support Package for all components of the Radiation Therapy System; (3) all installation services (“Construction Services”) for the System; and (4) all ancillary services. All items must be in accordance with the requirements and specifications set forth in *Section III, Requirements/Detailed Specifications* hereinafter.

#### **B. SUNY-DMC Background**

Located on an urban campus in Brooklyn, New York, the SUNY-DMC, also known as SUNY Health Science Center at Brooklyn and HSC – Brooklyn, is one of four academic medical center campuses of the 64 unit State University of New York system. SUNY-DMC traces its roots back to 1860, when a school of medicine was founded at the Long Island College Hospital. SUNY-DMC is comprised of five colleges: the College of Medicine, the College of Nursing, the College of Health Related Professions, the School of Graduate Studies, and the School of Public Health.

SUNY-DMC's goal is to educate the next generation of physicians, nurses, other health care professionals and researchers, and train them to deliver health care in a densely populated, multi-cultural, multi-ethnic urban community of diverse economic levels. In keeping with its unique history of being the first medical school in the United States to bring teaching to the bedside of hospitalized patients, SUNY-DMC attends to the health care needs of the 5.0 million residents of Brooklyn, Queens, and Staten Island through the University Hospital of Brooklyn and a network of educational affiliates.

Our facilities provide exceptional opportunities for those individuals who are committed to promoting health in urban communities, and addressing the complex challenges of investigating and preventing diseases that confront clinicians, educators, and researchers in such an environment. This special aspect of SUNY-DMC's unique mission is reflected in the students it attracts and selects, the vast majority of whom are drawn from Brooklyn and the New York City region. Many of these students are members of minority groups and/or come from families of first-generation immigrants or economically disadvantaged backgrounds.

Beyond formal degree-granting programs, SUNY-DMC engages in world-class research and supports advanced medical education in both its graduate and continuing education offerings. Downstate's grants rank it the fourth largest sponsored research program in the SUNY system, and among the National Science Foundation's top third of colleges and universities receiving federal research funds. SUNY-DMC and its regional affiliates also prepare over 900 residents and fellows in fifty-one specialty and sub-specialty programs of three to eight years in length, and offer a full continuing education program to health professionals in the region.

In addition to contributing to the local economy through its role in education, research, and business development, Downstate is one of the top six employers in Brooklyn and created an Advanced Biotechnology Incubator and Biotechnology Park to spur the development of a community of technology companies and medical services in Brooklyn.

The Hospital. SUNY-DMC's component University Hospital of Brooklyn ("UHB") is a teaching hospital serving as the regional referral center for the New York City boroughs of Brooklyn, Queens, and Staten Island. SUNY Downstate is a hospital of approximately 376 beds. UHB also operates five satellite clinics, located within five miles of SUNY-DMC's Clarkson Avenue campus.

Community Outreach. The neighborhoods that comprise the immediate UHB service area include high numbers of under-represented minorities and high concentrations of poverty with residents who bear a high health burden. SUNY-DMC has over sixty educational outreach, community outreach, and HIV prevention and care activities that address the special needs of the community.

## SECTION II.

### ADMINISTRATIVE CONSIDERATIONS

- A. Proposal Submission: Vendors responding to this IFB (each a “Vendor,” “Offeror” or “Bidder,” collectively, “Vendors,” “Offerors” or “Bidders”) must submit four (4) originals and two (2) copies (6 total copies) of proposals (“Proposals”), with each of the four (4) required originals bearing an original signature of an officer authorized to bind Vendor, which signature must be duly notarized. Proposals must include all required information, must adhere to the format prescribed hereinafter and shall be submitted as follows:

Proposals should be delivered or sent by any form of registered mail to:

SUNY-Downstate Medical Center  
Department of Contracts  
450 Clarkson Avenue - MSN 63  
Brooklyn, New York 11203-2098  
Attention: Maureen Crystal, Director Of Contracts

or hand delivered to:

Department of Contracts  
151 East 34th Street - Room AF-105  
Brooklyn, New York 11203  
Attn: Maureen Crystal

It shall be the responsibility of each Vendor to ensure that its proposal is properly received by the date and time and at the place specified. Proposals may be hand-delivered to the Department of Contracts (located at 151 East 34th Street, Room AF-105, Brooklyn, New York) to ensure timely delivery. Vendors that plan to hand-deliver Proposals should contact the appropriate Contract Officer listed hereinafter at least forty-eight (48) hours in advance to schedule delivery. Late and/or incomplete proposals will not be considered. SUNY-DMC will not accept any proposals submitted by telephone, e-mail or facsimile.

Proposals should be prepared simply and economically and, where applicable, should reference corresponding numerical or letter sections of the IFB. All information requested must be furnished by the Vendor and must be submitted in written form with the proposal. Statements must be complete and accurate and in the format requested. All documents must be sworn and notarized, where indicated. Omissions, inaccuracies and misstatements will be sufficient cause for the rejection of a proposal.

- B. **Response Date:** Proposals must be received no later than 1:00P.M., E.S.T. on Wednesday, August 12, 2015 (“Proposal Submission Deadline”). Vendors mailing their proposals must allow sufficient time for mail delivery to ensure receipt of their proposals by the time specified. Proposals must be sealed in an envelope showing the following information on the outside:
- Vendor's name and address
  - Proposal due date and Invitation for Bid number.



To aid in the evaluation process, proposals should be submitted with the following materials in the following sequence:

- Cover Letter/Letter of Transmittal in the following format:

**Table 1. Cover Letter Format**

<b>Cover Letter Format</b>
The Vendor’s Cover Letter shall contain the following information regarding the Vendor’s official representative for its proposal: <ul style="list-style-type: none"> <li>• Name of Vendor’s official representative;</li> <li>• Title;</li> <li>• Name of company;</li> <li>• Address;</li> <li>• Telephone number;</li> <li>• Facsimile number; and</li> <li>• E-mail address of the Vendor’s representative.</li> </ul>
The Vendor’s Cover Letter shall contain a statement certifying that the proposal shall remain valid for at least 150 days.
The Vendor’s Cover Letter shall contain a statement stating that it has supplied three References in the format of IFB, <b>Exhibit “E.”</b>
The Vendor’s Cover Letter shall contain a statement stating that it has submitted the Procurement Lobbying Law Affirmation, contained in <b>Exhibit “B,”</b> abided by State Finance Law Section 139(j) & (k), and will continue to do so until the due execution of a contract arising herefrom.
The Cover Letter shall include a statement that, if awarded the contract, the Vendor will comply with all the requirements set forth in this IFB, including the contract terms and conditions in the Contract Provisions Section, the attached Standard Clauses for all New York State Contracts, State Finance Law §§139-j and 139-k and any other applicable laws, rules, and regulations.

- References: Using the Reference Forms attached hereto as **Exhibit “E,”** submit such reference information as required pursuant to Section III (B) [pages 19-20] hereinafter.
- Required Documents: Vendor must provide any documents or other information specifically requested pursuant to Section III (C) [page 20] herein.
- Eligibility Requirement Grid: Vendor must submit a completed copy of the Eligibility Requirement Grid set forth in Section III (E) [pages 21-22] herein.
- Completed Cost Proposal, in the form set forth in **Exhibit “C”**.
- Completed Construction Proposal, addressing all items set forth in **Exhibit “H”**

C. **Pre-Bid Conference:** A formal, **MANDATORY** pre-proposal conference is scheduled in connection with this procurement. This conference will be held at 10:00 AM EST on Tuesday, July 28, 2015 , in the lobby at SUNY-DMC’s University Hospital of Brooklyn located at **450 Clarkson Avenue, Brooklyn, New York**. At this conference, SUNY-DMC will discuss, *inter alia*, the location of the prospective new LINAC, its present needs, and its requirements for the new prospective LINAC. Offerors are urged to read this IFB carefully prior to the conference as they may present any questions pertaining hereto to the appropriate contact person(s) during the conference. Any questions received during the meeting that are subsequently submitted in writing in accordance herewith will be addressed in writing and circulated to all participants. SUNY-DMC would appreciate 24-hour prior

confirmation from Offerors planning to attend. **Any vendor intending to submit a bid MUST ATTEND this conference. Any vendor that fails to attend will be precluded from submitting a bid for consideration.**

- D. **Calendar:** The IFB Calendar is listed in Table 2 below. SUNY-DMC reserves the right, in its sole discretion, to modify any event, time, or date in the IFB Calendar. SUNY-DMC will notify all Vendors (that submitted intention to bid forms) via addendum of any changes to the IFB Calendar.

**Table 2. IFB Calendar**

	<b>Event</b>	<b>Date</b>	<b>Time</b>
1	Release of IFB	<b>Mon, July 6, 2015</b>	<b>8:00 AM</b>
2	Vendors' Intent to Bid due	<b>ASAP no later than July 28, 2015</b>	<b>N/A</b>
3	Pre-Bid Conference/Walk-Thru	<b>Tues, July 28, 2015</b>	<b>10:00 AM</b>
4	Written questions and construction requirements due from Vendors	<b>Fri, July 31, 2015</b>	<b>3:00 PM</b>
5	Official response to Vendors' questions due	<b>Thurs, August 6, 2015</b>	<b>4:00 PM</b>
6	Closing date for receipt of Proposals	<b>Wed, August 12, 2015</b>	<b>1:00P.M.</b>

- E. **Bid Opening:** A public bid opening will be held on Wednesday, August 12, 2015 at 1:00 P.M., E.S.T. The location of the opening will be:

SUNY Downstate Medical Center  
 Department of Contracts  
 151 East 34th Street, Room AF105  
 Brooklyn, NY 11203-2098

- F. State Finance Law Section 139 (j) and (k) Contact Restrictions: Pursuant to State Finance Law (“SFL”) Sections 139(j) and (k) (collectively, the “Procurement Lobbying Law”), this solicitation imposes certain restrictions on communications between SUNY-DMC and a Vendor during the “Restricted Period.” Restrictions are expounded in considerably more detail in the documents pertaining to the Procurement Lobbying Law attached hereto as **Exhibit “B.”** Vendors must sign and return the Procurement Lobbying Law Affirmation of Understanding and Adherence (collectively “Procurement Lobbying Law Affirmations” or “Affirmations”), to SUNY-DMC no later than the date fixed for submission of “Intention to Bid” Forms hereunder in Table 2, IFB Calendar. In so doing, vendors shall affirm their understanding of and agreement to comply with: (1) the provisions of the Procurement Lobbying Law; and (2) SUNY-DMC’s policies promulgated thereunder. **Affirmations must be returned AS SOON AS POSSIBLE, but in no event later than the date on which Vendor’s Intent to Bid forms are due (as set forth in Table 2). Failure to timely return Affirmations may result in disqualification from consideration hereunder.**

- G. SUNY-DMC 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 available at [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://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 Office of the State Comptroller's 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](http://www.osc.state.ny.us/vendrep) or may contact SUNY-DMC or the Office of the State Comptroller's Help Desk for a copy of the paper form.

- H. **IFB Inquiries**: Any questions pertaining to this IFB must: (1) be in writing; (2) reference the section(s) in question; and (iii) be submitted to the following SUNY-DMC representatives ONLY:

Maureen Crystal  
Director of Contract  
Department of Contracts  
SUNY-Downstate Medical Center  
(718) 270-1976  
(718) 270-3342 - fax  
Maureen.Crystal@downstate.edu

And

Raul Tosado  
Executive Director  
**MWBE Coordinator (will also address all MWBE Questions)**  
SUNY-Downstate Medical Center  
(718) 613-8723  
(718) 221-6588 - fax  
Raul.Tosado@downstate.edu

All questions, including all issues with the proposed contract language, must be received by the date and time specified in the IFB Calendar (the "Question Period"). As stated above, pursuant to SFL 139(j) and (k), **Vendors may only submit questions to the foregoing individuals (each a "Designated Contact," collectively the "Designated Contacts"), and are strictly prohibited from "Contacting" other SUNY-DMC employees, except as specifically provided under the law.**

- I. Vendor Review of IFB: Should any interested Vendor find a discrepancy in any part of these specifications or the terms and conditions incomplete or otherwise questionable in any respect, Vendor shall, in writing, immediately call such matters to the attention of a SUNY-DMC representative referenced above. The submission of a Proposal shall be deemed a representation that the Vendor: (1) understands the requirements of this solicitation; (2) has conducted sufficient investigation so as to be aware of the nature of the work to be performed and the requirements of the IFB; and (3) is prepared to contractually obligate itself to perform the required services.
- J. Addenda: Any addendum issued to Vendors prior to the Bid Opening shall become a part of these specifications, and all proposals must include the work therein described. Acknowledgment of the

receipt of all amendments, addenda, and changes issued shall be required from all Vendors receiving the IFB by signing and returning one (1) copy of the Cover Sheet to the Contract Officer(s) (see General Instructions, above) by the IFB due date and time (said Cover Sheet being the first page of each addendum). Failure of a Vendor to acknowledge receipt of any Addendum shall not relieve the Vendor from compliance with the terms thereof.

- K. Proposal Confidentiality/ Freedom of Information Law: To extent applicable, Vendor 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 Vendor's negligent or willful acts or omissions, or the willful acts or omission of Vendor's Agents, Officers, employees or subcontractors. To the extent permitted by law, SUNY-DMC will not disclose the details of a Vendor's proposal, except for purposes of evaluation, prior to approval by the State Comptroller of the resulting contract(s). As previously provided, all material submitted becomes the property of SUNY-DMC and may be returned at its sole discretion. SUNY-DMC reserves the right to use any and all ideas (that are not identified as trade secrets) presented in any response to the IFB.

If a Vendor believes that any information in its proposal constitutes a "trade secret," as defined by the New York State Freedom of Information Law, Article 6 of the Public Officers Law, and said Vendor seeks an exemption from disclosure thereof, Vendor shall submit with its proposal a letter, specifically identifying by page number, line, or other appropriate designation, that information alleged to be trade secret and explaining, in detail, the basis therefore. A Vendor's failure to submit such a letter with its offer identifying alleged trade secrets shall constitute a waiver by the Vendor of any rights it may have under Section 89 (Subdivision 5) of the Public Officers Law, relating to the protection of trade secrets.

Vendor may not designate its entire proposal as trade secret or confidential. SUNY-DMC will not consider Vendor information to be a trade secret if such information is not sufficiently identified as a trade secret by the Vendor, and designated in the proposal in accordance with the above method, or if that information:

- Was known to SUNY-DMC before submission of such proposal; or
- Properly became known to SUNY-DMC thereafter through other sources; or
- Is in the public domain.

- L. Incurred Costs: The State of New York or SUNY-DMC will not be liable for any costs incurred by Vendors in associated with the preparation or presentation of a proposal.
- M. Notification of Vendors Not Selected: Once SUNY-DMC has notified the selected Vendor, SUNY-DMC will notify in writing all other Vendors that their proposals were not selected for award. As soon as possible following SUNY-DMC's receipt of a request therefore, SUNY-DMC will debrief any unsuccessful Vendor that requests a debriefing. The debriefing will be limited to the proposal submitted by the requesting Vendor.

Unselected Vendors may contact SUNY-DMC to request its then-current protest policy (the "Protest Policy"), which Protest Policy outlines the policies and procedures promulgated by SUNY-DMC with regard to/governing protests.

- N. Legal Compliance: All Vendors and their employees must be aware of (and comply with) the requirements of: 1) New York State Public Officers Law; 2) State Finance Law §§139-j and 139-k; 3) the Health Insurance Portability and Accountability Act of 1996 and laws, policies and procedures promulgated thereunder as set forth in the Business Associates Agreement attached hereto as **Exhibit “F”**; 4) other applicable provisions of New York State (“NYS”) and federal law; and 5) all codes, rules, and regulations that derive from State laws and that establish the standards for business and professional activities of State employees and govern the conduct of employees of firms, associations, and corporations in business dealings with NYS. By signing its proposal, each Vendor guarantees its own and its subcontractor’s and agent’s knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers, relationships, etc. involving NYS and/or NYS employees. Failure to comply with those provisions may result in disqualification from the bidding process and other civil or criminal proceedings as required by law.
- O. State of New York Vendor Forms: Any Vendor that receives an award (even a tentative award) hereunder, shall, within five (5) days after notification of such award, complete the requisite New York State Vendor forms (the “NYS Forms”), copies of which are attached hereto as **Exhibit “D”**, in accordance with the instructions therein, and shall send the completed original copies thereof directly to SUNY-DMC in the manner and within the time-frame specified by SUNY-DMC.
- P. SUNY-DMC’s Rights: In accepting, evaluating and awarding the contract resulting from this IFB, SUNY, in its sole discretion, reserves non-exclusive right to:
1. Disqualify a Vendor from receiving the award if such Vendor, or anyone in the Vendor’s employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
  2. Revise/amend any provision of this IFB, including evaluation instruments and process, by written notification to Vendors, prior to Bid Opening.
  3. Reject any and all proposals received as a result of this IFB.
  4. Require a Vendor to submit such additional information bearing upon the Vendor's ability to perform the Contract as SUNY-DMC deems appropriate.
  5. Consider any other information otherwise available to it concerning the financial, technical and other qualifications and abilities of the Vendor.
  6. Cancel this IFB, in whole or in part, at any time before award. This IFB creates no obligation on the part of SUNY-DMC to award a contract
  7. Waive procedural technicalities in proposals received, after prior notification to the Vendor, including the right to waive or modify minor irregularities in the proposal or adjust/correct arithmetical errors. Notwithstanding the foregoing, notification and concurrence of the Vendor shall not be required to waive or modify non-material irregularities in proposals.
  8. Incorporate into and/or make a part of the final contract, the contents of the selected proposal and any written questions and answers made during the proposal process. Should negotiations fail to result in an acceptable contract, SUNY-DMC reserves the right to terminate negotiations.
  9. Eliminate any requirement that is found to be unmet by all Vendors and deemed non-material.
  10. Begin contract negotiations with next-lowest Vendor(s) responsive to this IFB should SUNY-DMC find that the selected Vendor was Non-Responsive.
  11. Begin contract negotiations with the next-lowest Vendor, if SUNY-DMC terminates the contract.
  12. To the extent applicable hereto, select and award the contract to the Vendor whose proposal represents the best value to SUNY-DMC.

13. Make inquiries, at SUNY-DMC's discretion and by means it may choose, into the Vendor's background or statements made in the proposal to clarify or to determine the truth and accuracy of all statements made therein.
- Q. Method of Award: SUNY-DMC will award the contract resulting from this IFB to the "responsive" and "responsible" Vendor that proposes the lowest cost (based on the Grand Total) for the System, services, and maintenance package.
- R. Non-Responsiveness Determinations: SUNY-DMC reserves the right to deem "Non-Responsive" any Vendor(s) that fails to comply in any material respect with the instructions, or other requirements, set forth in this solicitation document. SUNY-DMC shall promptly notify Vendor(s) deemed Non-Responsive of such determination. Vendor(s) notified of such a determination shall have five (5) business days (from the date of notice) to respond to and/or contest such determination, and shall, without exception, be afforded due process. A final determination of Non-Responsiveness, following resolution of any response or contest, shall result in the disqualification of Non-Responsive bidder(s) from consideration hereunder.
- S. Group Pricing Organization Discounts: SUNY-DMC is a member of the Greater New York Hospital Association and University Hospital Consortium, Premier and Novation group purchasing. If the vendor has a relationship with any of these associations, the most favorable pricing, pursuant to each relationship, or in addition to such discounts should be used to give SUNY-DMC the most favorable pricing possible.
- T. Contract Provisions: Any contracts entered into as a result of this IFB (the "Contract" or the "Contracts") will be in the format set forth in **Section V, Contract Format and Provisions**, of this IFB, and shall also consist of the terms set forth in **Exhibit "A" and "A-1"** attached hereto and any other required terms. Offerors' proposals must be formulated based on such terms and conditions.
- U. Conflict of Interest: Bidder may be requested to provide evidence that the award of a contract will not result in (i) a conflict of interest with regard to other work performed by Bidder; or (ii) a potential conflict of interest among Bidder's staff.
- V. Minority and Women-owned Business Enterprises (MWBE)

Pursuant to New York State Executive Law Article 15-A, SUNY recognizes its obligation under the law 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 SUNY contracts.

For purposes of this solicitation, SUNY hereby establishes an overall goal of **30%** for MWBE participation, **15 %** for Minority-Owned Business Enterprises ("MBE") participation and **15%** for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). For additional information please refer to the MWBE requirements outlined in MWBE Prospective Bidder's Notice ([Form 7557-121](#)).

Please note the response forms identified in Form 7557-121 (SUNY MWBE Forms 104 & 107) must be submitted with all Bids. Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=611](http://www.suny.edu/sunypp/documents.cfm?doc_id=611)

#### W. Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder agrees with all of the terms and conditions of SUNY Exhibit A-1 including Clause 12 - Equal Employment Opportunities for Minorities and Women. 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, shall 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.

**Bidder further agrees, where applicable, to submit with the bid an EEO staffing plan (utilizing MWBE form 108) to identify the anticipated work force to be utilized on the Contract.** Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=611](http://www.suny.edu/sunypp/documents.cfm?doc_id=611). If the Bidder is awarded a Contract, Bidder will, upon request, submit to SUNY, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

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.

**In addition, Bidder must submit with their bid or proposal their firm's Equal Employment Opportunity Policy Statement (which conforms to the provisions of Exhibit A-1); utilizing (utilizing MWBE Form 104).** Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=611](http://www.suny.edu/sunypp/documents.cfm?doc_id=611). Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

#### X. Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in SUNY contracts and strongly contribute to the economies of New York and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders/Proposers/Contractors 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/Contractors need to be aware that to the maximum extent practical and consistent with legal requirements, they are strongly encouraged to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Bidders/Proposers/Contractors 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 SUNY 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 this 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. SUNY therefore expects Bidders/Proposers/Contractors 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 New York State and its taxpayers.

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 Business(es) that will be used. (Attach identifying information, e.g., contact information, dollar value of the subcontract or supply contract.)

**Y. 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 and a directory of minority and women-owned business enterprises is available from:

NYS Empire State Development  
Division for Small Business  
625 Broadway  
Albany, New York 12207  
Phone: 1-800-782-8369  
Email: [esd@empire.state.ny.us](mailto:esd@empire.state.ny.us)  
Website: <http://www.emipre.state.ny.us>

**Z. Independent Contractor**

The Successful Bidder (Contractor) and its agents or employees or any entity or person acting on behalf of the Contractor engaged in the performance of work shall at all times be deemed to be



performing as independent contractors. The Contractor hereby covenants and agrees to act in accordance with that status. The Contractor and its agents or employees or any entity or person acting on behalf of the Contractor shall neither hold themselves out as, nor claim to be, officers or employees of SUNY and shall make no claim for, nor be entitled to, Workers' Compensation coverage, medical and unemployment benefits, social security, or retirement membership benefits from SUNY.

AA. Subcontracting

In the event the Successful Bidder (Contractor) uses partners, subcontracts or subcontractors, the Contractor will remain responsible for compliance with all specifications and performance of all obligations under the contract resulting from this RFP. For the resulting agreement, the successful bidder will be the prime contractor.

Within thirty (30) calendar days after Notice of Award, the Successful Bidder must submit a written statement to SUNY giving the name and address of all proposed subcontractors. The statement must contain a description of the portion of the work and materials which the proposed subcontractors are to perform and must furnish any other information to document that the proposed subcontractors have the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and provisions of the contract.

If SUNY finds that the proposed subcontractors are qualified, it will so notify the Contractor within ten (10) business days following receipt of Contractor's written statement described above. If SUNY determines that a subcontractor is not qualified, it will so notify the Contractor. The Contractor must, within ten (10) business days thereafter, submit a written statement as described above with respect to other proposed subcontractors, unless the Contractor decides to do such work itself and in SUNY's opinion is qualified to do such work.

SUNY's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under the contract. The Contractor shall be solely responsible to SUNY for the acts, omissions or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. No provisions of the awarded contract shall create or be construed as creating any contractual relation between SUNY and any subcontractor or sub-subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Contractor.

The Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work. Contractor shall check requirements of the work and coordinate and adjust as required so that conflicts in time, work space, equipment and supplies do not occur in the work being performed by the Contractor with its own employees and the work being performed by its subcontractors.

No subcontractor shall be permitted to work until it has furnished satisfactory evidence to SUNY of the insurance required by law.

The Successful Bidder (Contractor) shall execute a written agreement with each of its subcontractors and shall require all subcontractors to execute with their sub-subcontractors a written agreement which shall bind each to the terms and provisions of the prime contract awarded, insofar as such terms and provisions are applicable to the work to be performed by such subcontractors. The

Contractor shall require all subcontractors and sub-subcontractors to promptly, upon request, file with SUNY a copy of such agreements upon request, from which the price and terms of payment may be deleted.

**BB. Restrictions on the Activities of Current and Former State Officers and Employees**

All Bidders and Bidder employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State.

Contractors and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth the New York State Public Officers Law §§ 73 and 74, and the underlying principle of law is to prevent conflicts of interest and encourage ethical behavior. The law may be found on the website of the New York State Joint Commission on Public Ethics at: [http://www.jcope.ny.gov/about/laws\\_regulations.html](http://www.jcope.ny.gov/about/laws_regulations.html).

### **SECTION III.**

#### **IFB REQUIREMENTS AND DETAILED SPECIFICATIONS**

##### **A. Requirements Summary**

1. The Offeror awarded the contract resulting from this IFB will be required to provide: (1) the LINAC, inclusive of all software necessary for the System's operation ("System"); (2) a comprehensive five-year maintenance and support package for the System for renewal; (3) all Installation /Construction Services; and (4) all ancillary services. Through procurement of the above-referenced services, SUNY-DMC seeks to install a System which, inter alia:
  - a. performs various forms of radiation therapy; and
  - b. performs radiosurgery.

This Section III of the IFB provides details on specific requirements, Contractor responsibilities, and other pertinent information. The Offeror is solely responsible for meeting all the requirements in this IFB. Each Offeror's responses to such requirements must be based on the specific performance proposed by that Offeror. Any and all costs related thereto (for the performance contemplated by such Offeror's responses hereto) must be included in such Offeror's cost proposal (as set forth below). No conditional, hypothetical or other indirect or unspecific responses (e.g. "will be scoped" or "available at additional cost") will be accepted, and may, at SUNY-DMC's sole discretion, result in such Offeror's disqualification from consideration hereunder, as such Offeror may be deemed Non-Responsive.

Submission of a Proposal is an affirmation by the Offeror that its organization complies with all the requirements and qualifications set forth in this IFB and that it is both financially and operationally capable of providing the System and services required hereunder in a manner consistent with the terms hereof.

##### **B. Qualifications of Vendor**

1. Experience: Proposals will be considered only from firms that are:
  - a. regularly engaged in the business of providing the System and services described in this IFB;
  - b. able to produce evidence that they have an established satisfactory record of performance;
  - c. sufficiently staffed, financially stable, and equipped with sufficient equipment and organizational capacity to execute and perform as described hereunder if awarded a contract ("Contract") under the terms and conditions stated in this IFB.
2. Licenses: Vendor must have, and, at its sole cost and expense, maintain through the term of the Contract resulting herefrom, all permits, licenses and authorizations to perform under the Contract and/or as required by the City of New York, State of New York, Federal Government, and by any other governmental authority with jurisdiction over the subject matter over the parties to such contract. All assigned Vendor personnel must have and maintain all licenses and/or certifications required to perform the services herein requested.
3. Evidence of Qualification: SUNY-DMC reserves the right, before awarding the contract, to require the Vendor submit such evidence of its qualifications as SUNY-DMC may deem necessary, and may consider any evidence available to it of the financial, technical, and other qualifications and abilities of a Vendor, including past performance, in making an award that is in the best interest of SUNY-DMC.

4. Restrictions: The successful Vendor shall not assign, transfer, convey, sublet, subcontract or otherwise dispose of this contract, or any of its titles or interests herein, or its power to execute such a contract to any person, company, or corporation without the prior written consent of SUNY-DMC and the approval of the Office of the New York State Comptroller.

C. References

Vendor shall submit complete Reference Forms (in the form annexed hereto as **Exhibit “E”**) for at least three (3) hospital customers (other than SUNY-DMC) for which Vendor is either currently providing, or has provided over the past three years, similar Systems as that sought herein.

The customers on the list may be contacted by SUNY-DMC, and must provide positive references for the subject Vendor. SUNY-DMC reserves the right to review and consider other known clients of the Vendor in addition to those provided and to disqualify based on unsatisfactory reports and records of services provided. If requested by Vendor, the list of references will be kept confidential, except where disclosure is required by law.

D. Detailed Specifications

Vendor shall be responsible for providing, at SUNY-DMC’s request, all products, supplies, personnel and any other performance necessary, for the provision of the System, attendant services, and a comprehensive maintenance and support package (“Maintenance Package”).

Without intending to limit the generality of the foregoing, and solely to facilitate Vendor’s understanding of the performance required by SUNY-DMC hereunder, this *Section III(C)* describes in detail the specific requirements, Vendor responsibilities, and other pertinent information relative to the System, services, and Maintenance package. The Vendor is solely responsible for meeting all the requirements in this IFB. All services performed must be compliant and consistent with applicable local, state, and federal laws and regulations.

Submission of a proposal is an affirmation by the Vendor that its organization complies with all the requirements and qualifications set forth in this IFB and that it is both financially and operationally capable of performing the services required hereunder in a professional manner consistent with the terms hereof.

Below, please find a detailed description of the System and services for which SUNY-DMC hereby solicits proposals

1. Scheduling Requirements

- a. Commencement: Vendor shall commence performance after the Agreement has become effective and following SUNY-DMC’s written notification to commence.
- b. Scheduling: Performance shall be scheduled on dates requested by SUNY-DMC following due execution of the Contract.
- c. Cancellation: Notwithstanding anything to the contrary stated in Vendor’s proposal, SUNY-DMC may cancel scheduled commencement of performance upon written notice without incurring any fees, charges, or other penalties. In the event of such cancellation, SUNY-DMC shall concurrently provide Vendor with an alternate date whereby performance may be commenced and satisfied.

- d. Pre-requisites: Where applicable, prior to providing the System and services, any personnel to be assigned to SUNY-DMC by Vendor shall complete and satisfy any and all requirements of Human Resources and/or other legal requirements including, but not limited to, HIPAA training, Corporate Compliance training, and Health Clearance(s). Vendor personnel will be prohibited from performing its services at SUNY-DMC unless and until it has obtained all required pre-assignment authorizations, clearances, trainings, etc.
2. Transportation: Notwithstanding anything to the contrary stated in *Section III(C)(1)*, Vendor shall provide for the transportation of all products to SUNY-DMC upon SUNY-DMC's request and after due execution of the Contract.
3. Installation: Notwithstanding anything to the contrary stated in *Section III(C)(1)*, Vendor shall provide for the installation, calibration, and other setup of the System until it has been Accepted<sup>1</sup> by SUNY-DMC.
4. Location of Services: Vendor shall deliver the System to an area designated by SUNY-DMC.
5. System and Maintenance Requirements: The System and Maintenance must conform to the mandatory requirements and specifications annexed here to as "**Exhibit "G"**
6. Construction: Vendor shall ensure that the System is installed, and construction is performed, in accordance with those specifications set forth in the documents that comprise "**Exhibit H**" annexed hereto, which documents include:
  - a. Design and Construction Project Description and outline Scope Design services and Construction;
  - b. State University Of New York Consultant Agreement
  - c. Construction Drawings
  - d. Schedule of Liquidated Damages
  - e. Labor and Material Bond

E. Additional Eligibility Criteria:

In order to be considered a "Responsive" Vendor eligible for award hereunder, Vendor must be capable of meeting all the requirements set forth in this *Section III*, including those requirements listed in the Eligibility Criteria Grid (the "Grid") below. To be considered Responsive, Vendor must complete the Grid and acknowledge and affirm its ability to perform in accordance with the items, requirements and other specifications listed therein by responding in the affirmative in the appropriate section(s) therein. Completed Grids must be included in Vendors' proposals. Either: (i) a Vendor's failure to respond to any of the items in the Grid; or (ii) a Vendor's provision of a negative response to any item in the Grid, will result in the disqualification of that Vendor from consideration hereunder, as such Vendor will be considered "Non-Responsive."\*

<sup>1</sup> To be Accepted, the System must satisfy the Acceptance Testing Period, which means the thirty (30) day period commencing immediately after installation of the System wherein SUNY-DMC shall have the right to test the System. In the event that the System fails to perform in substantial accordance with the Contract during the Acceptance Test Period, SUNY-DMC shall report the problem(s) to Vendor in writing and Vendor shall promptly correct the problem/nonconformity. In such event, the Acceptance Testing Period will continue until Vendor corrects all such problems/nonconformities to the extent necessary for the System to perform in all material respects in accordance with the Contract, and for an extended testing period of not less than 30days thereafter, unless SUNY-DMC reports to Vendor in writing a problem/nonconformity of the System with the Contract. In such event, the Acceptance Testing Period shall be extended for successive thirty (30) day periods (each an "Extended Testing Period," collectively "Extended Testing Periods") unless and until no errors are reported during such period. The System will be deemed accepted ("Accepted" or "Acceptance" which shall occur on the "Acceptance Date") either upon: (a) the conclusion of the Acceptance Test Period, in the event that no problems were reported by Customer; or (b) upon the expiration of any applicable Extended Test Period(s), provided all problems reported during such Extended Test Period have been corrected and Customer has been afforded an additional Extended Test Period to retest the System and verify resolution of the problem. Upon Acceptance, Vendor and SUNY-DMC shall execute a document attesting to same.

<u>Requirements</u>	<u>Yes</u>	<u>No</u>
Vendor possesses all necessary certifications and licenses for the provision of the System, services, and maintenance package.		
Vendor warrants that it currently possesses sufficient staff, financial support, equipment and organizational capacity (without subcontracting) to provide the System, services, and maintenance package.		
Vendor shall make available to SUNY-DMC adequate personnel to provide the System, services, and maintenance package.		
Vendor's Proposal conforms with all the construction requirements and specifications listed in Exhibit H to this IFB.		
Vendor's System complies with all the detailed specifications listed in <i>Section III(C)(6)</i> .		
Vendor's Maintenance Package and services comply with all the specifications listed in <i>Section III(C)(7)</i> herein.		
Vendor shall comply with all performance obligations listed in <i>Section III(C)</i> herein.		
Vendor acknowledges its understanding of and agreement to comply with the terms set forth in this IFB.		

\*NOTE: In the event of any confusion or uncertainty with regard to the Grid or the specific information or other requirements set forth in this IFB, Vendors are advised not to submit a proposal hereunder until uncertainty/confusion has been alleviated; as such confusion may result in disqualification of such Vendor's proposal if its proposal is determined to be Non-Responsive. Instead, Vendors should submit a written inquiry requesting clarification in the manner set forth in *Section II, Administrative Considerations, on page 10 of this IFB.*

**SECTION IV**  
**COST PROPOSALS**

Each Vendor must complete the Cost Proposal Grid and associated documents attached hereto as **Exhibit “C”** in accordance with the instructions therein. Each Vendor must provide detailed price information by category, in accordance with the Grid, for its System, maintenance and support packages, construction services, and ancillary services, which prices shall remain constant for the term of the Contract. Vendors acknowledge that SUNY-DMC will rely on their Cost Proposals as their proposed pricing for these items in accordance with the terms of this IFB. **Vendor’s compensation under the Contract will be limited to and governed by Cost Proposals submitted hereunder.**

Inquiries relating to Cost Proposal: Vendor’s Cost Proposal (the rates provided in **Exhibit “C”**) must include any and all costs associated with the items proposed hereunder. In the event of any confusion or uncertainty with regard to the specific Cost Proposal information required by SUNY-DMC, Vendor should not submit a proposal hereunder until said uncertainty/confusion has been alleviated, as such confusion may result in disqualification of Vendor’s proposal by way of Non-Responsiveness. Instead, Vendor should submit a written inquiry during the question and answer period prescribed hereunder requesting clarification in the manner set forth in *Section II* hereinabove. Please see page 10 for Calendar of Events.

**Guarantee: By submitting a response to this IFB, the Vendor warrants, represents and guarantees that the price offered is the same or lower than those offered by the Vendor, within the six (6) months prior to the date of its proposal, to any governmental or commercial account for similar Systems, services, and maintenance packages.**

Additional Services: By submitting a proposal hereunder, each Vendor acknowledges and agrees that it will only be compensated for providing those items requested herein and for which it has proposed its cost. SUNY-DMC will not be responsible for any additional costs, other than for the performance outlined hereunder, and for which such Vendor has actually proposed a cost in its Cost Proposal Matrix.

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## SECTION V

### CONTRACT PROVISIONS

#### A. Introduction

Once a Vendor (also referred to interchangeably as “Offeror,” or “Contractor”) is selected as a result of this IFB, SUNY-DMC and the Vendor (hereinafter referred to collectively as the “parties”) will negotiate and execute the Contract, which will set forth the rights and responsibilities of the parties with regard to the System, services, and maintenance package described in this IFB. The contract document will include all terms set forth in this IFB.

Vendor may only articulate issues it has with the terms and conditions during the question period. **SUNY-DMC will not negotiate any changes to the Contract which were not raised and addressed during the question and answer period designated in the IFB Calendar.**

For the purpose of the contract, SUNY-DMC will consider the Vendor an independent contractor engaged in providing services to SUNY-DMC. The Vendor is not an agent of SUNY-DMC or the State of New York.

In addition to the Contract, the complete Agreement between SUNY-DMC and the selected Vendor shall consist of such other documents as are described hereinafter.



**B. General Contract Terms & Conditions**

The numbered paragraphs in hereinafter represent the general terms and conditions to be included in the Contract entered into by the parties. Exhibit “D” to these General Terms & Conditions, embedded immediately thereafter, represent the construction terms and conditions to be included in the Contract entered into by the parties.

**Agency Contract Number: C\_\_\_\_\_**

**New York State Agency Number:3320218**

**AGREEMENT**(hereinafter referred to as the “Agreement”) made this \_\_\_ day of \_\_\_\_\_, 2012, by and between the **State University of New York**, an education corporation organized and existing under the laws of the State of New York and having its principal place of business located at State University Plaza, Albany, New York 12246, hereinafter referred to as “**State University**” for and on behalf of the **State University of New York – Downstate Medical Center**, 450 Clarkson Avenue, Brooklyn, New York 11203, hereinafter referred to as “**SUNY-DMC**” or “**Customer**” and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ and having a place of business located at \_\_\_\_\_ hereinafter referred to as “**Contractor**.”

**W I T N E S S E T H:**

**WHEREAS, SUNY-DMC** requires a LINAC radiation therapy system, including all necessary hardware, software, and services (both installation/implementation and support services, collectively the “Services”) thereto; and

**WHEREAS, SUNY-DMC** solicited proposals for the aforesaid services by publication in the \_\_\_\_\_ issue of the New York State Contract Reporter, a copy of which is annexed hereto as **Exhibit “B,”** and issuance of Invitation for Bids No. 15-14, (hereinafter referred to as “IFB”), a copy of which is annexed hereto as **Exhibit “C”** and made a part hereof; and

**WHEREAS, Contractor** submitted a timely proposal (the “Proposal”), a copy of which is attached hereto as **Exhibit “E”** and made a part hereof; and

**WHEREAS,** for the purposes of performing the radiation therapy and surgery, **Contractor** develops, markets and distributes the \_\_\_\_\_ (“System”), and related applications and services; and

**WHEREAS, SUNY-DMC** and **Contractor** desire to enter into an agreement setting forth the terms and conditions by which the **Contractor** will perform; and

**NOW, THEREFORE,** in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth at length herein. Unless specified otherwise, all references to “days” herein shall refer to calendar days.
2. Unless terminated earlier as provided herein, the term of this Agreement shall **be five (5) years**

(hereinafter referred to as the “Initial Term”), subject to regulatory approval hereof by the New York State Office of the Attorney General (“OAG”) and the New York State Office of the State Comptroller (“OSC”), where applicable, commencing five (5) business days following **Contractor’s** receipt of **SUNY-DMC’s** written notification (the “Notice to Proceed”) and expiring on the day immediately preceding the fifth (5<sup>th</sup>) anniversary of the commencement date. Thereafter, at **SUNY-DMC’s** sole discretion, this Agreement may be renewed for two additional five (5) year periods (each a “Renewal Term,” collectively with the Initial Term, the “Term”). To the extent applicable, this Agreement shall be deemed executory until the approvals required pursuant to New York State Finance Law (the approval of the New York Office of the Attorney General and Office of State Comptroller) are obtained.

(a) **Contractor** shall provide to **SUNY-DMC** the System and Services, which are set forth in greater comprehensive detail in **Contractor’s** Proposal. Without intending to limit the generality of the foregoing, **Contractor** shall provide, *inter alia*:

i. As to the System(s):

1. Radiation therapy, radiosurgery, VMAT, IMRT, IGRT, and SRT/S functionality;
2. Advanced Treatment Planning Systems (“TPS”);
3. A treatment couch with automated movement from the operator’s console outside of the LINAC treatment vault, on at least three Cartesian axes from the console;
4. Compatibility with **SUNY-DMC’s** IMPAC Mosaic Radiation oncology Management And Information System (“ROMIS”);
5. All necessary dedicated computer systems;
6. All accessories generally associated with the immobilization of patients during radiation therapy or surgery;
7. All disposable components used in connection with any aspect of radiation therapy or surgery for a period of two (2) years; and
8. All other components listed in IFB, Section III(C)(5)

ii. As to the Services:

1. Installation and implementation of all hardware and software.
2. Migration of **SUNY-DMC’s** Mosaic system from its Flatbush location to its campus, where the System will be installed.
3. Comprehensive maintenance and support services from Monday through to Friday, 8:00 A.M., E.S.T. to 9:00 P.M., E.S.T.
4. Guarantee of scheduled uptime of 99.99%
5. A comprehensive support package which encompasses:
  - a. Troubleshooting of all software malfunctions;
  - b. All necessary updates, patches, fixes;
  - c. Periodic updates to optimize System functionalities;
  - d. All necessary preventive maintenance, service visits, replacement of malfunctioning parts; and
  - e. All necessary training and implementation services
6. Access to **Contractor’s** then-current manuals, technical materials and on-line help for explanation and operation of the System;

(b) To facilitate **Contractor’s** performance, **SUNY-DMC** shall use best efforts to comply with **Contractor’s** technical specifications, which are as follows:

i.

(c) Upon the Commencement Date, **Contractor** shall immediately commence performance pursuant to the terms set forth herein. **Contractor** understands, agrees and acknowledges that, except where modified by a valid amendment hereto (“Change Order”), subject to the approval of the Office of the State Comptroller (“OSC”), where applicable, it shall perform only the services set forth in this Agreement in strict compliance with the terms hereunder. **Contractor** shall retain sole responsibility for the monitoring and administration of this Agreement, including, but not limited to ensuring that any limits or other conditions on its compensation are enforced strictly, and shall notify **SUNY-DMC**, as soon as practicable, if it appears that any compensation limits will be prematurely reached. Any failure of **Contractor** to comply with the foregoing, including but not limited to, performing services beyond the scope of this Agreement and/or exceeding or otherwise deviating from any compensation limit or other such provision hereof, shall be at **Contractor’s** sole cost and expense. Absent a valid amendment hereto providing for such additional performance, **SUNY-DMC** shall have no obligation to compensate **Contractor** for services or other performance beyond the scope of the Agreement, regardless of the nature thereof. This shall not extend to **Contractor’s** performance of any on-site labor outside the coverage hours set forth herein, which shall be billed to **SUNY-DMC** in accordance with the rates set forth in this Agreement.

3. In consideration of providing the System, Services, and all associated products and services listed in Section 4, *supra*, during the Term (provided that this Agreement is not sooner terminated, in whole or in part, as provided hereunder and/or subject to reductions for failure to meet guaranteed performance levels), **SUNY-DMC** shall compensate **Contractor** in the amount of \$\_\_\_\_\_ (“Total Compensation”), to be disbursed in the following manner following **Contractor’s** submission of a Proper Invoice, as hereinafter defined:

(a) System Costs:

- i. **Contractor** shall not be entitled to compensation for System costs prior to delivery.
- ii. **SUNY-DMC** shall compensate **Contractor** in the amount of forty percent (40%) following **SUNY-DMC’s** receipt of the System;
- iii. No less than thirty percent (30%) of the System costs shall be premised upon the satisfaction of Acceptance Testing. Acceptance Testing shall occur during the “Acceptance Testing Period,” which means the thirty (30) day period commencing immediately after installation wherein **SUNY-DMC** shall have the right to test the System. In the event the System fails to perform in substantial accordance with the Agreement during the Acceptance Testing Period, **SUNY-DMC** shall report the problem(s) to **Contractor** in writing and **Contractor** shall promptly correct the problem/nonconformity. In such event, the Acceptance Testing Period will continue until **Contractor** corrects all such problems/nonconformities to the extent necessary for the System to perform in all material respects in accordance with the Agreement, and for an extended testing period of not less than 30days thereafter, unless **SUNY-DMC** reports to **Contractor** in writing a problem/nonconformity of the System with the Agreement. In such event, the Acceptance Testing Period shall be extended for successive thirty (30) day periods (each an “Extended Testing Period,” collectively “Extended Testing Periods”) unless and until no errors are reported during such period. The System will be deemed accepted (“Accepted” or “Acceptance” which shall occur on the “Acceptance Date”) either upon: (a) the conclusion of the Acceptance Test Period, in the event that no problems were reported by **SUNY-DMC**; or (b) upon the expiration of any applicable Extended Test Period(s), provided all problems reported during such Extended Test

Period have been corrected and **SUNY-DMC** has been afforded an additional Extended Test Period to retest the System and verify resolution of the problem. Upon Acceptance, **Contractor** and **SUNY-DMC** shall execute a document attesting to same.

- iv. **SUNY-DMC** shall compensate **Contractor** fifteen percent (15%) of the System costs three months after Acceptance.
- (b) Services Fees:
- i. As to maintenance and support services, **SUNY-DMC** shall pay maintenance and support fees quarterly, in arrears;
  - ii. **SUNY-DMC** shall compensate **Contractor** for professional services only following provision of subject services.
- (c) Construction Fees:
- i. As to the construction services, **SUNY-DMC** shall compensate **Contractor** in the amount of \_\_\_\_\_, as is itemized in the Construction Terms and Conditions.
  - ii. **Contractor** may request progress payments for construction fees only through those procedures outlined in Sections 4.10 and 4.11 of the Construction Terms and Conditions.
  - iii. Deductions for Unperformed and/or Uncorrected Work
    1. Without prejudice to any other rights, remedies or claims of **SUNY-DMC**, in the event that the **Contractor** at any time fails or neglects to supply working forces and materials of the proper quantity and quality necessary, in the opinion of the Consultant (as defined in the Construction Terms and Conditions) or **SUNY-DMC**, to comply with the approved time progress schedule, or fails in any respect to prosecute the work with promptness and diligence or causes by any action or omission the stoppage or delay of or interference with the work of any other contractor having a contract with **SUNY-DMC**, or fails in the performance of any obligations and responsibilities under this Agreement, then, and in that event, **SUNY-DMC**, acting itself or through the Consultant, may, upon three (3) working days' notice to the **Contractor**, either itself provide or have any other contractor provide any and all labor or materials or both necessary, in its opinion, to correct any aforesaid deficiency of the **Contractor**, and **SUNY-DMC** will thereafter back charge the **Contractor** by issuing a Change Order reducing the amount of the consideration for all costs and expenses it incurs in connection with the correction of such deficiency.
    2. Notwithstanding any provisions in the Construction Terms and Conditions to the contrary, if **SUNY-DMC** deems it inexpedient to correct work not done in accordance with the Construction Terms and Conditions or any work damaged as a result thereof, it shall notify the **Contractor** of such fact and the latter shall not remedy or correct the same. In such event, however, the amount of the consideration shall be decreased by an amount, determined by **SUNY-DMC**, which is equal to the difference in value of the work as performed by the **Contractor** and the value of the work had it been satisfactorily performed in accordance with the Construction Terms and Conditions or which is equal to the cost of performing the corrective work, whichever shall be the higher amount.
- (d) After Hours expenses: For **Contractor's** performance of any on-site labor outside the coverage hours set forth hereinabove, **SUNY-DMC** shall compensate **Contractor** at the rate of \$\_\_\_\_\_ per hour.
- (e) Expenses: Any travel expenses to be reimbursed by **SUNY-DMC**, if any, shall be in strict conformance with the per diem rates promulgated by the General Services Administration.
- (f) Extension of Discount levels: **Contractor** agrees to extend the same discount levels offered

hereunder for any additional items **SUNY-DMC** may need to purchase under this Agreement, by way of Change Order.

- (g) Adjustment for Bond and Insurance Premiums: Upon final acceptance of the work to be performed under the Construction Terms and Conditions, **SUNY-DMC** shall adjust the consideration to reflect any changes in the cost of all required Bonds and liability and builder's risk insurance premiums which the **Contractor** had to pay for on all extra work and would have had to furnish and pay for on all omitted work. Unless such cost is agreed upon by **SUNY-DMC** and the **Contractor**, **SUNY-DMC** shall calculate and determine the amount of the adjustment in the consideration by estimating such cost.
- (h) Further Allowances for Construction Services: Where applicable, such allowances shall be governed by Section 4.05 of the Construction Terms and Conditions.

4. The **Contractor** hereby warrants and represents:

- (a) **Contractor** shall assume responsibility for the cost and timely accomplishment of all obligations and duties required by the Agreement whether or not the **Contractor**, or subcontractors, performs such obligations or duties. The **Contractor** shall ensure that all obligations and duties are carried out in a competent and timely manner.
- (b) That the services provided under this Agreement conform to the technical specifications provided in the IFB.
- (c) **Contractor** knows of no legal, business, or financial impediment at the time of execution, to the successful completion of its obligations pursuant to this Agreement. If the **Contractor** learns of any impediment (including bankruptcy, receivership, etc.), the **Contractor** must notify **SUNY-DMC** of such impediment immediately. Failure to do so during the course of the Agreement will be considered a material breach.
- (d) **Contractor** shall perform its obligations in accordance with all of the conditions, covenants, statements, and representations contained herein, during the Agreement term.
- (e) During the term of this Agreement, **Contractor** will maintain and make available the necessary levels of qualified personnel to ensure proper performance by **Contractor** of its obligations and responsibilities under this Agreement; and all work will be performed in a professional, expeditious manner.
- (f) If applicable, products delivered pursuant to this Agreement shall conform to the specifications and performance standards set forth in the Agreement.
- (g) *Intentionally omitted.*
- (h) **Contractor** shall pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Agreement. Prior to award and during the Agreement term and any renewals thereof, **Contractor** must establish to the satisfaction of **SUNY-DMC** that it meets or exceeds all requirements of the Agreement and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workers' compensation, and shall provide such proof as required by **SUNY-DMC**. Failure to do so may constitute grounds for **SUNY-DMC** to cancel or suspend this Agreement, in whole or in part, or to take any other action deemed necessary by **SUNY-DMC**.
- (i) If applicable, products delivered pursuant to the Agreement shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.
- (j) If applicable, licensed software contains no known viruses.

- (k) All services performed pursuant to the Agreement will be provided in a workmanlike manner in accordance with industry standards.
- (l) *Intentionally omitted.*
- (m) **Contractor** represents and warrants that it possesses and shall maintain in effect throughout the term of this Agreement, all permits, licenses and authorizations (collectively, “Licenses”) to perform under this Agreement as required and shall obtain and maintain any additional permits, licenses and authorizations which may be subsequently required throughout the term of this Agreement by the City of New York, the State of New York, the Federal Government, and/or by any other government or regulatory authority with jurisdiction. **Contractor** shall furnish to the administrator of forms hereunder evidence of such Licenses, and shall notify **SUNY-DMC** immediately of any change in the status of the same. Failure by **Contractor** to comply with its obligations under this section shall entitle **SUNY-DMC** to terminate this Agreement immediately upon notice.
- (n) **Contractor** warrants and represents it is not an Excluded Provider. “Excluded Provider” means a Person or Entity that either: (i) has been convicted of a crime related to health care; or (ii) is currently listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded programs (including without limitation federally funded health care programs such as Medicare and Medicaid). “Person” includes the person entering into the Agreement and any partners, associates or agents of that person including subcontractors or employees providing services under the Agreement.” “Entity” means the entity entering into the Agreement and any such entity’s principals, directors, managing employees, officers or any similar agents of such entity including any person who retains an ownership or controlling interest in the entity and subcontractors or employees providing services under the Agreement.

A breach of any provision of this section shall be deemed a “material breach” for purposes of default under this Agreement.

When the **Contractor** offers additional or more advantageous warranties than set forth above, **Contractor** shall offer or pass through any such warranties to **SUNY-DMC**.

5. **Contractor** acknowledges and agrees that its compensation for the System, Services, and attendant products from **SUNY-DMC** hereunder, in accordance with the terms hereof, shall be limited to the compensation set forth in Section 6. Except as provided pursuant to Section 5, *supra*, **Contractor** will not receive compensation for any performance outside of the scope of Section 4, *supra*, unless and until it has performed the necessary steps to obtain an official Change Order. **Contractor** acknowledges and agrees that (i) because **SUNY-DMC** is a New York State Agency, subject to the provisions of Section 163 of State Finance Law (the “Procurement Law”), any Change Order will require an independent procurement process and an appropriate document encompassing the terms of such performance, as hereinafter defined, which document may be subject to regulatory approval (defined as approval by OSC, the Office of the Attorney General, and/or any other regulatory authority applicable to this Agreement), where applicable; and (ii) **Contractor** shall not proceed with any such performance unless and until it has received confirmation in writing from **SUNY-DMC**, as hereinafter described. For each Change Order, **Contractor** must: (a) submit to **SUNY-DMC**’s notice recipient hereunder written documentation comprehensively describing the additional service(s) it seeks to render and the additional compensation sought; and (b) obtain **SUNY-DMC**’s notice recipient’s confirmation in writing, of its authorization to proceed with said additional service(s) at the proposed cost. The Change Order shall consist of **Contractor**’s submission under (a) and **SUNY-DMC**’s response under (b). To obtain compensation for any such additional services, **Contractor** will be required to submit **SUNY-DMC**’s confirmation (described under (b) above) with any invoice(s) including charges for additional services.

Fees paid for which it is subsequently determined that the **Contractor** was not entitled must be reimbursed to **SUNY-DMC**. **SUNY-DMC** may do so by subtracting such fees from any payments that later become due to the **Contractor** under this Agreement.

6. In accordance with the payment terms set forth herein, and pursuant to Section 6, *supra*, **Contractor** shall submit to **SUNY-DMC** an original copy of each Proper Invoice (as defined hereinafter), for all charges hereunder. Each invoice (“Proper Invoice”); shall: (i) be accurate and correct; (ii) reference this Agreement (#C\_\_\_\_\_); (iii) specifically detail the itemized cost of each item, date of performance or covered period, as applicable, specific service(s) rendered, any related information necessary to determine the validity of charges set forth therein, and any other information reasonably requested by **SUNY-DMC** or the Office of the State Comptroller; and (iv) be submitted as follows:

Original to:

**SUNY – Downstate Medical Center**  
**450 Clarkson Avenue**  
**Expenditure Processing – MSN#54**  
**Brooklyn, New York 11203-2098**

7. Payments to **Contractor** for all undisputed charges will be rendered by the State of New York (i.e., Office of the State Comptroller) thirty (30) days after receipt of a Proper Invoice submitted in the manner described hereinabove. Payment will be remitted to **Contractor** at the following address:

Federal Employer Identification Number:  
Attention: Accounts Receivable

Electronic Payment Registration. Pursuant to the January 22, 2010 Governor’s Office directive, all New York State (“**State**”) contracts executed after February 28, 2010 must contain a provision requiring payees to accept electronic payments. In furtherance thereof, as a condition precedent to receipt of payment hereunder, **Contractor** (provided that (i) **Contractor** is not already registered to receive electronic payments from the State and (ii) certifies such registration to **SUNY-DMC** in writing) shall:

- (a) Complete the “Electronic Payment Authorization Form for Vendors and Government Entities” (the “**Authorization Form**”); and
- (b) Submit via mail directly to OSC’s Bureau of State Accounting Operations (*See address below*) both (i) the completed Form with a voided check attached thereto (as verification of the vendor’s banking information) and (ii) the “Substitute W-9 Form.”

***Only signed original copies of the Authorization Form will be accepted.***

**Contractor** may, in lieu of the providing a voided check in the above-described manner, direct its Financial Institution to **both**: (i) complete section two (2) of the Authorization Form **and** (ii) forward

the completed application *directly* to:

NYS Office of the State Comptroller  
Bureau of State Accounting Operations  
Warranty & Payment Control Unit  
110 State Street – 9<sup>th</sup> Floor  
Albany, New York 12236

For additional information, **Contractor** should refer to the following website:  
<http://www.osc.state.ny.us/epay>.

8. The attention of the **Contractor** is specifically called to the provisions of the Lien Law of the State of New York, wherein funds received by a **Contractor** for a public improvement are declared to constitute trust funds in the hands of such **Contractor** to be applied first to the payment of certain claims.
9. **SUNY-DMC** is exempt from any and all taxes related to the products and services provided under this Agreement.
10. **Contractor** shall provide the System, Services, and attendant products, in accordance with the highest industry standards and in accordance with all Federal, State and Local statutes, laws, rules, ordinances and regulations applicable thereto.
11. **Contractor** agrees to comply with the provisions contained in **Exhibits “A”** and **“A-1”** attached to this Agreement and incorporated herein and made a part hereof. The term **“Contractor”** in said **Exhibits “A”** and **“A-1”** shall be construed to denote **Contractor** herein.
12. **Contractor** shall be fully liable for the actions of its agents, employees, partners, and subcontractors and shall fully indemnify and hold harmless the State of New York (hereinafter “State”), **SUNY-DMC**, and their officers agents or employees from and against any and all damages and expenses (including attorney’s fees) from suits, actions, and claims of every name and description arising out of or in connection with **Contractor’s** performance or failure to perform its obligations under this Agreement. However, **Contractor** shall not be required to indemnify the **State** or **SUNY-DMC** to the extent that any claim, loss, or damage arising hereunder is caused by the negligent act or failure to act of the **State** or **SUNY-DMC**. The **State** and **SUNY-DMC** may retain such moneys from any amount due **Contractor** as may be necessary to satisfy any claim for damages, costs, and the like asserted against the **State** or **SUNY-DMC** unless the **Contractor** at the time of the presentation of the claim shall demonstrate to **SUNY-DMC’s** satisfaction that sufficient moneys are set aside by **Contractor** in the form of a bond or through insurance coverage to cover any associated damages and other costs that may be claimed.
13. The **Contractor** shall obtain from the proper authorities all permits legally required to carry on its construction services, pay any and all taxes and fees legally required and shall be responsible for conducting its operations in accordance with the provisions of such permits. Except as otherwise expressly provided in the Construction Terms and Conditions, all of the work covered by this Agreement which is to be performed on property owned by the **State University of New York** is not subject to the building code of any city, county or other political subdivision of the State of New York. It is, however, subject to the provisions of the New York State Uniform Fire Prevention and Building Code and the applicable Federal and State health and labor laws and regulations. The building permit for the work



shall be issued by the Campus Code Compliance Officer.

14. To the extent applicable, **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 willful acts or omissions of **Contractor's** agents, officers, employees or subcontractors.

**15. Minority and Women-owned Business Enterprises (MWBE)**

*Pursuant to New York State Executive Law Article 15-A, SUNY-DMC recognizes its obligation under the law 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 SUNY-DMC contracts.*

*For purposes of this solicitation, SUNY hereby establishes an overall goal of 30 % for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15 % for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). For additional information please refer to the MWBE requirements outlined in MWBE Prospective Bidder's Notice (Form 7557-121).*

*Please note the response forms identified in Form 7557-121 (SUNY MWBE Forms 104 & 107) must be submitted with all Bids. Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=611](http://www.suny.edu/sunypp/documents.cfm?doc_id=611)*

16. *Intentionally Omitted.*

17. **Contractor** shall maintain for the duration of this Agreement, at its own expense and at no cost to the State of New York, with insurance companies authorized to do business in the State of New York, the following types and amounts of insurance, covering all operations hereunder, whether performed by **Contractor** or a subcontractor of **Contractor**:

(a) **Commercial General Liability** in the amount of \$1,000,000 single limit each occurrence, \$3,000,000 aggregate, to include:

- i. **Contractor's** Liability Insurance to cover operations with respect to services performed hereunder;
- ii. Products/Completed Operations.

(b) **Workers Compensation**

(c) **New York State Worker's Compensation and Disability Coverage** – **Contractor** shall submit either: (i) proof (which proof must be acceptable to the Worker's Compensation Board (the "Board")) of both New York Disability and New York Worker's Compensation coverage; or (ii) Certificate of Attestation of Exemption (CE-200) form(s) establishing statutory exemptions from coverage requirements (where applicable, a separate CE200 form must be submitted for Disability and Worker's Compensation). **ACORD FORMS ARE NOT CONSIDERED ACCEPTABLE PROOF.** Refer to the Board's website: <http://www.wcb.state.ny.us/> for further information.

(d) **Automobile insurance** (owned and non-owned vehicles) – no less than \$1,000,000 CSL each occurrence.

- (e) **For Construction services**, insurance in conformance with those requirements set forth in Sections 5.06 and 5.07 of the Construction Terms and Conditions.

Such policies shall apply on a primary and not on an excess or contributing basis, and shall name each of the **SUNY-DMC** and the State as additional insured (in the case of fire insurance, as its insurable interest may appear). Such policy shall designate **SUNY-DMC** as the loss payee and shall contain a provision that **SUNY-DMC** shall receive at least thirty (30) days' notice prior to material change, cancellation or expiration of any such policy. **Contractor** will be responsible to submit updated certificates throughout the duration of the contract term. The certificates of such insurance shall be delivered to **SUNY-DMC's** Director of Contracts prior to Commencement hereof.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If during the term of the policy, a carrier's rating falls below ""A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer reasonably acceptable to **SUNY-DMC** and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. **Contractor** shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

18. To the extent applicable, **Contractor** agrees to comply with the reporting requirements arising under New York State Finance Law Section 8 and Section 163, as amended by Chapter 10 of the Laws of 2006, which requirements are expounded in detail herein.

(a) Initial Reporting Requirement: Pursuant to the aforementioned Chapter 10 amendment, prior to or contemporaneous with execution of this Agreement, **Contractor** shall complete and submit to **SUNY-DMC's** Department of Contracts an original copy of the State Consultant Services Contractor's Planned Employment Form (hereinafter referred to as the "Planned Employment Form").

(b) Annual Reporting Requirement: In addition to the above-described initial reporting requirements, once annually during the term of this Agreement and any applicable renewal or extension terms, **Contractor** shall complete and submit to **SUNY-DMC**, to the Office of the State Comptroller (hereinafter referred to as "OSC") and to the Department of Civil Services (hereinafter referred to as "DCS") completed copies of the State Consultant Services Contractor's Annual Employment Report (hereinafter referred to as the "Annual Employment Report"). **Contractor** shall submit its first Annual Employment Report no later than May 15, 2012, and, thereafter, shall submit Annual Reports on May 15 for each subsequent year in which the Agreement remains effective, which Annual Report will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31).

Reports that are submitted to OSC may be transmitted as follows:

Via mail:

NYS Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236

Attn: Consultant Reporting

Via facsimile:

(518) 474-8030 or (518) 473-8808

Reports that are to be submitted to DCS may be transmitted as follows

Via mail:

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

To obtain samples of the forms **Contractor** is required to complete hereunder – the Planned Employment Form (Form A) and the Annual Employment Report (Form B) – **SUNY-DMC** directs **Contractor** to the following web address: [www.osc.state.ny.us/agencies/gbull/g-226.htm](http://www.osc.state.ny.us/agencies/gbull/g-226.htm), on which these forms are designated Form A and Form B. If, for whatever reason, **Contractor** prefers, upon request, **SUNY-DMC** will provide the forms to **Contractor**.

In completing these forms, **Contractor** must include information for all individuals providing services hereunder regardless of whether such individuals are employed by **Contractor** or by a subcontractor.

19. *Intentionally omitted.*

20. In no event shall either party be liable for incidental, consequential, or special damages, including but not limited to lost profits, even if such party has been advised of the possibility of such damages. Notwithstanding anything herein to the contrary, **Contractor** shall remain liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or tangible personal property attributable to the negligence or other tort of **Contractor** or its officers, employees or agents.

21. As to intellectual property:

(a) **Contractor** represents and warrants:

- i. **Contractor** has the right to grant the System and licenses set forth in this Agreement;
- ii. The System, all associated documentation, and **SUNY-DMC**'s use of same, to **Contractor**'s knowledge, do not violate or infringe on the intellectual property rights of any third party or the laws or regulations of any governmental, regulatory or judicial authority;
- iii. There is currently no active or, to **Contractor**'s knowledge, threatened suit by any third party based on an alleged violation of any such rights or laws by **Contractor**.

(b) Except for any rights granted to **SUNY-DMC** pursuant to the terms hereof, **Contractor** shall retain all right, title, and interest in its applications, utilities, documentation, and other intellectual property licensed to **SUNY-DMC** under this Agreement.

(c) Except where specifically provided otherwise hereunder or authorized by **Contractor**, **SUNY-DMC** shall not reproduce, materially alter, distribute, or transfer (by any means), display, sublicense, rent, lease, reverse engineer, decompile or disassemble, use in a service bureau, or create derivative works from any of **Contractor**'s applications, utilities, documentation, or other intellectual property.

- (d) **Contractor** shall indemnify, defend, at **SUNY-DMC**'s option, and hold harmless the State of New York, the State University of New York and **SUNY-DMC** from and against any action, whether threatened or actual, claim, demand, judgment, settlement, expense or other liability incurred by any of the foregoing in connection with or arising from a claim that **SUNY-DMC**'s use of the System, or any associated application, utility, or other intellectual property within the scope of this Agreement, infringes any patent, trade secret, or copyright or other third party intellectual property rights. In connection with the foregoing, **SUNY-DMC** shall promptly notify **Contractor** of the claim (provided, however, that **SUNY-DMC** and the State of New York retain the right to defend such claim using counsel of its selection), and reasonably cooperate with **Contractor** at **Contractor**'s sole expense in the defense of the claim or in any related settlement negotiations. This indemnity shall not apply to any claim of infringement, to the extent it results directly and solely from material modifications, additions, alterations, or other changes made by **SUNY-DMC** to the System's intellectual property absent **Contractor**'s consent.
- (e) In addition to (d) above, should the System, or any associated application, utilities, documentation, or other intellectual property, be likely to become the subject of a claim of patent, trade secret, or copyright infringement, **Contractor** shall promptly:
- i. Procure for **SUNY-DMC** the right to continue to use the System; or
  - ii. Replace or modify the System to make it non-infringing, provided however that (1) the System, as replaced/modified, shall perform substantially the same as (or better than) the original System; (2) **Contractor**'s obligations with respect to the System, as modified, shall continue in accordance with the provisions hereof; (3) such replacement/modification does not result in any additional cost to **SUNY-DMC**; and (4) that **Contractor** delivers the modified/replaced System within thirty (30) days after learning of such claim (and the modified/replaced System shall be subject to reasonable acceptance testing); or
  - iii. If neither (i) or (ii) is available, upon not less than sixty (60) days prior written notice (or such shorter period as may be set forth in any judicial decision), terminate this Agreement and refund to **SUNY-DMC** any portion of compensation already paid that is attributable to the balance of the term of the Agreement.

22. Except as otherwise provided herein, each party will treat as confidential any information provided by the other party that is marked as proprietary or confidential (or that reasonably should be known by the receiving party to be proprietary and/or confidential), and each party will protect the confidentiality of the other party's proprietary or confidential information using at least the same degree of care such party employs in protecting its own proprietary and confidential information (but in no event less than a reasonable degree of care). **SUNY-DMC** shall not intentionally remove or destroy any proprietary markings, including trademark designations, or restrictive legends reasonably placed upon or contained within the System, or any associated utilities, documentation, or other intellectual property. Such protection shall not be afforded to information that: (i) is known to the receiving party prior to receipt from the disclosing party, directly or indirectly, other than from a source having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement by the receiving party; (iv) is independently developed by the receiving party; (v) is subject to disclosure pursuant to New York State's Freedom of Information Law, as set forth in Article 6 of Public Officer's Law ("FOIL"); or (vi) is disclosed pursuant to the requirements of applicable law, legal process, or government regulation (other than FOIL), provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such

disclosure, and such disclosure is otherwise limited to the required disclosure. Upon termination or expiration of the Agreement, **Contractor** shall promptly return all confidential information to **SUNY-DMC**.

23. In the event that **SUNY-DMC** does not have available to it specifically appropriated funds for the payment of services hereunder for any fiscal period within the term of this Agreement and in the event that operating funds are not otherwise available, **SUNY-DMC** shall terminate this Agreement on the last day for which funds were appropriated or available, whichever is later. Notwithstanding the foregoing, **SUNY-DMC** represents that it intends to maintain this Agreement for the Term, as set forth in Section 2 hereinabove. **SUNY-DMC** has no reason to believe it will not have sufficient funds to enable it to make all payments due hereunder during the fiscal period in which **SUNY-DMC** operates.
24. Following the first year of this Agreement, **SUNY-DMC** reserves the sole right to terminate this Agreement for any reason by giving the **Contractor** thirty (30) days written notification, in which event **Contractor** shall refund to **SUNY-DMC** that portion of compensation already paid that is attributable to the balance of the term of this Agreement. If applicable, upon such termination, any fees due to **Contractor** for services provided hereunder may be Properly Invoiced immediately, and **SUNY-DMC** shall remit payment for such Proper Invoice in accordance with Section 7 herein.
25. In the event of a breach by either party of any provision of this Agreement, with the exception of a breach of **SUNY-DMC**'s payment obligations hereunder, which shall be governed by Article XI-A of New York State Finance Law and Section 27 hereinafter, the breaching party shall provide notice to the non-breaching party of the alleged breach, which notice shall specifically detail the alleged breach and the remedial measure sought, and allow one hundred twenty (120) days to cure such breach ("Curative Period"). In the event the breaching party has commenced, but not completed, remedial actions during such Curative Period, the non-breaching party may confer with the breaching party in good faith and the parties may negotiate a reasonable extension to the Curative Period. If the breach is not remedied within the one hundred twenty (120) day Curative Period, or any negotiated extension thereof, the non-breaching party reserves the right to cancel this Agreement immediately upon notice to the breaching party. In the event **SUNY-DMC** terminates this Agreement pursuant to this Paragraph 24 herein, or for any other reason whatsoever, **Contractor** shall refund to **SUNY-DMC** both: (i) any compensation paid on account of the period during which **Contractor**'s breach occurred; and (ii) that portion of compensation already paid that is attributable to the balance of the term of this Agreement. The foregoing termination right shall be in addition to and not in lieu of any other or additional rights and remedies that **SUNY-DMC** may have hereunder, at law or in equity.
26. As to Construction Services, in the event that the **Contractor** shall fail to substantially complete all the work within the time fixed for such completion on page A-1 of the Construction Terms and Conditions, or within the time to which such completion may have been extended, or in the event that the **Contractor** abandons the work and the same is not substantially completed within the aforesaid time for such completion, the **Contractor** must pay to **SUNY-DMC** as damages for each calendar day of delay in completing the work the amount set forth therein. In view of the difficulty of accurately ascertaining the loss which **SUNY-DMC** will suffer by reason of delay in completion of the work hereunder, said sum is hereby fixed and agreed as liquidated damages which **SUNY-DMC** will suffer by reason of such delay and not as a penalty. **SUNY-DMC** may deduct and retain out of the monies which may become due hereunder to the **Contractor** the amount of any such liquidated damages and, in case the amount which may become due to the **Contractor** under the provisions of the Agreement may be less than the liquidated damages suffered by **SUNY-DMC**, the **Contractor** shall pay the difference, upon demand, to

## SUNY-DMC.

27. Upon termination of this Agreement, whether through expiration of the Term or otherwise (e.g. by **SUNY-DMC**'s election), **Contractor** shall deliver to **SUNY-DMC**, within ten (10) days of termination, one copy of **SUNY-DMC**'s then-current database information in CSV format. In addition, within thirty (30) days of the termination of this Agreement, **Contractor** shall destroy all electronic protected health information ("EPHI"), as defined in 45 C.F.R. § 160.503, received from **SUNY-DMC** pursuant to this Agreement, that **Contractor** maintains in any form, and **Contractor** shall not retain copies of such information. If destruction of this information is not feasible, **Contractor** shall extend the protections of this Agreement to such information and limit further use and disclosure to those purposes that make the return or destruction of the information not feasible. Further guidance on **Contractor**'s treatment of EPHI is provided in the Business Associates Agreement (the "BAA"), annexed hereto as **Exhibit E** and made a part hereof.
28. If at any time hereunder **Contractor** alleges breach by **SUNY-DMC** of its payment obligations hereunder, **Contractor** shall not withhold performance under this or any other agreement it may have with **SUNY-DMC**. **Contractor** shall, instead, provide **SUNY-DMC** with notice, pursuant to the provisions governing notices hereunder, which notice shall specifically detail the alleged breach and the remedial measures sought, and allow **SUNY-DMC** one hundred twenty (120) days to cure any such breach ("Payment Curative Period"). In the event **SUNY-DMC** has commenced, but not completed, remedial actions during the Payment Curative Period, **SUNY-DMC** shall confer with **Contractor** in good faith and the parties shall negotiate a reasonable extension to the Payment Curative Period. If the parties cannot agree to a reasonable extension of the Payment Curative Period, **Contractor** may terminate the Agreement immediately.
29. **SUNY-DMC** reserves the right to terminate this contract in the event it is determined that any of the certifications filed by **Contractor**: (a) in accordance with State Finance Law §§139-j and 139-k were intentionally false or incomplete; or (b) in accordance with Tax Law Section 5-a, if applicable, were false or incomplete. Upon such determination, **SUNY-DMC** may exercise its termination right by providing written notification to **Contractor** in accordance with the written notification terms of the contract.
30. The parties agree that, if by reason of strike or other labor disputes, delays in government approvals, civil disorders, inclement weather, acts of God, or other cause beyond the control of the parties, either party is unable to entirely perform its obligations hereunder, such non-performance shall not be considered a breach of this Agreement.
31.
  - (a) The **Contractor** shall keep books and records pertaining to this Agreement in accordance with the requirements in Exhibit A. **Contractor** shall permit **SUNY-DMC** to examine and audit the books of the **Contractor** at the **Contractor**'s place of business, upon reasonable notice by **SUNY-DMC**.
  - (b) Pursuant to the Social Security Act, **Contractor** shall allow the Secretary of the Department of Health and Human Services ("HHS"), and other authorized federal officials, access to **Contractors**' books and records as they relate to services and procedures provided pursuant to this Agreement. Accordingly, **Contractor** agrees as follows:
    - i. Until the expiration of four (4) years after the furnishing of any service or procedure pursuant to this Agreement, **Contractor** shall, upon written request, make available to the

Secretary of HHS, the Secretary's duly authorized representatives, the Controller General, or the Controller General's duly authorized representatives, this Agreement and such books, documents and records as many be necessary to certify the nature and extent of the cost or value of services performed by **Contractor** hereunder;

- ii. If **Contractor** performs any of its duties hereunder by way of a subcontract with a related organization, and the value or cost of such subcontracted duties exceed ten thousand dollars (\$10,000.00) over a twelve (12) month period, such subcontract shall contain a clause to the same effect as subparagraph (i) hereinabove. Notwithstanding the foregoing, nothing in this subparagraph shall constitute waiver of notice or consent to **Contractor's** subcontracting of duties under this Agreement;
- iii. The availabilities of **Contractor's** books, documents and records shall be subject at all times to such criteria and procedures for seeking and obtaining access as may be promulgated by the Secretary of HHS by regulation and other applicable laws.

32. Any notices between **SUNY-DMC** and **Contractor** must be in writing signed by the party giving such notice, and shall be either hand delivered with receipt given or sent by certified mail, return receipt requested, or by overnight courier as follows:

To **SUNY-DMC**:

SUNY- Downstate Medical Center  
Director of Contracts  
450 Clarkson Avenue, MSN 63  
Brooklyn, New York 11203-2098  
Attention: Director of Contracts

To **Contractor**:

Attention: President

or to such other address or addressee as may be subsequently designated by notice. For notices relating to construction services, an additional copy must also be forwarded to:

Vice Chancellor for Capital Facilities  
State University of New York  
State University Plaza  
Albany, New York 12246

All notices become effective only when received by the addressee.

- 33.
- (a) **Contractor** shall be responsible for notifying the Director of Contracts, in writing, of any change of address(es) or telephone number, notwithstanding any notification to any other department of **SUNY-DMC**.
  - (b) **Contractor** shall be responsible for notifying the Director of Contracts, in writing, of the appropriate address(es) to send correspondence, including renewal letters and financial

documentation relating to this Agreement.

- (c) The Department of Contracts shall mail correspondence to the address(es) designated by Contractor.
- (d) The Department of Contracts shall not be liable for any ramifications resulting from **Contractor's** failure to comply with Items (a) and (b) herein above.

34.

- (a) The parties agree to comply with the requirements of the Health Insurance and Portability and Accountability Act of 1996
- (b) Upon termination of this Agreement, whether through expiration of the Term or otherwise (e.g. by SUNY-DMC's election), Contractor shall deliver to SUNY-DMC, within ten (10) days of termination, one copy of SUNY-DMC's then-current database information in CSV format. In addition, within thirty (30) days of the termination of this Agreement, Contractor shall destroy all electronic protected health information ("EPHI"), as defined in 45 C.F.R. § 160.503, received from SUNY-DMC pursuant to this Agreement, that Contractor maintains in any form, and Contractor shall not retain copies of such information. If destruction of this information is not feasible, Contractor shall extend the protections of this Agreement to such information and limit further use and disclosure to those purposes that make the return or destruction of the information not feasible. Further guidance on Contractor's treatment of EPHI is provided in the Business Associates Agreement (the "BAA"), annexed hereto as **Exhibit "F"** and made a part hereof.

35. Vendor Mandatory Requirements Regarding Employees

- (a) Vendor shall determine, by reference to the then Current Department of Health and Human Services Offices of the Inspector General's List, the General Administration list of Excluded Individuals/Entities, and the New York State Medicaid Disqualified Provider List, whether Vendor its employees, or any individual Vendor assigns to SUNY-DMC to furnish goods or services pursuant to the Agreement, or any individual or entity from which Vendor receives or purchases goods that it provides to SUNY-DMC, is excluded from participation in Medicare, Medicaid, or other federally funded health care programs. Vendor shall not assign to SUNY-DMC any employee or any individual that is so excluded. Prior to the assignment, Contractor shall provide SUNY-DMC with a copy of the report indicating that Vendor, the employee, individual, or entity is not so excluded. If, at any time during the term of the Agreement, Vendor, the employee, individual, or entity Vendor is excluded from participation in Medicare, Medicaid, or other federally funded health care programs, Vendor shall immediately notify SUNY-DMC of the exclusion, and SUNY-DMC shall have the option of immediately terminating the Agreement and this Amendment, in whole or in part as necessary and applicable in SUNY-DMC's sole discretion, and Vendor shall provide a pro rata refund to SUNY-DMC based on the period of time remaining in the term of the Agreement. Department of Health and Human Services Office of the Inspector General ([www.oig.hhs.gov](http://www.oig.hhs.gov)), General Services Administrative List of Excluded Individuals/Entities ([www.epls.gov](http://www.epls.gov)), and New York State Medicaid Disqualified Provider List ([www.omig.state.ny.us](http://www.omig.state.ny.us)).
- (b) Vendor shall ensure that all of its employees have successfully completed all required medical/physical and other required examinations. Without limiting the generality of the foregoing, Vendor shall be responsible for: (a) screening for competence all of its personnel performing work on or about SUNY-DMC's property; and (b) providing, on an individual basis, written certification to SUNY-DMC that each employee: (1) possesses the requisite employment eligibilities work status (form I-9), education, training, physical/mental health and experience required to perform the duties of the position performed on behalf of Vendor at SUNY-DMC; and (2) has demonstrated competence in performing the duties required of the position. The foregoing health requirements shall include, inter alia, Vendor causing all of its employee under to duty in any SUNY-DMC facility to submit to period health examinations as required by SUNY-DMC and/or by applicable law, and submission by Vendor of satisfactory evidence of



compliance with all health regulations to SUNY-DMC's Employee Health Department in accordance with its rules, regulations and standard practices

- (c) Vendor must maintain a file including documentation of the competencies of each employee working at SUNY-DMC and must make said file available via fax transmission or other reasonably requested medium to SUNY-DMC's Human Resources Department when requested, upon four (4) hours notice. At a minimum, such file must include for each individual, copies of any license, registration, certification and/or permits; evidence that the employee has received an initial SUNY-DMC orientation and attended any required annual Mandatory Education Program; evidence that the employee has had a physical examination within the last twelve (12) month period including TB testing, chicken pox and measles testing.
- (d) Vendor shall determine, through use of an appropriate consumer reporting agency, whether every individual under contract has at any time been convicted of a crime under any federal or state law, and shall furnish SUNY-DMC with a copy of the report resulting from such process. In the event that the individual has been so convicted, SUNY-DMC shall determine, in its sole discretion, whether assignment of such individual is acceptable. The criminal background check performed by Vendor shall meet the following specifications: a. A Social Security Trace shall be performed to verify that provided social security number is valid. This trace will provide address records of the employee associated with the number, which shall then be used for the associated criminal records search; and b. A search shall be performed of all criminal records (felony and misdemeanor) for all counties in which the individual is known to have resided, under his or her current name as well as under any alias or maiden names assigned to the Social Security Number. Such criminal records search should extend as far back in time as the records of each particular county permit, which may vary by state and/or county. With respect to individuals assigned to SUNY-DMC continuously for a year or more, Vendor shall re-perform the checks described hereinabove at least once annually, and shall provide SUNY-DMC with a copy of the resulting reports.

36. **Contractor** agrees, at all times, to comply with and adhere to the provisions of Section 6032 of the Deficit Reduction Act of 2005 (the "DRA"), any applicable anti-fraud New York State Law (now existing or hereafter arising) and any additional regulations or policies promulgated thereunder, as set forth in the DRA summary (the "DRA Appendix") annexed hereto as **Exhibit "G"** and made part hereof.

37.

- (a) **Contractor** shall not assign, convey, transfer, or subcontract any of its duties and responsibilities under this Agreement without the prior written consent of **SUNY-DMC** and OSC, pursuant to applicable law. Any approved subcontract of **Contractor's** duties and obligations under this Agreement shall be in writing and contain provisions that are consistent with the provisions of this Agreement. **SUNY-DMC** shall be provided a copy of any approved subcontract within ten (10) days of its execution. Notwithstanding the foregoing, **Contractor** shall remain primarily responsible for its obligations hereunder.
- (b) **SUNY-DMC** and the **State of New York** shall not be parties to any approved subcontract of **Contractor's** duties and obligations under this Agreement.
- (c) **Contractor** shall give **SUNY-DMC** immediate notice in writing of any claim, legal action, or suit filed, and prompt notice of any claim made, against **Contractor**, by any subcontractor or contractor that may result in litigation related in any way to this Agreement or that may affect the performance of **Contractor's** duties under this Agreement.
- (d) Neither this Agreement nor the rights of either party hereunder shall be assignable except with the prior written consent of the other party and the Office of the State Comptroller, which shall

not be unreasonably withheld, and all the terms and conditions hereof shall bind any permitted successor or assign of either party. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of the parties hereto to the same extent as if each such successor or assign were named a party hereto.

38. Nothing in this Agreement shall create or give to third parties, except the State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York and the State University of New York, any claim or right of action against the **Contractor**, the Consultant (as defined in the Construction Terms and Conditions), the State University Construction Fund, the Dormitory Authority of the State of New York, the **State of New York** or the **State University of New York** beyond such as may legally exist irrespective of the Agreement.
39. The **SUNY-DMC** Project Manager for this Agreement shall be the **Associate Administrator of Radiology**, or any other such individual as may be subsequently designated by **SUNY-DMC**. The Project Manager shall review any work plan prepared by the **Contractor**, approve activities hereunder and review and approve the **Contractor's** invoices submitted hereunder. The Project Manager, or any other such individual as may be subsequently designated by **SUNY-DMC**, shall also coordinate day-to-day support with **Contractor's** representatives and agents for addressing training, implementation, and support issues related to the Subscription and System.
40. This Agreement includes by reference all exhibits hereto. In the event that there is a conflict between any of the terms and conditions set forth in the documents that constitute this Agreement, the following order of precedence shall apply:
  - (a) **Exhibit "A"**
  - (b) **Exhibit "A-1", Exhibit "F" – BAA, Exhibit "G" – DRA Appendix;**
  - (c) The text of this Agreement;
  - (d) **Exhibit "B" – Contractor Reporter Advertisement**
  - (e) **Exhibit "C" – IFB**
  - (f) **Exhibit "D" – Construction Terms and Conditions**
  - (g) **Exhibit "E" – Contractor's Proposal;**
41. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under this Agreement shall not constitute consent to, a waiver of, or excuse for any other, different or subsequent breach.
42. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to the conflicts of law doctrine, and any action to interpret or enforce this Agreement or any provision herein shall be brought in a court of competent jurisdiction in the State of New York.
43. As to Construction Services:
  - (1) No action or proceeding shall be maintained by the **Contractor**, or anyone claiming under or through the **Contractor**, against the **SUNY-DMC**, or its trustees, officers, agents or employees, upon any claim arising out of or based upon the Agreement or any breach thereof or by reason of any act or omission or requirement of the **SUNY-DMC**, or its trustees, officers agents or employees, unless:
    - (a) Such action or proceeding is instituted in the Court of Claims for the State of New York;

- (b) The **Contractor** or the person claiming under or through it shall have strictly complied with all requirements relating to the giving of notices and information with respect to such claims; and
  - (c) Such action or proceeding shall be commenced within one (1) year after the submission to the SUNY-DMC of the final application for payment or, if the claim is based upon monies required to be retained for any period after the date of the final application for payment, such action is commenced within six (6) months after such monies become due and payable under the terms of the Contract; or
  - (d) If the Agreement is terminated or the **Contractor** declared in default by the **SUNY-DMC**, such action is commenced within six (6) months after the date of such termination or declaration of default by the University.
- (2) Notwithstanding anything in the laws of the State of New York to the contrary, the **Contractor**, or anyone claiming under or through the **Contractor**, shall not be entitled to any additional time to begin anew any other action if an action commenced within the times herein specified is dismissed or discontinued for any reason whatsoever.
44. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted or, if applicable, limited to the extent necessary for enforceability thereof.
45. If during the term of the Agreement and any extension thereof **Contractor** becomes aware of an actual or potential relationship that may be considered a conflict of interest, **Contractor** shall notify **SUNY-DMC** in writing immediately. Should **Contractor** engage any current or former New York State employee as its own employee or as an independent contractor because of such employee's knowledge of New York State finances, operations or knowledge of **SUNY-DMC's** operations, or any current or former State employee who in the course of his or her State employment had frequent contact with management-level **Contractor** employees, **Contractor** shall immediately notify **SUNY-DMC** in writing. Should **SUNY-DMC** thereafter determine that such employment is inconsistent with State or Federal Law, **SUNY-DMC** shall so advise **Contractor**, in writing, specifying its basis for so determining, and may request that the employee's or independent contractor's relationship be terminated with respect to **Contractor's** relationship with **SUNY-DMC**.
46. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties, and all previous communications between the parties with reference to the subject matter of this Agreement, whether written or oral, are hereby superseded. This Agreement may not be altered, modified or amended except by a written amendment executed by authorized officers of both parties and, where applicable, subject to the approval of the New York State Attorney General and Office of the New York State Comptroller.

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The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "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. **PROHIBITION AGAINST ASSIGNMENT**  
Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. **COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. 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.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding

upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

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 SUNY of any SUNY-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 on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, 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 its knowledge and belief 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 it to SUNY a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies 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, 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 SUNY and its representatives and entities 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. SUNY 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 SUNY 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, SUNY's or the State's right to discovery in any pending or future litigation.

#### 11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

Identification Number(s). Every invoice or New York State Claim for Payment submitted to the State University of New York 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 University of New York 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 State University of New York 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.

(a) 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:

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or

continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

(3) 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.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY 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, SUNY 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 Exhibit A, the terms of this Exhibit 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 State Finance Law §165 (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 Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, 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 Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have 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(5) of the 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  
30 South Pearl St., 7th Floor  
Albany, NY 12245  
Tel: 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 SUNY;

(b) The Contractor has complied with the Federal Equal Employment 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 Search 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 SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY 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 of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, 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, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

**24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT.**

In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

**25. 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.

**26. 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 SUNY 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 SUNY determines that such action is in the best interests of the State.

**27. 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.oqs.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.

**THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY**

28. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

29. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.



**1. DEFINITIONS.** The following terms shall be defined in accordance with Section 310 of the Executive Law:

**STATE CONTRACT** herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an 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.

**SUBCONTRACT** herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

**WOMEN-OWNED BUSINESS ENTERPRISE** herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or a authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

**MINORITY-OWNED BUSINESS ENTERPRISE** herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

**MINORITY GROUP MEMBER** shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

**CERTIFIED ENTERPRISE OR BUSINESS** shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development (“DMWBD”) for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

**2. TERMS.** The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University:

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action 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.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action 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 workforce on State Contracts; (ii) 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; (iii) At the request of the University 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, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Form 108 - 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.

(e) Form 112 - Workforce Employment Utilization Report (“Workforce Report”)

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

occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

(f) 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.

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of



affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(h) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

3. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority-and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

#### **4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN.**

The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and

women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

#### **5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.**

Based upon a n analysis of the following factors, the

University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic

Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

## 6. MWBE Utilization Plan.

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

(b) MWBE Utilization Plan (Form 7557-107).

Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and

submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
- iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and
- iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

- i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.
- ii. Failure to file the waiver form in a timely manner

may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

- i. If a Contractor fails to submit a MWBE Utilization Plan;
- ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
- iii. If a Contractor fails to submit a request for waiver; or
- iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

(g) 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.

(h) 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, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### **7. Waivers.**

(a) For Waiver Requests Contractor should use (Form 7557-114) – 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 University shall evaluate the request and issue a written notice of acceptance or

denial within twenty (20) days of receipt.

(c) If University, 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 University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **8. Quarterly MWBE Contractor Compliance Report.**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 7557-114) to the University by the 5<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

#### **9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.**

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole

purpose of achieving goals for minority and women's participation.

#### **(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.**

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of 15 percent (15%) for Certified Minority-Owned Business Enterprises and 15 percent (15%) for Certified Women-Owned Business Enterprises.

#### **10. ENFORCEMENT.**

The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

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, remedies or enforcement proceedings as allowed by the Contract.

**11. DAMAGES FOR NON COMPLIANCE.**

Where the University 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 liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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 University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, 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 University.

## EXHIBIT B

### ACKNOWLEDGMENT FORM PROCUREMENT LOBBYING LAW (SFL §139 J and §139 K)

**Subject: Procurement Project, Requisition: No. 15-14: LINAC Radiation Therapy System, Installation and Maintenance Packet.**

Pursuant to State Finance Law § §139-j and 139-k (the “Procurement Lobbying Law”), this solicitation involves restrictions on communications between a potential vendor, or person acting on behalf of a vendor (the “Offeror”) and SUNY-Downstate. Specifically, during the “**Restricted Period**” (as defined below) of a procurement process, Offerors are restricted from communicating with any SUNY-Downstate employees other than those employees listed below (the “**Designated Contacts**”). Additionally, Offerors are prohibited from making “**Contacts**” (as defined below). The designated staff member(s), as of the date hereof, is identified below.

*This Acknowledgment Form constitutes notice that the Restricted Period has commenced for the referenced procurement.*

SUNY-Downstate is required to record all Contacts, and, generally, must deny a contract award to an Offeror involved in a knowing and willful Contact. Additionally, a determination that an Offeror has provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

Further information about these requirements can be found on the following website:

<http://www.ogs.state.ny.us/purchase/AboutPSG.asp>

Contact: any oral, written or electronic communication with any employee of SUNY Downstate Medical Center under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.

Restricted Period: the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerors intending to result in a procurement contract with SUNY Downstate Medical Center and ending with the final contract award and approval/execution of such contract by SUNY-Downstate and, where applicable, the Office of the State Comptroller.

Designated Contact(s):

(1) Designated Contact

Name: Maureen Crystal  
Title: Director of Contracts  
Department: Contracts  
E-mail: [maureen.crystal@downstate.edu](mailto:maureen.crystal@downstate.edu)  
Phone: (718) 270-1976  
Fax: (718) 270-3342

(2) Designated Technical Contact

Name: Alvin Dunaisky  
Title: Asst. Dir. for Major Hospital Projects  
Department: Design & Construction/ FMD  
Email: [Alvin.Dunaisky@Downstate.edu](mailto:Alvin.Dunaisky@Downstate.edu)  
Phone: 718-270- 8291  
Fax: (718) 270-3760

(3) Designated MWBE Contact

Name: Raul Tosado  
Title: Executive Director  
Department: Contracts & Procurement  
E-mail: [raul.rosada@downstate.eud](mailto:raul.rosada@downstate.eud)  
Phone: 718-613-8723

Acknowledgment Page to Follow on Page 2 of 2

By signing below, the Offeror acknowledges and affirms its understanding of, and agreement to comply with, the Procurement Lobbying.

**An Offeror's failure to comply with the requirements of this Acknowledgment Form and/or with the Procurement Lobbying Law will result in disqualification from consideration for an award under the referenced procurement.**

**Offeror's Affirmation of Understanding and Adherence**

By signing below, I (Print Name) \_\_\_\_\_, (Print Title) \_\_\_\_\_, an authorized representative of (Insert Company Name) \_\_\_\_\_, hereby acknowledge and affirm that (Insert Company Name) \_\_\_\_\_ understands, and agrees to comply with, the Procurement Lobbying Law.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Subject: Procurement Project, Requisition No. 15-14: LINAC Radiation Therapy System**

**Exhibit "C"**  
**Cost Proposal Form – Page 1 of 4**

IFB# 15-14

Vendor must complete and include this sheet with your response to this IFB. These forms are to be completed by the Vendor and returned with the proposal. Attach additional sheets as necessary.

Vendor Information: \_\_\_\_\_

Company Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Point of Contact: \_\_\_\_\_

Internet Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

# of years in business: \_\_\_\_\_

# of years providing Services: \_\_\_\_\_

Instructions: Each Vendor must provide the detailed pricing information requested in the Cost Proposal Grid following these preliminary instructions and background (on Cost Proposal Page 3 of 5). As indicated in the Grid, Vendors should specify the charges that such Vendor proposes charging SUNY-DMC for providing the System and Services described herein. Any and all rates proposed hereunder shall remain constant for the term of the agreement resulting herefrom.

Each Vendor is required to use the information provided by SUNY-DMC in providing their proposed rates, and any other costs to determine the Grand Total amount (over 5 years) of such Vendor's bid.

Inquiries relating to Price Proposal: Vendor's Price Proposal (the rates provided by Vendor in Exhibit "C" herein) must include any and all costs associated with the provision of a Radiation Therapy System and Five (5) Year Maintenance Package.

In the event of any confusion or uncertainty with regard to the specific Price Proposal information required by SUNY-DMC, Vendor should not submit a proposal hereunder until uncertainty/confusion has been alleviated; as such confusion may result in disqualification of

**Exhibit “C” – Cost Proposal (Page 2 of 4)**

Vendor’s proposal if its proposal is determined to be non-responsive. Instead, Vendor should submit a written inquiry during the period prescribed for inquiry submission requesting clarification in the manner set forth in Section II hereinabove.

**Additional Services:** By submitting a Proposal hereunder, each Vendor acknowledges and agrees that it will only be compensated for providing the services requested herein and for which it has proposed its cost. SUNY-DMC will not be responsible for any additional costs, other than for the services outlined hereunder, and for which such Vendor has actually proposed a cost in its Proposal.

**Guarantees:** By submitting a response to this IFB, each Vendor warrants, represents and guarantees that the price offered is the same or lower than those offered to any governmental or commercial account for similar products and services.

**Information:** In the below Cost Proposal Grid (the “Grid”), each Vendor must indicate costs under the appropriate category. If a Vendor seeks to propose costs for which a category is not provided, that Vendor should insert the category and cost proposed in the Miscellaneous or Additional Costs category.

Please complete the Cost Proposal Table on the following page, and sign the certification(s) that follow.

**\*\*NOTE - the final costs must be all-inclusive. Vendor’s compensation under the Contract will be limited to the rates herein proposed, which rates shall remain fixed for the term of the Contract(s) (VENDOR’S SHALL NOT PROPOSE ANY ESCALATION).**

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**Exhibit “C” – Cost Proposal (Page 3 of 4)**

**Cost Proposal Grid**

The following pricing is proposed by (vendor name) \_\_\_\_\_ for providing SUNY-DMC with a Radiation Therapy System and Maintenance Package, in accordance with the specifications set forth in IFB #15-14. Where necessary, please provide further itemization of the below components in attachments hereto. That notwithstanding, the below-quoted costs represent all costs, fees, and expenses to be incurred by SUNY-DMC from Vendor and its subcontractors, with respect to this procurement.

**A. Price of All Equipment and Components**

Total: \_\_\_\_\_

Year 2: \_\_\_\_\_  
 Year 3: \_\_\_\_\_  
 Year 4: \_\_\_\_\_  
 Year 5: \_\_\_\_\_  
 Total: \_\_\_\_\_

In the event the service component hereunder is extended beyond the five year period called for herein, the Contractor shall be entitled to an increase, one time at the start of any such extension period, which increase may not exceed the lesser of (a) any increase in the Consumer Price Index (CPI) as reported by the United States Labor Department for the New York City metropolitan area (CPI-U, New York, All Items) for the twelve months ended ninety days prior to the start date of such extension period and (b) two percent (2%).

**C. Installation/Construction/Implementation Fees Cost of Installation/Construction for all equipment:**

\_\_\_\_\_

*Cost of interfacing machine to existing hardware and software:*

\_\_\_\_\_

Total: \_\_\_\_\_

**D. Anticipated After-Hours Maintenance Costs**

Provide the Hourly rate (Over-time, Holiday, Weekends)t for a total of 50 hours per year:

50 Hours x \_\_\_\_\_ = \$ \_\_\_\_\_ per year.

*Hardware Maintenance and Software Support Package (as set forth in IFB Section III(C)(6))*

**B. Maintenance and Support**

Year 1: \_\_\_\_\_

**GRAND TOTAL: A + B + C + D = \$ \_\_\_\_\_ \*\***

Vendor’s Certification that Vendor has read and understands all aspects of this IFB, EXHIBIT A, and EXHBIT A-1. Vendor further certifies that the above-quoted costs include all expenses to be incurred by SUNY-DMC from Vendor and its subcontractors.

Vendor’s Authorized Signature: \_\_\_\_\_

Print FULL Name and Title: \_\_\_\_\_

\*At time of installation, vendor will provide its latest model equipment with all up-to-date upgrades.

**\*\*Evaluation will be based on this figure.**

**Exhibit "C" – Cost Proposal (Page 4 of 4)**

Proposal Summary

Certification

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

1. The prices in this proposal 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 vendor, Vendor or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the vendor and will not knowingly be disclosed by the vendor prior to opening, directly or indirectly, to any other vendor, Vendor or to any competitor;
3. No attempt has been made or will be made by the vendor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.
4. The attached State University of New York standard contract clauses contained in Exhibit "A" and Exhibit "A-1" are made a part of this IFB and by submitting this proposal the vendor accepts the terms contained therein.

\_\_\_\_\_  
(Vendor's Name)

By: \_\_\_\_\_  
(Officer's Name)

\_\_\_\_\_  
(Officer's Title)

I	LINAC UNIT SPECIFICATIONS:	YES	NO	COMMENTS
	The System must be fully equipped to perform radiation therapy and radiosurgery, with all the additional functionalities described in the requirements herein.			
	The System must be a digital unit that is capable of performing Flattening Filter Free (FFF) a high dose mode of > 1000 mu/min @ isocenter mode for 6MV.			
	The System must be capable of performing FFF energies at 1400MU/min @ 6MV, 2200MU/min @10MV.			
	The System leaf speed must be at least 2.5cm/second			
	Radiation Oncologic specific information system software.			
	Information system support including licenses, training, and workflow consultation including migration of previous patient data.			
	The System must include at least 2 treatment planning systems with software, hardware, and training for the physicist, dosimetrist, and staff.			
	Physics Commissioning support,including Daily QA and other phantoms required for QA program.			
	The System must include a treatment planning system that is capable of placing the Isodose Curve on top of a Cone Beam CT.			
	The System must be equipped with VMAT, IMRT, IGRT, and SRT/S functionalities.			
	The System must have photon energy settings of 6MV, 10MV, and high with and without wedges, with a minimum normal clinical operating dose rate of 300 cGy/min and a radiosurgery treatment dose rate of at least 1000 cGy/min for a 10cm by 10cm field with an isocenter of 100cm.			
	The System must have electron energy settings of 6, 9, 12, 15, and 18 MeV and include at least 5 cone sizes with a minimum dose rate of no less than 300 cGy/min for a 10cm by 10cm field with an isocenter of 100cm.			
	The System must be able to perform single and multiple arc VMAT treatments within a single plan corresponding to a single treatment fraction for treatments involving one fraction per day at photon beams settings of 6MV, 10MV, and High.			
	The System must be able to perform IMRT at photon beam settings of 6MV 10MV and High.			
	The System must be equipped to perform X-ray kilovoltage, cone-beam CT using the Vendor's largest detector area imaging device available for both gated and non-gated IGRT functionality and registration of X-ray CT-based images with planning CT and produce shifts in at least cartesian 3 axes.			
	The System must have a maximum treatment field of view of no less than 40cm by 40cm at a machine isocenter of 100cm.			
	The System must be equipped with multi-leaf collimators (MLC) usable for the entirety of the above FOV with leaf widths that are at most a nominal 1 cm at the 100 cm isocenter. The nominal leaf width of the MLC leaf for the middle 20cm of the treatment FOV must be no greater than 0.5cm at the Isocenter.			
	The System must be equipped with a treatment couch with automated movement from the operator's console outside of the LINAC treatment vault on at least three Cartesian axes from the console( in 6 dimensions: 3 translation an 3 rotations). Specifically, it must be moveable without entering the LINAC vault.			
	The System must have a fully electronic record and verify system. The system must allow Dicom query import and export, and visualization of RT dose, RT plan and RT Structure set. There should be at least 10 Workstations and current user licenses.			

	The system should track patient dose automatically after being treated on the machine and fully integrate with the electronic record and verify system of a vendor provided ROMIS. (Radaition Oncology Medical Information System).			
	The system must have capability for complete electronic treatment chart with electronic dynamic documents and revision history			
	The system must include hardware and software allow visualization of isodose line and 3D dose on cone beam CT taken of the patient on the treatment table. The visualization of isodose line on all treatment Cone beam CT for intra fraction dose analysis			
	The System must be capable of performing intra-cranial and extra-cranial SRT/S using cones.			
	The System must be equipped with at least 2 treatment planning systems WS's for the planning and treatment of SRT/S cases,3D conformal radiation therapy w/MLC's which IMRT and VMATIncludes all necessary hardware, software, licenses and interfaces to enable complete functionality with an electronic record and verify ROMIS that will be provided by vendor. The calculation of electron doses in the TPs must be done with a Monte Carlo algorithm.			
	If applicable, the Vendor must supply the dedicated computer systems necessary for full operation and utilization of the System.			
	Vendor must supply all accessories generally associated with the immobilization of patients during radio-surgery for intra-cranial and extracranial sites.			
	Upon installation, vendor must provide all data collection services and cover all costs associated with the necessary acceptance testing and commissioning data collection of ALL clinical treatment systems (photon and electron data collection, IGRT, IMRT, VMAT, SRT/S, etc) and BOTH existing (Nucletron Oncentra) and new (SRT/S treatment planning system) treatment planning systems associated with this IFB under the direction and personal participation of the Chief Physicist and/or their designee. Any hardware, software, license, interfaces, phantoms and other equipment necessary for all routine quality assurance recommended or required by the Vendor, NYC, NYS and Federal law shall be provided by the Vendor for those purposes. This includes but is not limited to equipment necessary to perform quality assurance of: a) both the gated and non-gated IGRT system, b) per patient-plan IMRT, VMAT and SRT/S, c) the SRT/S system's positional and dose delivery accuracy, d) photon and electron beam AAPM TG-51 dose calibration, flatness and symmetry profile checks, e) X-ray to light field congruence, f) all aspects of a modern LINAC's mechanical systems checks according to AAPM's TG#142, g) the total system's performance on an annual basis as part of an annual calibration using a water scanning phantom and reservoir tank system capable of full 40 cm by 40 cm field measurements to depths of up to 30 cm with full scatter conditions at a machine isocenter of 100 cm set at the water surface, h) the LINAC's daily output, symmetry and X-ray/light field congruence constancy.			
	An intercom system shall be provided between the LINAC vault and the LINAC console. At least 3 neutron-hardened cameras with pan/tilt/zoom capability as part of a video surveillance or remote monitoring systems shall be provided and installed in the LINAC vault with viewing, monitoring and controls at the TX console. At least 2 additional cameras with pan/tilt/zoom capability as part of a video surveillance or remote monitoring systems shall be provided and installed at the LINAC control console area. Both of the video systems above shall be accessible via secure, password protected intranet network connection using common web browser software with PTZ control capability and must have DVR systems provided which will record and store high resolution video from all of the installed cameras for a period of at least 1 month.			
	A full, solid state laser isocenter alignment system with overhead, left/right side, sagittal and overhead lasers shall be provided and installed in the LINAC vault.			

	System must be equipped to perform SBRT, SRS, and respiratory gating procedures.			
	System must be equipped to perform 1 and 2 arc VMAT for SBRT procedures.			
	The system must allow for auto field sequencing and automation of treatment fields.			
	The system could allow on the fly addition of imaging field sequence by the therapist.			
	On board KV imaging (2D and 3D CBCT) with automated record and verify compatibility (online and offline fusion)			
	The system must include the ability to allow remote access for monitoring of LINAC performance.			
	Minimum 80cm bore.			
	Dual photon Energy Linear accelerator (6MV and High with optional 6X High Intensity Mode energy 6X FFF mode).			
	<0.5mm radius run-out for gantry and collimator axes.			
	<0.75mm radius run-out for gantry, collimator and couch axes.			
	Max field size 40x40cm.			
	Dose rate for 6MV and High.			
	Electron energy (6, 9, 12, 15, 18 MeV).			
	Image guided couch with <1mm motion accuracy.			
	Remote couch motion option.			
	IMRT capabilities for entire 40 x 40cm FOV.			
	Advanced Dynamic MLC (MLC motion for ARC and dose dynamic beams).			
	Sliding window capabilities.			
	Electronic Portal imaging capabilities with automated record and verify compatibility (online and offline registration).			
	40cm by 30cm active imaging area.			
	Radiographic 2D images.			
	Fluoroscopic 2D images.			
	Cone beam CT 3D images.			
	Volumetric modulated arc therapy capabilities (VMAT).			
	Enhanced or Universal wedges.			
	Auto field sequencing.			
	Integrated treatment console.			
	Treatment delivery functionality including treatment , setup, verification and record of treatment from a single file.			
	MLC and portal images acquisition from a single application.			
	KV images including CBCT from a single application.			
	Photos, activity and setup info display.			
	Integrate with record and verify.			
	Record of interrupted or partial treatment.			
	Multi user login.			
	Offer Marketing assistance.			
	Offer medical coding updates based on functions of selected equipment.			
	The system must have a digital central control system for safety and better performance.			
	Selected vendor must be able to complete the installation of equipment including all ancillary systems, as well as provide beam data collection and other data for physics acceptance testing and commissioning under the supervision of the physics group for compliance with regulatory requirements.			
<b>II</b>	<b>LINAC SOFTWARE &amp; HARDWARE MAINTENANCE SPECIFICATIONS:</b>	<b>YES</b>	<b>NO</b>	<b>NO</b>
<b>A</b>	<b>Service Contract Requirements:</b>			
	Principal Coverage Period: 8am-5pm Mon – Friday			
	Uptime Guarantee: 99%			
	Service call reply/response time: 30 minutes			
	Service on-site: Certified Service Engineer arrival time: 4 hours			

	Part(s) order requirement: by Noon Eastern Standard time to assure next day delivery.			
	Unlimited labor coverage on-site during the principle coverage period.			
	Provision of labor rates for service hours outside of principle coverage period, including holidays.			
	Up to 10 year contract covering the useful life of the equipment.			
	Parts Delivery: within 24 hours of part order.			
<b>B</b>	<b>Hardware Support Package:</b>			
	For all hardware used and associated with the operation of the System, Bidder shall supply a comprehensive support, service, and maintenance package ("Hardware Maintenance Package") with the following specifications:			
	The Hardware Maintenance Package shall commence upon the complete installation of the system, as defined above in paragraph 3 of this Section III(C), IFB Requirements/Detailed Specifications.			
	The Hardware Maintenance Package shall encompass, but not be limited to: (i) service visits upon SUNY-DMC's request, necessary to remedy malfunctions in the System; (ii) installation and replacement of all malfunctioning and/or necessary parts, to ensure the System's proper function; (iii) supply, delivery, and transportation of all necessary spare parts; (iv) two preventive maintenance visits per twelve month period; and (v) training, instruction, and assistance in the operation of the System, given by Vendor's licensed and trained personnel to SUNY-DMC's designated personnel.			
	The Hardware Maintenance Package shall include an uptime guarantee of 99%.			
	Technical support through the Hardware Maintenance Package shall operate from Monday through Friday, from the hours of 8:00 A.M. E.S.T through 9:00 P.M. E.S.T. Vendors should also include rates associated with technical support provided outside of this time range.			
	Planned Maintenance: the manufacturer's recommended amount of PM's per year.			
	Technical Phone Support with hardware & software: 24 hours/7days per week including Holidays.			
	Real time technical support via remote service connection.			
	Single point of contact such as a centralized call center provided by the manufacturer for all service calls.			
	Quality Assurance supports to maintain the quality specification as per the equipment/unit specifications, which should include testing, physical safety, electrical, and support system evaluations. A log with the reporting of any findings and their corrective actions should be provided for quality assurance data generation and tracking.			
	Ancillary systems maintenance for all ancillary components of the magnet and coolant/refrigeration units.			
	American College Radiology or American College of Radiation Oncology accreditation assistance to aide in confirming quality of the TG142, record and verify, and other system requirements for accreditation. Moreover, unlimited technical and clinical application support pertaining to the readiness of the system, including tips and training relative to the ACR or ACRO accreditation process.			
	Inclusion of an ARRTaccredited self-study program that is relative to the latest trends in therapeutic imaging which will provide up to 12 category A credits.			
	Provision of system software upgrades, at least 1 successful system computer hardware replacement.			

	Application support including troubleshooting by a certified advanced applications expert, either remotely or direct (hands-on) via remote access to be providing during principle coverage period.			
	Subscription to internet learning for up to 3 technologists for up to 12 category A continuing education credits that are recognized by the ARRT.			
	Coverage of IT service calls concerning server hardware.			
	Access to a web-based portal or website that can provide utilization data including the ability to produce reports that can be exported or saved by the user. Moreover should have access to information related to diagnostic imaging equipment such as service, PM management tools, service documentation, service contract management tools, asset management tools, equipment performance reports, etc.			
	Provision of a workstation engines that can be used for post-image generation manipulation, including support of the licensed workstation engines.			
	Non-Inclusion of travel time for Service Engineer to and from our facility during the principal coverage period.			
	Inclusion of on-site parts and labor costs during principle coverage period.			
<b>C</b>	<b>Software Support Package:</b>			
	For all software used and associated with the operation of the System, Bidder shall supply a comprehensive support, service, and maintenance package ("Software Support Package") with the following specifications:			
	The Software Support Package shall commence from the complete installation of the system, as defined above in paragraph 3 of this Section III(C), IFB Requirements/Detailed Specifications.			
	The Software Support Package shall encompass, but not be limited to: (i) troubleshooting of all software malfunctions; and (ii) periodic updates, patches, and fixes necessary for the System's optimal functionality.			
	The Software Support Package shall include an uptime guarantee of 99%.			
	Technical support through the Software Support Package shall operate from Monday through Friday, from the hours of 8:00 A.M. E.S.T through 9:00 P.M. E.S.T. Vendors should also include rates associated with technical support provided outside of this time range.			
	Should SUNY-DMC seek support under the Software Support Package, Vendor shall react to SUNY-DMC's reports of the malfunctioning System by phone call, within twenty four (24) hours. If the malfunction cannot be remedied by Vendor's phone support, Vendor shall undertake the necessary on-site repair or dispatch of spare parts within one business day of such phone assessment. Should emergency repair be required, Vendor shall utilize best efforts to provide such service, with such emergency service to be charged at a reasonable rate demarcated in the Contract arising hereunder.			
	Technical support through the Software Support Package shall be available both telephonically and in-person.			
	Out of Scope Services: Should SUNY-DMC require Vendor to render any services outside the hours contemplated herein, Vendor shall utilize best efforts to provide such services. SUNY-DMC shall compensate Vendor for these services at the rate provided in Vendor's Cost Proposal.			

	<p>Should SUNY-DMC seek support under the Software Support Package, Vendor shall react to SUNY-DMC's reports of the malfunctioning System by phone call, within twenty four (24) hours. If the malfunction cannot be remedied by Vendor's phone support, Vendor shall undertake the necessary on-site repair or dispatch of spare parts within one business day of such phone assessment.</p>			
	<p>Technical support through the Hardware Maintenance Package shall be available both telephonically and in-person.</p>			
	<p>Out of Scope Services: Should SUNY-DMC require Vendor to render any services outside the hours contemplated herein, Vendor shall utilize best efforts to provide such services. SUNY-DMC shall compensate Vendor for these services at the rate provided in Vendor's Cost Proposal.</p>			



## EXHIBIT “D” – SUNY-DMC Constructions Terms and Conditions

The University and the Contractor agree as follows:

1. The Contractor shall perform all work and duties required for the construction of Project Number \_\_\_\_\_, titled \_\_\_\_\_, as contained in the Contract Documents. Subject to authorized adjustments the work and duties contained in the same shall be completed within \_\_\_\_\_ calendar days starting 10 calendar days after the approval date of the New York State Comptroller. The Contractor agrees to pay the University liquidated damages in accordance with paragraph 1 of the Proposal for each calendar day of delay in completing the work.
2. The University shall pay and the Contractor shall accept for the performance of work of the above referenced Project, the total contract compensation of \$ \_\_\_\_\_, (in figures), \_\_\_\_\_ (in word)s.

### ARTICLE I

#### General Provisions

#### Section 1.01 Definitions

Where the following words and expressions are used in the Contract Documents it is understood that they have the meaning set forth as follows:

<b>CONSULTANT</b>	The Architect, Engineer, Landscape Architect, or Surveyor named in the Notice to Bidders or such other person or firm designated by the University to provide general administration of the Contract and inspection of the work.
<b>BIDDING DOCUMENTS</b>	The Notice to Bidders, Information for Bidders and Proposals
<b>BONDS</b>	Performance Bond and Labor and Material Bond
<b>CONTRACT OR CONTRACT DOCUMENTS</b>	The Agreement, Project Manual, Proposal, Bonds, Specifications, Contract Drawings, Addenda issued prior to the opening of bids and Change Orders issued after the award of the Contract.
<b>UNIVERSITY</b>	State University of New York
<b>NOTICE OF AWARD</b>	Letter of Intent
<b>PROJECT</b>	The facility or facilities to be constructed including all usual, appropriate and necessary attendant work shown on, described in or mentioned in the Contract.
<b>SITE</b>	The area within the Contract limit lines, as shown on the Drawings, and all other areas upon which the Contractor is to perform work.
<b>WORK</b>	The using, performing, installing, furnishing and supplying of all materials, equipment, labor and incidentals necessary or proper for or incidental to the successful completion of the Project and the carrying out of all duties and obligations imposed upon the Contractor by the Contract.
<b>NOT IN CONTRACT, "N.I.C."</b>	Indicates equipment furnished by the Owner and installed under another construction contract or by another contractor, or operations at the site not included as part of this Contract.
<b>PROVIDE, PROVIDED</b>	Mean that the Contractor shall furnish and install all materials and labor for the item so specified.

#### Section 1.02 Intentionally omitted.

#### Section 1.03 Nomenclature

Materials, equipment or other work described in words which have a well-known, technical or trade meaning shall be interpreted as having such meaning in connection with the Contract.

#### **Section 1.04 Intentionally omitted.**

The Contract, together with all exhibits thereto, constitutes the entire agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties hereto.

#### **Section 1.05 Intentionally omitted.**

#### **Section 1.06 Accuracy and Completeness of Contract Documents**

- (1) The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all. The intention of the Documents is to include all materials, plant, equipment, tools, skill and labor of every kind necessary for the proper execution of the work and also those things which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.
- (2) The Contract Documents contemplate a finished piece of work of such character and quality as is reasonably inferable from them. The Contractor acknowledges that the contract consideration includes sufficient money allowance to make its work complete and operational and in compliance with good practice and it agrees that inadvertent minor discrepancies or omissions or the failure to show details or to repeat on any part of the Contract Documents the figures or notes given on another shall not be the cause for additional charges or claims. In case of a conflict between any part or parts of the Contract Documents with any other part or parts thereof, as contrasted with an omission or failure to show details or to repeat on any part of the Contract Documents the figures or notes given on another part thereof, the following shall be given preference, in the order hereinafter set forth, to determine what work the Contractor is required to perform: (a) Addenda (later dates to take preference over earlier dates); (b) Amendments to Agreement; (c) Agreement; (d) Specifications; (e) Schedules; (f) Large scale detail Drawings (detail drawings having a scale of 3/4" and over); (g) Large scale plan and section Drawings (plan and section drawings having a scale equal to or larger than that used for the basic floor or site plan, as the case may be); (h) Small scale detail Drawings (detail drawings having a scale of less than 3/4"); and (i) Small scale plan and section Drawings (plan and section drawings having a scale less than that used for the basic floor or site plan, as the case may be). In the event of such a conflict between or among parts of the Contract Documents that are entitled to equal preference, the more expensive way of doing the work, the better quality or greater quantity of material shall govern unless the University otherwise directs.

#### **Section 1.07 Organization of Contract Documents**

The Specifications and Drawings are generally divided into trade sections for the purpose of ready references, but such division is arbitrary and such sections shall not be construed as the prescription by the Consultant or the University of the limits of the work of any subcontractor or as a determination of the class of labor or trade necessary for the fabrication, erection, installation or finishing of the work required. The Contractor will be permitted to allot the work of subcontractors at its own discretion regardless of the grouping of the Specifications and Drawings. It shall be the Contractor's responsibility to settle definitively with each subcontractor the portions of the work which the latter will be required to do. The University and the Consultant assume no responsibility whatever for any jurisdiction claimed by any of the trades involved in the work.

#### **Section 1.08 Furnishing of Contract Documents**

The Contractor shall be furnished, free of charge, with as many copies of the Specifications and Drawings as it may reasonably request, in the judgment of the University, within fifteen (15) working days after the Notice of Award. Any other copies of the Specifications and Drawings which the Contractor may desire can be obtained by it from the Consultant at the latter's cost of duplication thereof.

#### **Section 1.09 Examination of Contract Documents and Site**

By executing the Contract, the Contractor agrees: that it has carefully examined the Contract Documents together with the site of the proposed work as well as its surrounding territory; that it is fully informed regarding all the conditions affecting the work to be done and the labor and materials to be furnished for the completion of the Contract; and that its information has been acquired by personal investigation and research and not in the estimates and records of the University.

#### **Section 1.10 Intentionally omitted.**

#### **Section 1.11 Intentionally omitted.**

#### **Section 1.12 Intentionally omitted.**

#### **Section 1.13 Intentionally omitted.**

## **ARTICLE II**

### **Contract Administration and Conduct**

#### **Section 2.01 Consultant's Status**

- (1) The Consultant, as the University's representative, shall provide general administration of the Contract and inspection of the work. The Consultant will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it will not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Consultant's duties, services and work shall in no way supersede or dilute the Contractor's obligation to perform the work in conformance with all Contract requirements, but it is empowered by the University to act on its behalf with respect to the proper execution of the work and to give instructions when necessary to require such corrective measures as may be necessary, in its professional opinion, to insure the proper execution of the Contract or to otherwise protect the University's interest.
- (2) The Consultant shall have the authority to stop the work or to require the prompt execution thereof whenever such action may be necessary, in its professional opinion, to insure the proper execution of the Contract or to otherwise protect the interests of the University.
- (3) Except as otherwise provided in the Contract, the Consultant shall determine the amount, quality, acceptability, fitness and progress of the work covered by the Contract and shall decide all questions of fact which may arise in relation to the interpretation of the plans and Specifications, the performance of the work and the fulfillment by the Contractor of the provisions of the Contract. The Consultant shall in the first instance be the interpreter of the provisions of the Contract and the judge of its performance and it shall use its power under the Contract to enforce its faithful performance.

#### **Section 2.02 Finality of Decisions**

- (1) Any decision or determination of the Consultant under the provisions of the Contract shall be final, conclusive and binding on the Contractor unless the Contractor shall, within ten (10) working days after such decision, make and deliver to the University a verified written statement of its contention that the decision of the Consultant is contrary to a provision of the Contract. The University shall thereupon determine the validity of the Contractor's contention. Pending decision by the University, the Contractor shall proceed in accordance with the Consultant's decision.
- (2) Wherever it is provided in the Contract Documents that an application must be made to the University and/or determination made by the University, the University's decision on such application and/or its determination under the Contract Documents shall be final, conclusive and binding upon the Contractor unless the same shall be determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith and unless the Contractor, within ten (10) working days after receiving notice of the University's decision or determination, files a written statement with the University and the Consultant that it reserves its rights in connection with the matters covered by said decision or determination.

#### **Section 2.03 Claims and Disputes**

- (1) If the Contractor claims (i) that any work it has been ordered to do is extra work or (ii) that it has performed or is going to perform extra work or (iii) that any action or omission of the University or the Consultant is contrary to the terms and provisions of the Contract, it shall:
  - a. Promptly comply with such order;
  - b. File with the University and the Consultant, within five (5) working days after being ordered to perform the work claimed by it to be extra work or within five (5) working days after commencing performance of the extra work, whichever date shall be the earlier, or within five (5) working days after the said action or omission on the part of the University or the Consultant occurred, a written notice of the basis of its claim and request a determination thereof;
  - c. File with the University and the Consultant, within thirty (30) calendar days after said alleged extra work was required to be performed or said alleged extra work was commenced, whichever date shall be the earlier, or said alleged action or omission by the University or the Consultant occurred, a verified detailed statement, with documentary evidence, of the items and basis of its claim;
  - d. Produce for the University's examination, upon notice from the University, all its books of account, bills, invoices, payrolls, subcontracts, time books, progress records, daily reports, bank deposit books, bank statements, checkbooks and canceled checks, showing all of its actions and transactions in connection with or relating to or arising by reason of its claim, and submit persons in its employment and in its subcontractors' employment for examination under oath by any person designated by the University to investigate any claims made against the University under the Contract, such examination to be made at the offices of the Contractor; and

- e. Proceed diligently, pending and subsequent to the determination of the University with respect to any such disputed matter, with the performance of the Contract and in accordance with all instructions of the University and the Consultant.
- (2) The Contractor's failure to comply with any or all parts of subdivision b of paragraph (1) of this Section shall be deemed to be (i) a conclusive and binding determination on its part that said order, work, action or omission does not involve extra work and is not contrary to the terms and provisions of the Contract; and (ii) a waiver by the Contractor of all claims for additional compensation or damages as a result of said order, work, action or omission. The provisions of subdivision b of paragraph (1) of this Section are for the purpose of enabling the University to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects of circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expenses or circumstances as they occur. Compliance with such provisions is essential whether or not the University is aware of the circumstances of any order or other circumstances which might constitute a basis for a claim and whether or not the University has indicated it will consider a claim in connection therewith.
- (3) No person has power to waive or modify any of the foregoing provisions and, in any action against the University to recover any sum in excess of the sum certified by the University to be due under or by reason of the Contract, the Contractor must allege in its complaint and prove at the trial compliance with the provisions of this Section.
- (4) Nothing in this Section shall in any way affect the University's right to obtain an examination before trial or a discovery and inspection in any action that might be instituted by or against the University or the Contractor.

#### **Section 2.04 Omitted Work**

The University reserves the right at any time during the progress of the work to delete, modify or change the work covered by the Contract, by a Change Order thereto providing for either a reduction or omission of any portion of the work, without constituting grounds for any claim by the Contractor for allowances for damages or for loss of anticipated profits and in such event a deduction shall be made from the Contract consideration, the amount of which is to be determined in accordance with the provisions of Section 4.02 of the Agreement.

#### **Section 2.05 Extra Work**

- (1) The University reserves the right at any time during the progress of the work to add, modify or change the work covered by the Contract by a Change Order thereto providing for extra work of either a qualitative or quantitative nature and in such event the Contract consideration shall be increased by an amount to be determined in accordance with the provisions of Section 4.02 of the Agreement and the completion date for all or any part of the work shall be extended for such period of time as may be determined by the University as necessary, because of the extra work, to complete the work or any part thereof.
- (2) Nothing in the Contract Documents shall excuse the Contractor from proceeding with the extra work as directed and, except as otherwise specifically provided for in a Change Order, the terms and conditions of the Contract Documents shall be fully applicable to all extra work.
- (3) The Contractor shall have no claim for extra work if the performance of such work, in the judgment of the Consultant, is made necessary or desirable because of any act or omission of the Contractor which is not in accordance with the Contract.
- (4) Notwithstanding the provisions of Section 2.02 of the Agreement and any other provisions of the Contract Documents to the contrary, the University, after conferring with the Consultant, shall have the right to overrule a determination or decision of the Consultant, that relates to whether certain work is included in the Contract Documents or is extra work, which he or she believes is incorrect; in the event an officer exercises such right, his or her determination or decision shall be final, conclusive and binding upon the Contractor and the University unless the same shall be determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith.

#### **Section 2.06 Contractor to Give Personal Attention**

- (1) The Contractor shall give its constant personal attention to all the work while it is in progress and shall place the working charge of a competent and reliable full-time superintendent acceptable to the Consultant and the University who shall have authority to act for the Contractor and who shall be accountable to the Consultant to the extent provided in the Contract. Unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in its employ, such superintendent shall not be changed without the written permission of the Consultant and the University.
- (2) When the Contractor and its superintendent are temporarily absent from the site of the work, the Contractor or its superintendent shall designate a responsible supervisory employee to receive such orders as the Consultant or its representative may give. At no time shall any work be conducted on the site in the absence of an individual present who has been so designated by the Contractor or its superintendent as having authority to receive and execute instructions given by the Consultant or its representative.

#### **Section 2.07 Employment of Workers**

The Contractor shall at all times employ competent and suitable workers and equipment which shall be sufficient to prosecute all the work to full completion in the manner and time specified. All workers engaged in specially or skilled work shall have had sufficient experience in such work to properly and satisfactorily perform the same. Should the Consultant deem any employee of the Contractor or any subcontractor

incompetent, careless, insubordinate or otherwise objectionable or whose continued employment on the work is deemed by the Consultant to be contrary to the public interest, it shall so advise the Contractor and the latter shall dismiss or shall cause the subcontractor, if such employee is employed by the latter, to dismiss such employee and such employee shall not again be employed on the work to be performed under the Contract without obtaining the prior written approval of the Consultant.

## **Section 2.08 Detailed Drawings and Instructions**

Upon timely notice by the Contractor that supplementary information is required, the Consultant shall furnish additional instructions, by means of Drawings or otherwise, necessary for the proper execution of the work. All such Drawings and instructions shall be consistent with the Contract Documents, true developments thereof and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper Drawings and/or instructions.

## **Section 2.09 Contract Documents to Be Kept at Site**

The Contractor shall keep at the site of the work a copy of the Drawings and Specifications and shall at all times give the Consultant and the University access thereto.

## **Section 2.10 Permits and Building Codes**

The Contractor shall obtain from the proper authorities all permits legally required to carry on its work, pay any and all taxes and fees legally required and shall be responsible for conducting its operations in accordance with the provisions of such permits. Except as otherwise expressly provided in the Contract Documents, all of the work covered by this Contract which is to be performed on property owned by the State University of New York is not subject to the building code of any city, county or other political subdivision of the State of New York. It is, however, subject to the provisions of the New York State Uniform Fire Prevention and Building Code and the applicable Federal and State health and labor laws and regulations. The building permit for the work shall be issued by the Campus Code Compliance Officer.

## **Section 2.11 Surveys**

- (1) From the data shown on the Drawings and identified at the site by the Consultant, a licensed surveyor, to be designated and paid for by the University, shall establish one (1) fixed bench mark and one (1) fixed base line at the site. The Contractor shall work from the bench marks and base lines shown on the Drawings, identified at the site by the Consultant and established at the site by the aforesaid surveyor and shall establish such supplementary bench marks and base lines that are required in order for it to lay out the work. The Contractor shall be responsible for all measurements that may be required for execution of the work to the exact position and elevation as prescribed in the Specifications, shown on the Drawings, or as the same may be modified at the direction of the Consultant to meet changed conditions or as a result of modifications to the work covered by the Contract.
- (2) The Contractor shall furnish at its own expense such stakes and other required equipment, tools and materials, and all labor as may be required in laying out any part of the work. If, for any reason, monuments are disturbed, it shall be the responsibility of the Contractor to reestablish them, without cost to the University, as directed by the Consultant. The Consultant may require that construction work be suspended at any time when location and limit marks established by the Contractor are not reasonably adequate to permit checking completed work or the work in progress.
- (3) In all multiple-story construction, the Contractor shall establish and maintain line marks at each floor level and grade marks four (4) feet above the finished floor at each floor level.

## **Section 2.12 Site Conditions**

- (1) The Contractor acknowledges that it has assumed the risk and that the Contract consideration includes such provision as it deems proper for all physical conditions and subsurface conditions as it could reasonably anticipate encountering from the provisions of the Contract Documents, borings, rock cores, topographical maps and such other information as the University or the Consultant made available to it prior to the University's receipt of bids or from its own inspection and examination of the site prior to the University's receipt of bids.
- (2) In the event that the Contractor encounters subsurface physical conditions or other latent physical conditions at the site differing substantially from those shown on or described or indicated in the Contract Documents and which could not have been reasonably anticipated from the aforesaid information made available by the University or the Consultant or from the Contractor's aforesaid inspection and examination of the site, it shall give immediate notice to the Consultant of such conditions before they are disturbed. The Consultant will thereupon promptly investigate the conditions and, if it finds that they do substantially differ from that which should have been reasonably anticipated by the Contractor, it shall make such changes in the Drawings and Specifications as may be necessary and a Change Order shall be issued, the amount of which shall be determined in accordance with the provisions of Section 4.02, to reflect any increase or decrease in the cost of, or the time required for, performance of the Contract as a result of any of the aforesaid changes made by the Consultant and/or as a result of such unanticipated subsurface conditions.

## **Section 2.13 Right to Change Location**

When additional information regarding the subsurface conditions becomes available to the University as a result of the excavation work, further testing or otherwise, it may be found desirable to change the location, alignment, dimensions or grades to conform to such

conditions. The University reserves the right to make such reasonable changes in the work as, in its opinion, may be considered necessary or desirable, such changes and any adjustments in the Contract consideration as a result thereof are to be made in accordance with the provisions of Sections 2.04, 2.05 and 4.02 of the Agreement.

### **Section 2.14 Unforeseen Difficulties**

Except as otherwise expressly provided in Section 2.12 of the Agreement and in other Sections of the Contract Documents, the Contractor acknowledges that it has assumed the risk and that the Contract consideration includes such provisions as it deems proper for any unforeseen obstacles or difficulties which it may encounter in the performance of the work.

### **Section 2.15 Moving Materials and Equipment**

Should it become necessary, in the judgment of the Consultant, at any time during the course of the work to move materials which are stored on the site and equipment which has been temporarily placed thereon, the Contractor upon request of the Consultant shall move them or cause them to be moved at its sole cost and expense; provided, however, if materials and equipment have been stored or placed by the Contractor at a location on the site expressly approved, in writing, by the consultant and the same are moved or caused to be moved by the Contractor at the Consultant's request, such removal shall be deemed extra work and the Contractor shall be compensated therefore in accordance with the provisions of Section 4.02 of the Agreement.

### **Section 2.16 Other Contracts**

- (1) Prior to and during the progress of the work hereunder the University reserves the right to let other contracts relating to the Project or in connection with work on sites within the Contract limit lines or adjoining or adjacent to that on which the work covered by this Contract is to be performed. In the event such other contracts are let, or have previously been let, the Contractor and such other contractors shall coordinate their work with each other, arrange the sequence of their work to conform with the progressive operation of all the work covered by such contracts and afford each other reasonable opportunities for the introduction and storage of their materials, supplies and equipment and the execution of their work. If the Contractor or such other contractors contend that their work or the progress thereof is being interfered with by the acts or omissions of the other or others or that there is a failure to coordinate or properly arrange the sequence of the work on the part of the Contractor or such other contractors, they shall, within five (5) working days of the commencement of such interference or failure of coordination or failure to perform work in proper sequence, give written notification to the University and the Consultant of such contention. Upon receipt of such notification or on its own initiative, the Consultant shall investigate the situation and issue such instructions to the Contractor or such other contractors with respect thereto as it may deem proper. The Consultant shall determine the rights of the Contractor and of such other contractors and the sequence of work necessary to expedite the completion of all work covered by this Contract in relation to the work covered by said other contracts.
- (2) The Contractor agrees that it has and will make no claim for damages against the University by reason of any act or omission to act by any other contractor or party or in connection with the Consultant's or University's acts or omissions to act in connection with such other contractor, but the Contractor shall have a right to recover such damages from the other contractors under a provision similar to the following provision which has been or will be inserted in the Contract with such other contractors.
- (3) Should any other contractor, having or who shall hereafter have a contract with the University relating to the Project or in connection with the work on sites adjoining or adjacent to that on which the work covered by this Contract is to be performed, sustain any damage, during the progress of the work hereunder, through any act or omission of the Contractor, the Contractor agrees to reimburse such other contractor for all such damages and it further agrees to indemnify and save harmless the University and the State of New York from all claims for such damages.
- (4) If the proper and accurate performance of the work covered by the Contract depends upon the proper performance and execution of work not included herein or depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the Consultant any defects in such work that render it unsuitable for proper execution and results. Its failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the execution of the work covered by the Contract, except as to latent defects which may be discovered thereafter.

### **Section 2.17 Inspection and Testing**

- (1) All materials and workmanship shall be subject to inspection, examination and testing by the Consultant and the University at all times during the performance of the work and at all places where the work is carried on. Except as otherwise herein specified, the University shall pay for the cost of inspection, examination and testing by the Consultant or the University. If, however, the tests and any attendant re-inspection or re-examination prove that the materials and/or work tested do not meet the requirements of the Contract, then the entire cost of such tests is to be borne by the Contractor. The Consultant will have the right to reject defective material and workmanship furnished by the Contractor or require its correction. The Contractor, without charge therefore, shall satisfactorily and promptly correct all rejected work and replace all rejected material with proper material.
- (2) The Contractor shall promptly segregate and remove from the site of the work all rejected material and work. If the Contractor shall fail to proceed at once with the replacing of rejected material and/or correction of defective workmanship, the University may, by contract or otherwise, replace such material and/or correct such workmanship, and charge the costs thereof to the Contractor and/or it may cancel the Contract and terminate the Contractor's employment as provided in the Agreement.

- (3) The Contractor, without additional charge therefore, shall promptly furnish all reasonable facilities, labor and materials necessary for the safe and convenient inspection and testing that may be required by the Consultant or the University.
- (4) If the Contract Documents or the Consultant's instructions or the applicable laws, ordinances or regulations of any governmental authority require any part of the work covered by the Contract to be specially tested or inspected, the Contractor shall give the Consultant timely notice of its readiness for such testing or inspection or, if the same is to be performed by a governmental authority, of the date fixed therefore. If any such work, without the written permission of the Consultant, should be covered up prior to such testing or inspection, the Contractor, at its sole cost and expense, must, if directed by the Consultant, uncover the same for testing or inspection and reconstruct the same after the tests or inspection are conducted. All certificates of inspection or testing, involving the Contractor's work, required to be obtained from governmental authorities are to be secured by the Contractor at its sole cost and expense.
- (5) Should it be considered necessary or advisable by the Consultant at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the Contractor, upon request, shall furnish all necessary facilities, labor and material to perform such examination. If the work subject to such examination is found to be defective or nonconforming in any manner due to the fault of the Contractor or any of its subcontractors, such uncovering or destruction and necessary reconstruction, even though such includes work not covered in the Contract, shall be at the expense of the Contractor. If, however, such work after testing and examination is found to be satisfactory, the University will pay the Contractor the cost of such uncovering or destruction and reconstruction, such cost to be determined as in the case of extra work as provided in Section 4.02.
- (6) Inspection of material and furnished articles to be incorporated in the work may be made at the place of production, manufacture or shipment unless otherwise stated herein. The inspection of material and workmanship for final acceptance as a whole or in part will be made at the site of the work.

## **Section 2.18 Subcontractors**

- (1) Except for subcontractors designated by the University, or required to be named at any earlier date, pursuant to the provisions of the Information for Bidders, within thirty (30) calendar days after Notice of Award, the Contractor must submit a written statement to the Consultant giving the name and address of all proposed subcontractors. Said statement must contain a description of the portion of the work and materials which the proposed subcontractors are to perform and furnish and any other information tending to prove that the proposed subcontractors have the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and provisions of the Contract Documents.
- (2) If the Consultant finds that the proposed subcontractors are qualified, it will so notify the Contractor within ten (10) working days after receipt of the aforesaid information. If the determination is to the contrary, however, the Consultant within such period will notify the Contractor of such determination and the latter, unless it decides to do such work itself and is qualified, in the Consultant's opinion, to do such work, must, within ten (10) working days thereafter, submit similar information with respect to other proposed subcontractors.
- (3) The Consultant's approval of a subcontractor and/or the University's designation of a subcontractor pursuant to the provisions of the Contract Documents shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to the University for the acts or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.
- (4) The Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work and it shall check all space requirements of the work and coordinate and adjust the same so that conflicts in space do not occur in the work being performed by it with its own employees and with the work being performed by its subcontractors and so that all equipment, piping, wiring, etc., can be installed, where possible, in the spaces allowed for the same.
- (5) No subcontractor shall be permitted to work at the site until (a) it has furnished satisfactory evidence to the Consultant of the insurance required by law; (b) in the case of a Project involving a federal grant, it has furnished satisfactory evidence to the Consultant of the same type and amount of liability insurance as that required of the Contractor by Section 5.06 of the Agreement; and (c) except for subcontractors designated by the University pursuant to the provisions of the Information for bidders, it has been approved by the Consultant.
- (6) Within seven (7) working days after the Contractor receives payment from the University on account of a progress payment application for the percentage of the work done, it shall pay each of its subcontractors the sum contained in said payment for the percentage of said subcontractor's work, less the same amount retained therefrom by the University under the terms of the Contract Documents or in consequence of any legal proceedings or statutory liens, and less any amounts due the Contractor under the subcontract for work not performed or not properly or timely performed by the subcontractor. In the event any subcontractor is not paid by the Contractor, the former should immediately notify the University of such fact. Notwithstanding the foregoing, no retention or withholding of payment by the university shall affect the Contractor's obligation to pay all subcontractors, agents, employees or other parties for goods or services provided in connection with the work.
- (7) The Contractor shall execute with each of its subcontractors and shall require all subcontractors to execute with their sub-subcontractors a written agreement which shall bind the latter to the terms and provisions of this Contract insofar as such terms

and provisions are applicable to the work to be performed by such subcontractors. The Contractor shall require all subcontractors and sub-subcontractors to promptly, upon request, file with the Consultant and the University a copy of such agreements, from which the price and terms of payment may be deleted.

- (8) If for sufficient reason, at any time during the progress of the work to be performed hereunder, the Consultant determines that any subcontractor or sub-subcontractor is incompetent, careless or uncooperative, the Consultant will notify the Contractor accordingly and immediate steps will be taken by the Contractor for cancellation of such subcontract or sub-subcontract. Such termination, however, shall not give rise to any claim by the Contractor or by such subcontractor or sub-subcontractor for loss of prospective profits on work unperformed and/or work unfurnished and a provision to that effect shall be contained in all subcontracts and sub-subcontracts.
- (9) No provisions of this Contract shall create or be construed as creating any contractual relation between the University and any subcontractor or sub-subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Contractor.

## **Section 2.19 Shop Drawings and Samples**

- (1) The Contractor, in accordance with the approved Shop Drawing and Sample schedule and with such promptness and in such sequence as to cause no delay in the work, shall submit for the Consultant's approval all Shop Drawings and Samples called for under the Contract or requested by the Consultant.
- (2) Shop Drawings shall establish the actual detail of the work, indicate proper relation to adjoining work, amplify design details of mechanical and electrical equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.
- (3) All Shop Drawings and Samples shall be thoroughly checked by the Contractor for compliance with the Contract Documents before submitting them to the Consultant for approval and all Shop Drawings shall bear the Contractor's recommendation for approval certifying that they have been so checked. Any Shop Drawings submitted without this stamp of approval and certification, and Shop Drawings which, in the Consultant's opinion, are incomplete, contain numerous errors or have not been checked or only checked superficially, will be returned unchecked by the Consultant for resubmission by the Contractor. In checking Shop Drawings, the Contractor shall verify all dimensions and field conditions and shall check and coordinate the Shop Drawings of any section or trade with the requirements of all other sections or trades whose work is related thereto, as required for proper and complete installation of the work.
- (4) Samples must be of sufficient size or number to show the quality, type, range of color, finish and texture of the material. Each Sample shall be properly labeled to show the nature of the material, trade name of manufacturer, name and location of the work where the material represented by the Sample is to be used and the name of the Contractor submitting the Sample. Transportation charges to the Consultant must be prepaid on Samples forwarded to it.
- (5) Shop Drawings and Samples, submitted by the Contractor in accordance with the approved Shop Drawing and Sample schedule, will be reviewed by the Consultant within fifteen (15) working days and if satisfactory will be approved. A Shop Drawing, when approved, will be returned to the Contractor. If not satisfactory, the Drawings and Samples will be appropriately marked and returned to the Contractor for correction thereof, in which event the Contractor shall resubmit to the Consultant a corrected copy of the Shop Drawing or a new Sample, as the case may be. The Contractor shall make any correction required by the Consultant and shall appropriately note any changes or revisions on the Shop Drawing, dated to correspond with the date of the Consultant's request for the change. Upon approval of the Shop Drawing by the Consultant, the Contractor shall promptly furnish to the Consultant as many copies thereof as the Consultant may reasonably request.
- (6) At the time of submission of a Shop Drawing or Sample, the Contractor shall inform the Consultant and the University in writing of any deviation in the Shop Drawing or Sample from the requirements of the Contract Documents. Unless such deviation is specifically noted by the Contractor with a notation that such deviation will result in extra work for which the Contractor requests payment or requires additional time, the Contractor shall be deemed to have waived any claim for extra work, additional compensation or payment or an extension of time with respect to all work shown on, described in or related to the Shop Drawing or Sample.
- (7) The Consultant's approval of Shop Drawings or Samples is for design only and is not a complete check on the method of assembly, erection or construction. Approval shall in no way be construed as: (a) permitting any departure whatsoever from the Contract Documents, except where the Contractor, in accordance with the provisions of paragraph 6 of this Section, has previously notified the University and the Consultant of such departure; (b) relieving the Contractor of full responsibility for any error in quality of materials, details, dimensions, omissions or otherwise that may exist; (c) relieving the Contractor of full responsibility for adequate field connections, erection techniques, bracing or deficiencies in strength; (d) relieving the Contractor of full responsibility for satisfactory performance of all work and coordination with the work of all subcontractors and other contractors; or (e) permitting departure from additional details or instructions previously furnished by the Consultant.
- (8) No work requiring a Shop Drawing or Sample shall be commenced until a Shop Drawing or Sample is approved in writing by the Consultant and all such work shall be: (a) in accordance with the approved Shop Drawing, provided the latter conforms in all respects to the Contract Documents or to such deviations therefrom as have been previously noted by the Contractor in accordance with the provisions of paragraph 6 of this Section; and (b) in conformance in all respects to the sample furnished to and approved by the Consultant and, unless otherwise specified, as new and of good quality.



## **Section 2.20 Equivalents - Approved Equal**

### **A. EQUIVALENTS OR APPROVALS - GENERAL**

- (1) The words "similar and equal to", "or equal", "equivalent", and such other words of similar content and meaning shall, for the purposes of this Contract, be deemed to mean similar and equivalent to one of the named products. For the purposes of subdivisions A and B of this Section and for purposes of the Bidding Documents, the word "products" shall be deemed to include the words "articles", "materials", "items", "equipment" and "methods". Whenever in the Contract Documents one or more products are specified, the words "similar and equal to" shall be deemed inserted.
- (2) Whenever any product is specified in the Contract Documents by a reference to the name, trade name, make or catalog number of any manufacturer or supplier, the intent is not to limit competition, but to establish a standard of quality which the Consultant has determined is necessary for the Project. A Contractor may at its option use any product other than that specified in the Contract Documents provided the same is approved by the Consultant in accordance with the procedures set forth in subdivision B of this Section. In all cases the Consultant shall be the sole judge as to whether a proposed product is to be approved and the Contractor shall have the burden of proving, at its own cost and expense, to the satisfaction of the Consultant, that the proposed product is similar and equal to the named product. In making such determination the Consultant may establish such objective and appearance criteria as it may deem proper that the proposed product must meet in order for it to be approved.
- (3) Nothing in the Contract Document shall be construed as representing, expressly or implicitly, that the named product is available or that there is or there is not a product similar and equal to any of the named products and the Contractor shall have and make no claim by reason of the availability or lack of availability of the named product or of a product similar and equal to any named product.
- (4) The Contractor shall have and make no claim for an extension of time or for damages by reason of the time taken by the Consultant in considering a product proposed by the Contractor or by reason of the failure of the Consultant to approve a product proposed by the Contractor.
- (5) Requests for approval of proposed equivalents will be received by the Consultant only from the Contractor.

### **B. EQUIVALENTS OR APPROVALS AFTER BIDDING**

- (1) Requests for approval of proposed equivalents will be considered by the Consultant after bidding only in the following cases: (a) the named product cannot be obtained by the Contractor because of strikes, lockouts, bankruptcies or discontinuance of manufacture and the Contractor makes a written request to the Consultant for consideration of the proposed equivalent within ten (10) calendar days of the date it ascertains it cannot obtain the named product; or (b) the proposed equivalent is superior, in the opinion of the Consultant, to the named product; or (c) the proposed equivalent, in the opinion of the Consultant, is equal to the named product and its use is to the advantage of the University, e.g., the University receives an equitable credit, acceptable to it, as a result of the estimated cost savings to the Contractor from the use of the proposed equivalent or the University determines that the Contractor has not failed to act diligently in placing the necessary purchase orders and a savings in the time required for the completion of the construction of the Project should result from the use of the proposed equivalent; or (d) the proposed equivalent, in the opinion of the Consultant, is equal to the named product and less than ninety (90) calendar days have elapsed since the Notice of Award of the Contract.
- (2) Where the Consultant pursuant to the provisions of the subdivision approves a product proposed by a Contractor and such proposed product requires a revision or redesign of any part of the work covered by this Contract, all such revision and redesign and all new Drawings and details required therefore shall be subject to the approval of the Consultant and shall be provided by the Contractor at its own cost and expense.
- (3) Where the Consultant pursuant to the provisions of this Section approves a product proposed by a Contractor and such proposed product requires a different quantity and/or arrangement of duct work, piping, wiring, conduit or any other part of the work from that specified, detailed or indicated in the Contract Documents, the Contractor shall provide the same at its own cost and expense.

## **Section 2.21 Intentionally Omitted.**

## **Section 2.22 Possession Prior to Completion**

If before the final completion of all the work it shall be deemed advisable or necessary by the University to take over, use, occupy or operate any part of the completed or partly completed work or to place or install therein equipment and furnishings, the University, upon reasonable written notice to the Contractor, shall have the right to do so and the Contractor will not in any way interfere therewith or object to the same. Such action by the University shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract Documents and the Contractor acknowledges that such action by the University does not in any way evidence the completion of the work or any part thereof or in any way signify the University's acceptance of the work or any part thereof, provided, however, that the period for the Contractor's warranties and guarantees under the Contract for the work so occupied or operated shall be deemed to commence on the date said work is occupied or operated. The Contractor agrees to continue the performance of all work covered by the Contract in a manner which will not unreasonably interfere with such takeover, use, occupancy, operation, placement or installation.

## **Section 2.23 Completion and Acceptance**

### **A. PARTIAL COMPLETION AND ACCEPTANCE**

If before the final completion of all the work any portion of the permanent construction has been satisfactorily completed and the same will be immediately useful to the University, the latter may, by written notice, advise the Contractor that it accepts such portion of the work. Such actions by the University shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract with respect to any work not so completed and accepted.

### **B. SUBSTANTIAL COMPLETION**

When all the work covered by the Contract is substantially completed, i.e., has reached such point of completion that the Project can be fully occupied and used for the purposes for which it was intended, the Contractor shall give written notice thereof to the University and the Consultant. The latter will then promptly make an inspection of the work and, if they shall determine that all the work is substantially completed, they shall so advise the Contractor. Such action shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract with respect to any uncompleted (including untested or deferred work), unaccepted or corrective work or in any way affect, limit or preclude the issuance by the Consultant, from time to time thereafter, of "Punch Lists", i.e., lists of uncompleted or corrective work which the Contractor is to promptly complete and/or correct.

### **C. FULL COMPLETION AND ACCEPTANCE**

After the completion of all the work the Contractor shall give written notice to the University and the Consultant that all the work is ready for inspection and final acceptance. The University and the Consultant shall promptly make such inspection and, if they shall determine that all the work has been satisfactorily completed, the University shall thereupon by written notice advise the Contractor that it accepts such work.

## **Section 2.24 Record Drawings**

- (1) Prior to acceptance by the University of all work covered by the Contract, the Contractor shall furnish to the Consultant one (1) set of current Contract Drawings on which the Contractor has recorded, using colored pencil, in a neat and workmanlike manner, all instances where actual field construction differs from work as indicated on the Contract Drawings. These "Record" Drawings shall show the following information: (a) all significant changes in plans, sections, elevations and details, such as shifts in location of walls, doors, windows, stairs and the like made during construction; (b) all significant changes in foundations, columns, beams, openings, concrete reinforcing, lintels, concealed anchorage and "knock-out" panels made during construction; (c) final location of electric panels, final arrangement of electric circuits and any significant changes made in electrical design as a result of Change Orders or job conditions; (d) final location and arrangement of all mechanical equipment and major concealed plumbing, including, but not limited to, supply and circulating mains, vent stacks, sanitary and storm water drainage; and (e) final location and arrangement of all underground utilities, connections to building and/or rerouting of existing utilities, including, but not limited to, sanitary, storm, heating, electric, signal gas, water and telephone.
- (2) Shop Drawings shall not be acceptable as "Record" Drawings.
- (3) The Contractor agrees to provide Record Drawings on "electronic media" or "hard copy" at the discretion of the University at no extra cost.

## **Section 2.25 Guarantees**

- (1) The Contractor, at the convenience of the University, shall remove, replace and/or repair at its own cost and expense any defects in workmanship, materials, ratings, capacities or characteristics occurring in or to the work covered by the Contract within one (1) year or within such longer period as may otherwise be provided in the Contract, the period of such guarantee to commence with the University's final acceptance of all work covered under the Contract or at such other date or dates as the University may specify prior to that time, and the Contractor, upon demand, shall pay for all damage to all other work resulting from such defects and all expenses necessary to remove, replace and/or repair such other work which may be damaged in removing, replacing or repairing the said defects. The obligations of the Contractor under the provisions of this paragraph or any other guarantee provisions of the Contract Documents are not limited to the monies retained by the University under the Contract.
- (2) Unless such removal, replacement and/or repair shall be performed by the Contractor within ten (10) working days after it receives written notice from the University specifying such defect, or if such defect is of such a nature that it cannot be completely removed, repaired and/or replaced within said ten (10) day period and the Contractor shall not have diligently commenced removing, repairing and/or replacing such defect within said ten (10) day period and shall not thereafter with reasonable diligence and in good faith proceed to do such work, the University may employ such other person, firm or corporation as it may choose to perform such removal, replacement and/or repair and the Contractor agrees, upon demand, to pay to the University all amounts which it expends for such work.

## Section 2.26 Default of Contractor

- (1) In addition to those instances specifically referred to in other Sections hereof, and those referenced in the Master Agreement, the University shall have the right to declare the Contractor in default of the whole or any part of the work if:
  - a. The Contractor makes an assignment for the benefit of creditors pursuant to the statutes of the State of New York; or if
  - b. A voluntary or involuntary petition in bankruptcy is filed by or against the Contractor; or if
  - c. A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or if
  - d. The Contractor shall sublet, assign, transfer, convey, or otherwise dispose of the Contract other than as herein specified; or if
- (2) Before the University shall exercise its right to declare the Contractor in default by reason of the conditions set forth *in this subsection*, it shall give the Contractor three (3) working days' notice of its intention to declare the Contractor in default and unless, within such three (3) day period, the Contractor shall make arrangements, satisfactory to the University, to correct and/or eliminate the conditions set forth in the University's aforesaid notice, the Contractor may be declared in default at the expiration of such three (3) day period or at the expiration of such longer period of time as the University may determine. In addition to those instances specifically referred to above, the University shall have the right to declare the Contractor in default of the whole or any part of the work if, in the sole opinion of the University:
  - a. The Contractor becomes insolvent; or if
  - b. The Contractor fails to commence work when notified to do so by the Consultant; or if
  - c. The Contractor shall abandon the work; or if
  - d. The Contractor shall refuse to proceed with the work when and as directed by the Consultant; or if
  - e. The Contractor shall without just cause reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the University, to complete the work in accordance with the approved time progress schedule, and shall fail or refuse to sufficiently increase such working force when ordered to do so by the Consultant; or if
  - f. The Contractor is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders; or if
  - g. The work cannot be completed within the time herein provided therefore or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the University's opinion, attributable to conditions within the Contractor's control; or if
  - h. The work is not completed within the time herein provided therefore or within the time to which the Contractor may be entitled to have such completed extended; or if
  - i. The Contractor is or has been willfully or in bad faith violating any of the provisions of this Contract; or if
  - j. The Contractor is not or has not been executing the Contract in good faith and in accordance with its terms.
- (3) The right to declare in default for any of the grounds specified or referred to shall be exercised by the University sending the Contractor a written notice setting forth the ground or grounds upon which such default is declared. Upon receipt of notice that it has been declared in default, the Contractor shall immediately discontinue all further operations under the Contract and shall immediately quit the site, leaving untouched all plant, materials, equipment, tools and supplies then on site.
- (4) The University, after declaring the Contractor in default, may then have the work completed by such means and in such manner, by contract, with or without public letting, or otherwise, as it may deem advisable, utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the site, and also such subcontractors as it may deem advisable, or it may call upon the Contractor's surety at its own expense to do so.
- (5) In the event that the University declared the Contractor in default of the work or any part of the work, the Contractor, in addition to any other liability to the University hereunder or otherwise provided for or allowed by law, shall be liable to the University for any costs it incurs for additional architectural and engineering services necessary, in its opinion, because of the default and the total amount of liquidated damages from the date when the work should have been completed by the Contractor in accordance with the terms hereof to the date of actual completion of the work, both of which items shall be considered as expenses incurred by the University in completing the work and the amount of which may be charged against and deducted out of such monies as would have been payable to the Contractor or its surety if the work had been completed without a default.
- (6) If the University completes the work, the Consultant shall issue a certificate stating the expenses incurred in such completion, including the cost of re-letting. Such certificates shall be final, binding and conclusive upon the Contractor, its surety, and any person claiming under or through the Contractor, as to the amount thereof.

- (7) The expense of such completion, as so certified by the Consultant, shall be charged against and deducted out of such monies as would have been payable to the Contractor if it had completed the work; the balance of such monies, if any, subject to the other provisions of the Contract, to be paid to the Contractor without interest after such completion. Should the expense of such completion, so certified by the Consultant, exceed the total sum which would have been payable under the Contract if the same had been completed by the Contractor, any such excess shall be paid by the Contractor to the University upon demand.
- (8) In the event the University shall determine to complete the work without calling upon the Contractor's surety to do so, the Contractor shall not be entitled, from and after the effective date of the declaration of the default, to receive any further payment under the Contract until the said work shall be wholly completed and accepted by the University.
- (9) In case the University shall declare the Contractor in default as to a part of the work only, the Contractor shall discontinue such part, shall continue performing the remainder of the work in strict conformity with the terms of the Contract, and shall in no way hinder or interfere with any other contractors or persons whom the University may engage to complete the work as to which the Contractor was declared in default.
- (10) The provisions relating to declaring the Contractor in default as to the entire work shall be equally applicable to a declaration of partial default, except that the University shall be entitled to utilize for completion of the part of the work as to which the Contractor was declared in default only such plant, materials, equipment, tools and supplies as had been previously used by the Contractor on such part.
- (11) In completing the whole or any part of the work, the Consultant and the University shall have the power to depart from, change or vary the terms and provisions of the Contract; provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variations, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the Consultant's certificate of the cost of completion, nor shall it constitute a defense to any action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for its default.
- (12) The provisions of this Section shall be in addition to any and all other legal or equitable remedies provided by this Agreement and otherwise available by law.

## **Section 2.27 Termination**

- (1) The University may terminate this Contract under those grounds set forth in the Master Agreement. Any such termination shall be effected by a notice in writing to the Contractor specifying the date upon which such termination shall become effective and the extent to which performance of the Contract shall be terminated. Such termination shall be effective on the date and to the extent specified in said notice.
- (2) Upon receipt of a notice of termination, and except as otherwise directed in writing by the University, the Contractor shall:
  - a. Discontinue all work and the placing of all orders for materials and facilities otherwise required for the performance thereof;
  - b. Cancel all existing orders and subcontracts to the extent such orders and subcontracts relate to the performance of work terminated by the notice of termination;
  - c. Take such actions as may be necessary to secure to the University the benefits of any rights of the Contractor under orders or subcontracts which relate to the performance of work terminated by the notice of termination, including, but not limited to, the assignment to the University, in the manner and to the extent directed by the University, all the right, title and interest of the Contractor under the orders or subcontracts so terminated and canceled. In the event of such assignment, the University shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination and cancellation of such orders and subcontracts;
  - d. Transfer title and deliver to the University, in accordance with the direction of the University, all materials, supplies, work in process, facilities, equipment, machines or tools produced as a part of or acquired by the Contractor in connection with the work terminated by said notice, and all plans, Drawings, Working Drawings, sketches, Specifications and information for use in connection therewith; provided, however, that the Contractor may retain any of the foregoing if it so elects and forgoes reimbursement therefore;
  - e. Take such action as may be necessary or as the Consultant or the University may prescribe for the protection and preservation of all property in the possession or control of the Contractor in which the University, under the provisions of the Contract, has or may acquire an interest.
- (3) Notwithstanding the foregoing, should the notice of termination relate to only a portion of the work covered by the Contract, the Contractor will proceed with the completion of such portions of the work as are not terminated.
- (4) The University will pay and the Contractor shall accept, in full consideration for the performance and completion of the portions of the work as are not terminated, a sum calculated by determining the percentage the portions of the work not terminated bear to the total amount of the work covered by the Contract, and by multiplying the Contract consideration by such percentage the product thereof

being the amount to be paid to the Contractor. The University shall determine the amount of such consideration in accordance with the foregoing.

- (5) Upon compliance by the Contractor with the foregoing provisions of this Section and subject to deductions for payments previously made, the University, for the portions of the work terminated, shall compensate the Contractor as follows:
  - a. By reimbursing the Contractor for actual expenditures made with respect to such work, including expenditures made in connection with any portion thereof which may have been completed prior to termination, as well as expenditures made after termination in completing those portions of the work covered by the Contract which the Contractor may have been required by the notice of termination to complete. The University shall determine the allocability and amount of such expenditures.
  - b. By reimbursing the Contractor for all actual expenditures made, with the prior written approval of the University or pursuant to a court judgment, in settling or discharging any outstanding contractual obligations or commitments incurred or entered into by the Contractor in good faith with respect to the Contract and resulting from the termination thereof.
  - c. By reimbursing the Contractor for all actual expenditures made after the effective date of the notice of termination resulting from or caused by the Contractor taking necessary action or action prescribed by the Consultant or the University for the protection and preservation of all property in the possession or control of the Contractor in which the University, under the provisions of the Contract, has or may acquire an interest.
  - d. By paying the Contractor a markup, which is to be calculated in the same manner as that provided for in subdivision c of paragraph (1) of Section 4.02 for extra work, on the foregoing expenditures, which markup is to cover the Contractor's overhead and profit; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, said markup shall be reduced by one-third.
- (6) The sum of all amounts payable under this Section, plus the sum of all amounts previously paid by the University under the provisions of the Contract, shall not exceed the amount of the Contract consideration. In no event shall the Contractor be entitled to any payment for loss of anticipated profits on uncompleted work and the University shall not be liable for the same.
- (7) Termination by the University under the provisions of this Section shall be without prejudice to any claims or rights which the University may have against the Contractor. The University may retain from the amount due to the Contractor under the provisions of this Section such monies as may be necessary to satisfy any claim which the University may have against the Contractor in connection with the Contract; provided, however, that the University's failure to retain such monies shall not be deemed a waiver of any of its rights or claims against the Contractor.
- (8) Notwithstanding the foregoing, where the Contractor and the Consultant can agree upon another method of determining the amount of the consideration to be paid to the Contractor under the provisions of the Section, such method, subject to the approval of the University, may, at the option of the University, be substituted for the method set forth above.

## **ARTICLE III**

### **Time of Performance**

#### **Section 3.01 Commencement, Prosecution and Completion of Work**

- (1) The Contractor agrees that it will begin the work herein embraced within ten (10) calendar days after the Contract approval date of the New York State Comptroller and that it will prosecute the same with such diligence that all work covered by the Contract shall be entirely completed and performed on or before the time specified on page A-1 of the Agreement.
- (2) The Contractor further agrees that time is of the essence in this Contract and that the work shall be prosecuted in such manner and with sufficient plant and forces to complete all the work by the specified completion date.

#### **Section 3.02 Time Progress Schedule**

- (1) Within thirty (30) calendar days after receipt of the Notice of Award, the Contractor, unless otherwise directed by the University, shall submit to the University and the Consultant for their approval its proposed working plan and schedule for its first ninety (90) calendar days of operation. The working plan and schedule shall be in the form of suitable charts, diagrams or bar graphs and shall be based on the Contractor's logic and time estimates. Such plan and schedule shall be sufficiently detailed to show clearly, in sequence, all salient features of the work of each trade including: the anticipated time of commencement and completion of such work and the interrelationship between such work, submission of Shop Drawings and Samples for approval, approval of Shop Drawings and Samples, placing of orders of materials, fabrication and delivery of materials, installation and testing of materials, contiguous or related work under other contracts, and other items pertinent to the work.
- (2) Within ninety (90) calendar days after receipt of the Notice of Award, the Contractor, unless otherwise directed by the University, shall submit to the University and the Consultant for their approval its proposed working plan and schedule for all the work covered by the Contract. Said proposed working plan and schedule shall be prepared in accordance with the form and requirements set forth in the preceding paragraph.

- (3) The aforesaid proposed working plan and schedule shall be revised by the Contractor until they are satisfactory to the University and the Consultant, and the same shall be periodically revised thereafter and submitted by the Contractor to the University and the Consultant for approval at such time or times as the University or the Consultant may request.
- (4) The proposed working plan and schedule, including any revision or revisions thereof, when approved by both the University and the Consultant shall be known as the time progress schedule. The time progress schedule, as the same may be revised from time to time by the Contractor and approved by the University and the Consultant, shall be strictly adhered to by the Contractor.
- (5) If through the fault of the Contractor or any subcontractor the Contractor shall fail to adhere to the time progress schedule, it must promptly adopt such other and additional means and methods of construction as will make up for the time lost and will assure completion in accordance with such schedule.
- (6) The University's or the Consultant's approval of the Contractor's time progress schedule or of its time, means and/or methods of construction, including any revisions thereof, and/or their failure to reject the same shall not relieve the Contractor of its obligation to accomplish the result required by the Contract, nor shall the exercise of such right to reject, create or give rise to any claim, action or cause of action, legal, equitable or otherwise, against the Consultant or the University.

### **Section 3.03 Time Schedule for Shop Drawings and Samples**

- (1) Within sixty (60) calendar days after the date specified for the commencement of the work, the Contractor, unless otherwise directed by the Consultant, shall submit to the latter for approval a proposed time schedule covering the preparation and submission of all Shop Drawings and Samples. The proposed schedule will be revised by the Contractor until it is satisfactory to the Consultant and it shall be periodically revised thereafter and submitted by the Contractor to the Consultant for approval at such time or times as the Consultant may request.
- (2) The aforesaid schedule, as the same may be revised from time to time by the Contractor, after approval by the Consultant, shall be strictly adhered to by the Contractor.

### **Section 3.04 Notice of Conditions Causing Delay**

- (1) Within ten (10) working days after the commencement of any condition which is causing or may cause delay in completion, the Contractor must notify the Consultant and the University in writing of the effect, if any, of such condition upon the time progress schedule, and must state why and in what respects, if any, the condition is causing or may cause such delay.
- (2) Failure to strictly comply with this requirement may, in the discretion of the University, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from any change, extra work, suspension, or other condition.

### **Section 3.05 Extension of Time**

- (1) An extension or extensions of time for the completion of the work may be granted by the University subject to the provisions of this Section, but only upon written application therefore by the Contractor to the University and the Consultant.
- (2) An application for an extension of time must set forth in detail the source and the nature of each alleged cause of delay in the completion of the work, the date upon which each such cause of delay began and ended and the number of days of delay attributable to each of such causes. It must be submitted prior to completion of the work.
- (3) If such an application is made, the Contractor shall be entitled to an extension of time for delay in completion of the work caused solely: (a) by the acts or omissions of the University, its trustees, officers, agents or employees; or (b) by the acts or omissions of other contractors, not including subcontractors of the Contractor, on this Project; or (c) by unforeseeable supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, acts of God or the public enemy, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes).
- (4) The Contractor shall, however, be entitled to an extension of time for such causes only for the number of calendar days of delay which the University may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of this Section and Section 3.04. The University shall make such determination within ninety (90) calendar days after receipt of the Contractor's application for an extension of time; provided, however, said application complies with the requirements of this Section.
- (5) The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the work as determined by the University, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of its subcontractors or materialmen, and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

- (6) The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the University.
- (7) If the Contractor shall claim to have sustained any damages by reason of delays, extraordinary or otherwise, or hindrances which it claims to be due to any action, omission, direction or order by the University or the Consultant, the Contractor shall be entitled only to an extension of time as hereinabove provided and shall not have or assert any claim or prosecute any suit, action, cause of action or proceeding against the University based upon such delays or hindrances, unless such delays or hindrances were caused by the University's bad faith or its willful, malicious, or grossly negligent conduct, or unanticipated delays, or delays so unreasonable that they constitute an intentional abandonment of the contract by the University, or delays resulting from the University's breach of a fundamental obligation of the contract.

### **Section 3.06 Contractor's Progress Reports**

After commencement of the work the Contractor shall furnish the Consultant with written monthly reports setting forth the condition and general progress of the work, the percentage of each part of the work that has been finished, those parts of the work which have been completed within the scheduled time and those parts of the work which have not been finished within the scheduled time, and the general progress of the work that is being performed away from the site and the approximate date when such work will be finished and delivered to the site.

## **ARTICLE IV**

### **Payment**

#### **Section 4.01 Compensation to Be Paid Contractor for Construction Services**

The University shall pay to the Contractor and the latter shall accept as full and complete payment for the performance of this Contract, subject to additions or deductions as provided herein, the sum indicated on page 1 of this Agreement which sum is the amount of the total compensation for construction services in the Agreement.

#### **Section 4.02 Value of Omitted and Extra Work**

- (1) The amount by which the Contract consideration is to be increased or decreased by any Change Order shall be determined by the University by one or more of the following methods:
  - a. By accepting an amount agreed upon by both parties, which amount is to be calculated in a manner similar to that provided in subdivision c hereof.
  - b. By applying the applicable price or prices set forth in the attached Schedule "I" of this Agreement or by applying a unit price agreed to by both parties. Subject to the provisions of Sections 4.04, this method must be used if the Contract Documents contain applicable unit prices.
  - c. By estimating the fair and reasonable cost of: (i) labor, including all wages, required wage supplements and insurance required by law (workers' compensation, social security, disability, unemployment, etc.) paid to or on behalf of foremen, workers and other employees below the rank of superintendent directly employed at the site of the Project; (ii) materials; and (iii) equipment, excluding hand tools, which, in the judgment of the University, would have been or will be employed exclusively and directly on the omitted work or extra work, as the case may be; and, in the case of extra work, where the same is performed directly by the Contractor, by adding to the total of such estimated costs a sum equal to 15 percent thereof, but, where the extra work is performed by a subcontractor, by adding a sum equal to 15 percent of said costs for the benefit of such subcontractor, and by adding, for the benefit of the Contractor (no further allowance will be made where extra work is performed by the sub-subcontractor), an additional sum equal to 10 percent of the first \$10,000 of the above-estimated costs, including the subcontractor's percentage override, plus 5 percent of the next \$90,000 of the total of said items, plus 3 percent of any sum in excess of \$100,000 of the total of said items. For the purposes of the aforesaid percentage overrides, the words "extra work" shall be defined as a complete item of added, modified or changed work as described in the Consultant's written instructions to the Contractor. Such "extra work" may include the work of one or more trades and/or subcontractors or sub-subcontractors and shall include all labor, materials, plant, equipment, tools and all incidentals directly and/or indirectly necessary, related, involved in or convenient to the successful completion of the extra work item. Where the Consultant's aforesaid written instructions to the Contractor involve both an increase and a reduction in similar or related work, the above percentage overrides will be applied only on the amount, if any, the cost of the increased work exceeds the cost of the reduced work.

All profit, overhead and expense of whatsoever kind and nature, other than those set forth above in items (i) through (iii), of the Contractor, its subcontractors and sub-subcontractors, are covered by the aforesaid percentage overrides and no additional payment therefore will be made by the University. The University may make such cost estimate either before or after the extra work is completed by the Contractor.

- d. By determining the actual cost of the extra work in the same manner as in the above subdivision c except that actual costs of the Contractor shall be utilized in lieu of estimated costs. The University shall have the option of utilizing this method provided it notifies the Contractor of its intent to do so prior to the time the Contractor commences performance of such extra work.
- (2) Irrespective of the method used or to be used by the University in determining the value of a Change Order, the Contractor, within fifteen (15) working days after a request for the same, must submit to the University and the Consultant a detailed breakdown of the Contractor's estimate of the value of the omitted and/or extra work.
- (3) For the purposes of paragraph (1) hereof, the cost of equipment shall be determined, irrespective of the actual price for any rental or actual cost associated with such equipment and irrespective of whether the equipment is or is not owned by the Contractor, as follows: (a) for the first 40 hours of use by taking the monthly rate listed in the "Green Book" (the publication of the Associated Equipment Distributors of Oakbrook, Illinois) and dividing the same by 176 hours to establish an hourly rate and then multiplying such hourly rate by the actual number of hours that the equipment was used; and (b) for any period of time in excess of the first 40 hours of use by taking 50 percent of the hourly rate established in accordance with the above for equipment used for periods of less than 40 hours, and then multiplying such rate by the actual number of hours in excess of 40 hours that the equipment was used. In the event that the "Green Book" does not list the item of equipment used, the applicable rate shall be determined in the same manner as that set forth above except that the monthly rate shall be that set forth in the "Blue Book" (published by Equipment Guidebook Co. of Palo Alto, California). If no listing or rates for an item of equipment is contained in either the "Green Book" or the "Blue Book", the University shall determine the reasonable rate of rental of the particular item of equipment by such other means as it finds appropriate. The editions of the "Green Book" and the "Blue Book" to be used shall be those in effect on the date of the receipt of bids for this Contract. None of the provisions of the "Green Book" or the "Blue Book" shall be deemed referred to or included in this Contract excepting only the aforesaid monthly rates. To the cost of equipment as determined above, there is to be added the actual cost of gasoline, oil, grease and maintenance required for operation of such equipment and, in the case of equipment utilized only for extra work when, in the opinion of the Consultant, suitable equipment therefore was not available on the site, the reasonable cost of transporting said equipment to and from the site. Notwithstanding the foregoing, if the Consultant should determine that the nature or size of the equipment used by the Contractor in connection with the extra work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the Consultant to be suitable for the extra work, the cost of equipment will not be based upon the equipment used by the Contractor but instead will be based on the smallest or least elaborate equipment determined by the Consultant to have been suitable for the performance of the extra work.
- (4) Unless otherwise specifically provided for in a Change Order, the compensation specified therein for extra work includes full payment for both the extra work covered thereby and for any damage or expense caused the Contractor by any delays to other work to be done under the Contract resulting from or on account of said extra work, and the Contractor waives all rights to any other compensation for said extra work, damage or expense.

### **Section 4.03 Adjustment for Bond and Insurance Premiums**

Upon final acceptance of the work to be performed under this Contract, the University shall adjust the Contract consideration to reflect any changes in the cost of all required Bonds and liability and builder's risk insurance premiums which the Contractor had to pay for on all extra work and would have had to furnish and pay for on all omitted work. Unless such cost is agreed upon by the University and the Contractor, the University shall calculate and determine the amount of the adjustment in the Contract consideration by estimating such cost.

### **Section 4.04 Unit Prices, If Applicable**

- (1) Except as otherwise provided in the second paragraph of this Section, the unit prices, set forth in the attached Schedule I will be binding upon both the University and the Contractor in determining the value of omitted and/or extra work, and, in the case of extra work, such unit prices shall be deemed to include all profit, overhead and expenses of whatever kind and nature of the Contractor, its subcontractors and sub-subcontractors, and the Contractor agrees that it shall make no claim for any profit, overhead, expense or percentage override in connection therewith.
- (2) Where Schedule I sets forth a unit price for added and/or deducted work, the University shall have the option, whenever it is found that the quantity of changed work varies by more than 15 percent from the quantity that is stated or that can be determined by the Contract Documents at the time of execution thereof, to accept or reject such unit price for the quantity that the changed work varies by more than 15 percent from the stated or determinable quantity. Where a quantity is not specifically stated in the Contract Documents, the University's determination of the amount of said quantity included in the Contract Documents shall determine the applicability of this paragraph. Where the University, pursuant to the foregoing provisions, exercises its aforesaid option, the amount of the increase or decrease in the Contract consideration for the quantity of work which varies by more than 15 percent from the stated or determinable quantity shall be determined in accordance with the provisions of Section 4.02 of the Agreement as if there was no unit price therefore set forth in said Proposal.

### **Section 4.05 Allowances**

- (1) The Contractor acknowledges that the Contract consideration includes the allowances set forth in the attached Schedule I and, except for quantitative allowances, it agrees to cause the work covered thereby to be done by such contractors for such sums as the University may direct. Where cash allowances are provided, the allowances shall be deemed to include the purchase of the materials and/or equipment and the delivery of the same to the job site. Unless otherwise specified in the Contract Documents, cash allowances



do not include the proper installation of the materials and/or equipment or the connection for final utilities thereto; the cost of said installation and/or connection having been included in the amount of the Contract consideration.

- (2) The Contractor acknowledges that the Contract consideration includes such sums for expenses and profit on account of cash allowances as it deems proper and that it shall make no claim for expenses or profit or any percentage override in addition thereto; said items having been included in the amount of the Contract consideration.
- (3) In the event any cash allowance listed below is either higher or lower than the cost of having the work done in accordance herewith, the Contract consideration shall be adjusted to reflect such variance, the amount of said adjustment to be the difference between the amount of the allowance and the actual cost of performing the work covered thereby.
- (4) When quantitative allowances are provided, progress payments thereof to the Contractor will be based upon the applicable unit prices set forth in the attached Schedule I, subject, however to the provisions of paragraph (2) of Section 4.04. In the event any of said quantitative allowances are more than or less than the actual quantity of work performed, the Contract consideration shall be adjusted to reflect such variance, the amount of said adjustment to be determined in accordance with the provisions of Section 4.02 and Section 4.04 of the Agreement.

#### **Section 4.06 Deductions for Unperformed and/or Uncorrected Work**

- (1) Without prejudice to any other rights, remedies or claims of the University, in the event that the Contractor at any time fails or neglects to supply working forces and materials of the proper quantity and quality necessary, in the opinion of the Consultant or the University, to comply with the approved time progress schedule, or fails in any respect to prosecute the work with promptness and diligence or causes by any action or omission the stoppage or delay of or interference with the work of any other contractor having a contract with the University, or fails in the performance of any obligations and responsibilities under this Contract, then, and in that event, the University, acting itself or through the Consultant, may, upon three (3) working days' notice to the Contractor, either itself provide or have any other contractor provide any and all labor or materials or both necessary, in its opinion, to correct any aforesaid deficiency of the Contractor, and the University will thereafter back charge the Contractor by issuing a Change Order reducing the amount of the Contract consideration for all costs and expenses it incurs in connection with the correction of such deficiency.
- (2) Notwithstanding any provisions in the Contract Documents to the contrary, if the University deems it inexpedient to correct work not done in accordance with the Contract or any work damaged as a result thereof, it shall notify the Contractor of such fact and the latter shall not remedy or correct the same. In such event, however, the amount of the Contract consideration shall be decreased by an amount, determined by the University, which is equal to the difference in value of the work as performed by the Contractor and the value of the work had it been satisfactorily performed in accordance with the Contract or which is equal to the cost of performing the corrective work, whichever shall be the higher amount.

#### **Section 4.07 Liquidated Damages for Construction Services**

In the event that the Contractor shall fail to substantially complete all the work within the time fixed for such completion on page A-1 of the Agreement, or within the time to which such completion may have been extended, or in the event that the Contractor abandons the work and the same is not substantially completed within the aforesaid time for such completion, the Contractor must pay to the University as damages for each calendar day of delay in completing the work the amount set forth on page A-1. In view of the difficulty of accurately ascertaining the loss which the University will suffer by reason of delay in completion of the work hereunder, said sum is hereby fixed and agreed as liquidated damages which the University will suffer by reason of such delay and not as a penalty. The University may deduct and retain out of the monies which may become due hereunder to the Contractor the amount of any such liquidated damages and, in case the amount which may become due to the Contractor under the provisions of the Contract may be less than the liquidated damages suffered by the University, the Contractor shall pay the difference, upon demand, to the University.

#### **Section 4.08 Contract Breakdown**

Prior to the submission of its first application for a progress payment, the Contractor shall present to the University and the Consultant for their approval a detailed schedule showing the breakdown of the Contract consideration. Such schedule must contain the amount estimated for each part of the work and quantity survey for each part of the work. It shall also list the estimated value of the Contractor's guarantee obligations under the provisions of the Contract Documents, which is hereby fixed at \$5,000 or one-half of one percent (1/2%) of the Contract award amount, whichever is the lesser sum. Such schedule shall be revised by the Contractor until the same shall be satisfactory to the University and the Consultant and shall not be changed after the University and the Consultant have approved the same. The amounts set forth in the schedule will not be considered as fixing the basis for additions to or deductions from the Contract consideration.

#### **Section 4.09 Prompt Payment Requirements for Construction Services**

- (1) For the purposes of Article XI-A of the State Finance Law, the campus for which the work is being performed is the University's designated payment office. Applications for payment must contain the approval of the Consultant before being submitted to the University.
- (2) Whenever the Consultant's approval of an application for payment is required under the Contract, the Consultant shall have fifteen (15) calendar days after receipt of such application to inspect the work before acting on the application.

- (3) This Contract is subject to the approval of the Comptroller of the State of New York. Until such approval is given, the thirty (30) day period referred to in Article XI-A of the State Finance Law for the payment of invoices without interest shall not begin.

#### **Section 4.10 Progress Payments**

- (1) Unless otherwise provided in the Contract, progress payments will be made as the work progresses upon applications submitted by the Contractor and approved by the Consultant and the University. Payment of such approved applications shall be made by the University within thirty (30) days after such approval has been given.
- (2) The University shall make progress payments to the Contractor on the basis of such approved applications, less an amount equal to 5 percent thereof, plus an amount necessary, in the University's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged, which it shall reserve from each such payment until all of the work covered by the Contract has been completed.
- (3) When the University and the Consultant have determined that all the work is substantially completed, or that a substantial portion of the permanent construction has been completed and accepted, the University shall make a progress payment to the Contractor, on the basis of an application submitted by the Contractor and approved by the Consultant and the University, which shall reduce the unpaid amount due to the Contractor under the terms of the Contract, including all monies retained by the University from previous progress payments to the Contractor, to an amount equal to two (2) times the cost, estimated by the Consultant, of performing, in accordance with the Contract, all uncompleted, unaccepted and corrective work, plus an amount necessary, in the University's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. As the remaining items of work are satisfactorily completed or corrected, the University shall make progress payments to the Contractor, on the basis of applications submitted by the Contractor and approved by the University and the Consultant, covering said items of work less an amount necessary, in the University's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

#### **Section 4.11 Applications for Progress Payments**

The Contractor shall prepare all applications for progress payments for work performed, together with supporting data and computations as are deemed necessary by the Consultant to determine the accuracy of the application. The application for payment shall be submitted on the form prescribed by the University. Failure of the Contractor to submit applications for progress payments, or lack of complete and accurate supporting data, shall be sufficient reason for withholding payment until such omissions or errors are rectified. Unless otherwise directed, such applications, signed and certified as correct by the Contractor, shall be delivered by the Contractor to the Consultant once each month showing the total value of work completed and in place on the last day of the payment period covered by the application.

#### **Section 4.12 Progress Payments for Materials Delivered to Site**

- (1) Progress payments made in accordance with Section 4.10 shall include a payment for materials and equipment to be furnished and installed under the Contract, after such materials and equipment have been delivered and accepted at the site of the work.
- (2) Materials and equipment for which such progress payment has been made shall not be removed from the site, shall be stored until incorporated into the work in a location approved by the Consultant and shall be adequately protected from fire, theft and vandalism, the effects of the elements and any other damage whatsoever, and shall at all times be available for inspection by the Consultant and the University.

#### **Section 4.13 Transfer of Title to Materials Delivered to Site**

Title to all supplies and materials to be furnished or provided by the Contractor to the University pursuant to the provisions of the Contract Documents shall immediately vest in and become the sole property of the University upon delivery of such supplies and materials to the site. Notwithstanding such transfer of title, the Contractor shall have the full continuing responsibility to install such materials and supplies, protect them, maintain them in proper condition and forthwith repair, replace and make good any damage thereto without cost to the University until such time as the work covered by the Contract is fully accepted by the University. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract. In the event that, after title has passed to the University, any of such supplies and materials are rejected as being defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the Contractor.

#### **Section 4.14 Progress Payments for Materials Stored Off Site**

- (1) Progress payments made in accordance with Section 4.10 shall include a payment for materials and equipment which are in short and/or critical supply or have been specially fabricated for the Project. Materials and equipment, for which a progress payment is made pursuant to the preceding sentence, shall be stored by the Contractor, after fabrication, until such time as their delivery to the site is required, at a facility and location approved by the Consultant; shall be adequately protected from fire, theft and vandalism, the effects of the elements and any other damage whatsoever; and shall at all times be available for inspection by the Consultant and the University. No progress payment shall, however, be made for said materials and equipment until:
- a. The Contractor furnishes to the University a bill of sale listing quantity and costs of said materials and equipment f.o.b. point of origin;

- b. The Consultant shall have inspected said materials and equipment and recommended payment therefore; and
  - c. The Contractor furnishes to the University a builder's risk insurance policy, with the broad form extended coverage endorsement, for said materials and equipment, in an amount equal to 100 percent of the value thereof, which policy shall be maintained, at the sole cost and expense of the Contractor, until said materials and equipment have been incorporated into the Project. The said insurance policy shall contain a provision that the loss, if any, is to be made adjustable with and payable to the University as trustee for the insured, i.e., the University and the Contractor, and a provision that it shall not be changed or canceled and that it will be automatically renewed upon expiration and continued in force unless the University is given fifteen (15) days' written notice to the contrary.
- (2) Materials and equipment for which a progress payment has been made by the University pursuant to this Section shall be, become and remain the sole property of the University; provided, however, that the Contractor shall have the full continuing responsibility to install such materials and equipment, to deliver it to the site, to protect it, to maintain it in proper condition and to forthwith repair, replace and make good any damage thereto without cost to the University until such time as the work covered by the Contract is fully accepted by the University. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract.

#### **Section 4.15 Withholding of Progress Payments**

Notwithstanding anything contained in the Contract to the contrary, the University may withhold payment of all or any part of a progress, final or guarantee payment, in such an amount as it may deem proper to enforce the provisions of the Contract and to satisfy the claims of third parties, when:

- a. The University shall learn of any claim, of whatever nature or kind, against the University or the Contractor, which in any way arises or is alleged to arise out of or as a result of or in connection with the performance by the Contractor of the work covered by the Contract or out of or in connection with the Contractor's operations or performance at or in the vicinity of the construction site, that, in the opinion of the University, may not be adequately covered by insurance.

If an action on such claim is timely commenced and the liability of the University and/or the Contractor shall have been established therein by a final judgment of a court of competent jurisdiction, or if such claim shall have been admitted by the Contractor to be valid, the University shall pay such judgment or admitted claim out of the monies retained by it under the provisions of the Contract and return the balance, if any, without interest, to the Contractor.

The University may withhold from the Contractor any payments retained by it until such time as all such claims are either satisfied or barred by law from being presented. At such time the University, upon written demand by the Contractor, shall return to the Contractor the amount so withheld, without interest.

- b. The Contractor has not complied with any lawful or proper direction of the Consultant or the University or their representatives concerning the work covered by the Contract or the performance of the Contract or the production of records as required under the provisions of the Contract.
- c. There exists any of the conditions, listed in Section 2.26, which would allow the University to declare the Contractor in default of the whole or any part of the work.
- d. The Contractor is a foreign contractor and has not furnished satisfactory proof that all taxes due by such Contractor under the provisions of the Tax Law have been paid. The Certificate of the New York State Tax Commission to the effect that all such taxes have been paid shall be conclusive proof of the payment of such taxes. The term "foreign contractor" as used herein means, in the case of an individual, a person who is not a resident of the State of New York; in the case of a partnership, one having one or more partners not a resident of the State; and in the case of a corporation, one not organized under the laws of the State of New York.
- e. The Contractor, upon request of the University at any time after the initial progress payment by the University to the Contractor, fails to furnish the University with such documentary evidence that the University may deem necessary to prove to it that material and labor paid for by the University under previous applications for payment submitted have been paid for by the Contractor and that there are no outstanding claims or liens in connection therewith or fails to satisfy the University that the Contractor, with good cause, has sufficiently provided for the payment and/or satisfaction of claims for said material and labor.

#### **Section 4.16 Lien Law**

The attention of the Contractor is specifically called to the provisions of the Lien Law of the State of New York, wherein funds received by a Contractor for a public improvement are declared to constitute trust funds in the hands of such Contractor to be applied first to the payment of certain claims.

#### **Section 4.17 Substitution of Securities for Retainage**

Any time after 50 percent of all the work has been completed, the University, if the progress and performance of the work is satisfactory to it, on request of the Contractor, will allow the Contractor to withdraw up to 50 percent of the aforesaid amount retained by the University

by depositing with the Comptroller of the State of New York government securities, of the type and kind specified in Section 139 of the State Finance Law, having a market value not exceeding par, at the time of deposit, equal to the amount so withdrawn. The Comptroller of the State of New York shall, from time to time, collect all interest or income on the obligations so deposited, and shall pay the same, when and as collected, to the Contractor. If the deposit is in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the Contractor; provided, however, that the Contractor shall not be entitled to interest or coupons or income on any of the deposited securities, the proceeds of which have or will be used or applied by the University. In the event that the Contractor does not, in accordance with the terms and provisions of the Contract, comply with and fulfill all of its obligations and responsibilities thereunder, the Comptroller of the State of New York shall have the right to sell, assign, transfer or otherwise dispose of the aforesaid securities and the University shall have the right to use and apply all or any part of the monies obtained by the Comptroller of the State of New York from such a sale, assignment, transfer or disposition or from the collection of interest or income from said securities to the performance and fulfillment of said obligations and responsibilities. Notwithstanding the foregoing, when the University makes a payment under Section 4.10 (3) of the Agreement, it will return to the Contractor, as part of such payment, its substituted securities, and thereafter all retention of the University shall be in funds and not in substituted securities.

#### **Section 4.18 Final Payment**

Upon acceptance of all the work, except for the Contractor's guarantee obligations under Section 2.25 of the Agreement and the Contractor's guarantee obligations under any provision of the Specifications, the contractor shall prepare and submit to the University and the Consultant, for their approval, a final application for payment, which the University, within thirty (30) days after its approval of the same, shall pay. Such application and payment shall be in an amount equal to 100 percent of the Contract consideration, excluding the Contractor's guarantee obligations (reference Section 4.08), less:

- a. All previous payments by the University to the Contractor;
- b. All deductions authorized to be made by the University under the Contract; and
- c. An amount necessary, in the University's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

#### **Section 4.19 Acceptance of Final Payment**

- (1) The acceptance by the Contractor, or by anyone claiming by or through it, of the final payment shall, except with respect to the amount retained by the University pursuant to the provisions of subdivisions b and c of Section 4.18 of the Agreement, constitute and operate as a release to the University from any and all claims of any liability for anything theretofore done or furnished for or relating to or arising out of the work covered by the Contract and for any prior act, neglect or default on the part of the University or any of its trustees, officers, agents or employees in connection therewith.
- (2) Should the Contractor refuse to accept the final payment as tendered by the University or should the Contractor refuse to execute the final application for payment without protest and without reserving any rights or claims against the University, it shall constitute a waiver of any right to interest on the amount of the payment so tendered and/or on the amount set forth in said final application for payment.

#### **Section 4.20 Guarantee Payment**

- (1) Subject to the provisions of the second paragraph of this Section, at the expiration of one (1) year after the University has accepted all the work covered by the Contract, the Contractor shall prepare and submit to the University and the Consultant, for their approval, a guarantee application for payment, which the University, within thirty (30) days after its approval of the same, shall pay. Such application and payment shall be in an amount equal to the monies retained by the University for the Contractor's guarantee obligations under the Agreement, less any monies deducted by the University under this Section. The Contractor shall not be entitled to any interest on the monies retained by the University pursuant to subdivision c of Section 4.18 of the Agreement.
- (2) In the event the Contractor does not, in accordance with the terms and provisions of the Contract, complete all corrective work or comply with and fulfill its contractual obligations, the University may use and apply all or any part of the monies retained by it to have such work or obligations performed or fulfilled by a person, firm or corporation other than the Contractor. The obligations of the Contractor, under the terms and provisions of the Contract, shall not, however, be limited to the monies retained by the University pursuant to the provisions of the Contract.
- (3) No payments may be made under this agreement for work completed more than 365 days after

{Insert Contract Closing Date}

Unless the date/duration listed on page A-1, is extended in writing by the Fund, and approved by OSC.

#### **Section 4.21 Acceptance of Guarantee Payment**

The acceptance by the Contractor, or by anyone claiming by or through it, of the guarantee payment shall constitute and operate as a release to the University from any and all claims in connection with monies retained by the University. Should the Contractor refuse to accept the guarantee payment as tendered by the University or should the Contractor refuse to execute the guarantee application for payment without protest and without reserving any rights or claims against the University, it shall constitute a waiver of any right to interest on the amount of the payment so tendered and/or on the amount set forth in said guarantee application for payment.

#### **Section 4.22 Contractor Limited to Money Damages as to Construction Services**

Inasmuch as the Contractor can be compensated adequately by money damages for any breach of the Contract which may be committed by the University, the Contractor agrees that no default, act or omission of the University shall constitute a material breach of the Contract entitling it to cancel or rescind the same or to suspend or abandon performance thereof; and it hereby waives any and all rights and remedies to which it might otherwise be or become entitled to because of any wrongful act or omission of the University or its representatives, saving only its right to money damages.

#### **Section 4.23 No Estoppel or Waiver as to Construction Services**

- (1) The University shall not be precluded or estopped by any inspection, acceptance, application for payment or payment, final or otherwise, issued or made under the Contract or otherwise issued or made by it, the Consultant, or any trustee, officer, agent or employee of the University, from showing at any time the true amount and character of the work performed, or from showing that any such inspection, acceptance, application for payment or payment is incorrect or was improperly issued or made; and the University shall not be precluded or estopped, notwithstanding any such inspection, acceptance, application for payment or payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with the Contract and any monies which may be paid to it or for its account in excess of those to which it is lawfully entitled.
- (2) Neither the acceptance of all or any part of the work covered by the Contract; nor any payment therefore; nor any order or application for payment issued under the Contract or otherwise issued by the University, the Consultant, or any trustee, officer, agent or employee of the University; nor any permission or direction to continue with the performance of the Contract before or after its specified completion date; nor any performance by the University of any of the Contractor's duties or obligations; nor any aid lent to the Contractor by the University in its performance of such duties or obligations; nor any delay or omission by the University to exercise any right or remedy accruing to it under the terms of the Contract or existing at law or in equity or by statute or otherwise; nor any other thing done or omitted to be done by the University, its trustees, officers, agents or employees; shall be deemed to be a release to the Contractor or its sureties from any obligations, liabilities or undertakings in connection with the Contract or the Performance Bond or a waiver of any provision of the Contract or of any rights or remedies to which the University may be entitled because of any breach thereof, excepting only a written instrument expressly providing for such release or waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the Contract, because of any breach hereof, shall be deemed a waiver of any money damages to which the University may be entitled because of such breach. No waiver by the University of any breach of the Contract shall be deemed to be a waiver of any other or any subsequent breach.

#### **Section 4.24 Limitation of Actions as to Construction Services**

- (1) No action or proceeding shall be maintained by the Contractor, or anyone claiming under or through the Contractor, against the University, or its trustees, officers, agents or employees, upon any claim arising out of or based upon the Contract or any breach thereof or by reason of any act or omission or requirement of the University, or its trustees, officers agents or employees, unless:
  - a. Such action or proceeding is instituted in the Court of Claims for the State of New York;
  - b. The Contractor or the person claiming under or through it shall have strictly complied with all requirements relating to the giving of notices and information with respect to such claims; and
  - c. Such action or proceeding shall be commenced within one (1) year after the submission to the University of the final application for payment or, if the claim is based upon monies required to be retained for any period after the date of the final application for payment, such action is commenced within six (6) months after such monies become due and payable under the terms of the Contract; or
  - d. If the Contract is terminated or the Contractor declared in default by the University, such action is commenced within six (6) months after the date of such termination or declaration of default by the University.
- (2) Notwithstanding anything in the laws of the State of New York to the contrary, the Contractor, or anyone claiming under or through the Contractor, shall not be entitled to any additional time to begin anew any other action if an action commenced within the times herein specified is dismissed or discontinued for any reason whatsoever.

### **ARTICLE V**

#### **Protection of Rights and Property**

#### **Section 5.01 Accidents and Accident Prevention**

The Contractor shall at all times take reasonable precautions for the safety of persons engaged in the performance of the work. The Contractor shall comply fully with all applicable provisions of the laws of the State of New York, OSHA, and with all valid rules and regulations adopted or promulgated by the agencies of the State of New York pursuant thereto. The Contractor's attention is specifically called to the applicable rules and regulations, codes and bulletins of the New York State Department of Labor.

### **Section 5.02 Adjoining Property**

The Contractor shall be required to protect all the adjoining property and to repair or replace any such properties damaged or destroyed by it, its employees or subcontractors through, by reason of or as a result of activities under, for or related to the Contract.

### **Section 5.03 Emergencies**

- (1) In case of an emergency which threatens loss or injury to persons or property, the Contractor will be allowed to act, without previous instructions from the Consultant or the University, in a diligent manner, to the extent required to avoid or limit such loss or injury, and it shall notify the Consultant and the University immediately thereafter of the action taken by it and of such emergency. Where the Contractor has not taken action but has notified the Consultant or the University of an emergency which threatens loss or injury to persons or property, it shall act in accordance with the instructions and/or authorization by the Consultant or the University.
- (2) In the event that the Contractor performs extra work in accordance with the preceding paragraph, it will be compensated therefore in accordance with the provisions of Section 4.02.

### **Section 5.04 Fire Safety**

- (1) In the event that a municipal fire alarm box is not located within 300 feet from the site of the Project, the Contractor will be required to provide at the site of the Project, at a location approved by the Consultant, a private unlisted telephone reserved for fire calls only. The phone must be in addition to regular business phones and a rule prohibiting its use for purposes other than alarm for fire or other emergencies must be strictly enforced. The phone itself should be colored red and be located at a point quickly available to all employees, including watchmen. Clear instructions for the sending of a fire alarm should be conspicuously posted by the phone and all personnel customarily at work near the phone shall be acquainted with the procedure. If such a phone is required, the Contractor, at its sole cost and expense, must provide the same from the time the University first approves the Contract breakdown to be submitted by the Contractor pursuant to the provisions of Section 4.08 up until the time the University accepts all the work covered by the Contract.
- (2) All solid fuel salamanders and U. L. approved heaters used by the Contractor or any of its subcontractors shall be arranged in a standard manner. All other salamanders used by the Contractor or any of its subcontractors shall require constant attendance of competent persons on each floor where in use.
- (3) All temporary fabric used by the Contractor or any of its subcontractors for curtains or awnings shall be either non-combustible or flame retarded so that it will not burn or propagate flame.

### **Section 5.05 Risks Assumed by Contractor**

- (1) The Contractor solely assumes the following distinct several risks whether they arise from acts or omissions (whether negligent or not and whether supervisory or otherwise) of the Contractor, of the University, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the prosecution of the work covered by the Contract, whether such risks are within or beyond the control of the Contractor and whether such risks involve a legal duty, primary or otherwise, imposed upon the State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York or the State University of New York, excepting only risks which arise from defects in maps, plans, designs or Specifications prepared, acquired or used by the Consultant or the University, from the negligence of the University, its agents or employees or from affirmative acts of the State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York or the State University of New York or their trustees, officers, agents or employees committed with intent to cause the loss, damage and injuries herein below set forth:
  - a. The risk of loss or damage, direct or indirect, to the work covered by the Contract or to any plant, equipment, tools, materials or property furnished, used, installed or received by the University or by the Contractor or any subcontractor, materialman or worker performing services or furnishing materials for the work covered hereunder.

The Contractor shall bear such risk of loss or damage until the work covered by the Contract has been fully accepted by the University or until completion of removal of such plant, equipment, tools, materials or property from the construction site and the vicinity thereof, whichever event occurs last. In the event of such loss or damage, the Contractor shall forthwith repair, replace and/or make good any such loss or damage without cost to the University.

- b. The risk of claims, just or unjust, by third persons against the Contractor, the State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York, or the State University of New York on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising or alleged to arise out of or as a result of or in connection with the performance by the Contractor of the work covered by the Contract (whether

actually caused by or resulting from the performance of the Contract) or out of or in connection with the Contractor's operations or presence at or in the vicinity of the construction site. The Contractor shall bear such risk for all such deaths, injuries, damages or losses sustained or alleged to have been sustained prior to the final acceptance by the University of all work covered by the Contract. The Contractor shall also bear the risk of claims for wrongful death occurring subsequent to said final acceptance provided such death is caused, contributed to or is a consequence of bodily injuries sustained or alleged to have been sustained prior to said final acceptance.

- (2) The Contractor shall indemnify and save harmless the State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York and the State University of New York, their trustees, officers, agents or employees against all claims described above and for all costs and expenses incurred by them in the defense, settlement or satisfaction thereof, including attorneys' fees and court costs. If so directed, the Contractor shall at its own expense defend against such claims, in which event it shall not, without obtaining express advance permission from Counsel of the University, raise any defense involving in any way jurisdiction of the tribunal over the University, governmental nature of the University or the provisions of any statutes respecting suits against the University.
- (3) Neither the University's final acceptance of the work to be performed hereunder nor the making of any payment shall release the Contractor from its obligations under this Section. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which it is responsible shall not be deemed to limit the effect of the provision of this Section or to imply that it assumes or is responsible for only risks or claims of the type enumerated.

### **Section 5.06 Compensation and Liability Insurance**

- (1) The Contractor shall procure and maintain, at its own cost and expense, until final acceptance by the University of all the work covered by this Contract, the following kinds of insurance:

- a. Workers' Compensation Insurance.

A policy complying with the requirements of the laws of the State of New York.

- b. General Liability and Property Damage Insurance.

A standard general comprehensive liability insurance policy or a commercial general liability insurance policy issued to and covering the liability of the Contractor for all work and operations under this Contract, including, but not limited to, contractual and completed operations coverage. Such policy shall be written by a company licensed or approved as an excess line liability company by the New York State Department of Insurance. The coverage under such policy shall not be less than the following limits:

Bodily Injury and Property Damage Liability  
\$ 1,000,000 Each Occurrence  
\$ 2,000,000 Aggregate

The aforesaid insurance requirements will be deemed met by the Contractor's procurement and maintenance of either of the aforesaid policies and, in addition thereto, an umbrella policy providing similar coverage; provided, however, that the total amount of insurance coverage is at least equal to the requirements above set forth.

- c. Automobile Liability and Property Damage Insurance.

A policy covering the use in connection with the work covered by the Contract Documents of all owned, non-owned and hired vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear license plates. The coverage under such policy shall not be less than the following limit:

Bodily Injury and Property Damage Liability  
\$ 1,000,000 Each Occurrence

- d. Owner's Protective Liability Insurance.

A policy issued to and covering the liability for damages imposed by law upon the State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York and the State University of New York, their trustees, officers, agents or employees, with respect to all operations under the Contract by the Contractor and its subcontractors, and/or their interest in the Project and the property upon which work under the Contract is to be performed, including omissions and supervisory acts of the former. Said insurance shall be in the same amounts as that required under subdivision b above and shall be written by a company licensed or approved as an excess line liability company by the New York State Department of Insurance.

- e. Asbestos Abatement Insurance.

A liability insurance policy issued to and covering the liability, of the Contractor and/or subcontractor engaged in the removal, handling or wrapping of asbestos, if any of such work is to be performed under the Contract, for bodily injury, illness, sickness or property damage caused by exposure to asbestos in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The Contractor and/or its aforesaid subcontractor shall either obtain an endorsement to the aforesaid required insurance policy adding the

State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York and the State University of New York, their trustees, officers, agents or employees, as additional parties insured thereunder or shall obtain a separate owner's protective liability insurance policy for such parties with coverage similar to that required by the first sentence of this subdivision. In addition, any Contractor or subcontractor engaged in the removal, handling, or wrapping of asbestos shall hold harmless and indemnify the State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York and the State University of New York, for any claims or liabilities in connection with illness or sickness arising from work performed, not performed, or which should have been performed. The Contractor shall have said hold-harmless and indemnification conditions stipulated in all Contracts with subcontractors.

- (2) The aggregate insurance limit set forth above shall apply separately to each project for which a certificate of insurance and/or policy is issued.
- (3) Before commencing the performance of any work covered by the Contract, the Contractor shall furnish to the University a certificate or certificates in duplicate of the insurance required under the foregoing provisions. Such certificates shall be on a form prescribed by the University, shall list the various coverages and shall contain, in addition to any provisions hereinbefore required, a provision that the policy shall not be changed or canceled and that it will be automatically renewed upon expiration and continued in force until final acceptance by the University of all the work covered by the Contract, unless the University is given fifteen (15) days' written notice to the contrary. Upon request, the Contractor shall furnish the University with a certified copy of each policy. The State University reserves the right to receive a copy of the insurance policy which was based on the Certificate of Insurance issued.
- (4) All insurance required to be procured and maintained as aforesaid must be procured from insurance companies approved by the University and authorized to do business in the State of New York. The State University is to be cited as a named insured on all policies and certificates of insurance and shall be notified if a policy is canceled, terminated or modified.
- (5) If at any time any of the above-required insurance policies should be canceled, terminated or modified so that insurance is not in effect as above required, then, if the University shall so direct, the Contractor shall suspend performance of the work covered in the Contract. If the said work is so suspended, no extension of time shall be due on account thereof. If said work is not suspended, then the University may, at its option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be payable by the Contractor to the University.

#### **Section 5.07 Builder's Risk Insurance**

- (1) The Contractor shall procure and maintain, at its own cost and expense, until final acceptance of all work covered by this Contract or until the Project has been turned over for use by the State University of New York, whichever event occurs earlier, a builder's risk insurance policy with fire, extended coverage, vandalism and malicious mischief coverage.
- (2) The policy shall be in an amount equal to the Project's insurable value, i.e., the Contract consideration less the cost of the Contractor's Performance and Labor and Material Bonds; the cost of trees, shrubbery, lawn grass, plants and the maintenance of the same; the cost of demolition; the cost of excavation; the cost of foundations, piers or other supports which are below the undersurface of the lowest basement floor, or where there is no basement, which are below the surface of the ground, concrete and masonry work; the cost of underground flues, pipes or wiring; the cost of earthmoving, grading and the cost of paving, roads, walks, parking lots or athletic fields; and the cost of bridges, tunnels, dams, piers, wharves, docks, retaining walls and radio and/or television towers and antennas.
- (3) The policy may contain a provision for a \$500 deductible for each loss to a Project having an insurable value of less than \$1,500,000 and a \$1,000 deductible for each loss to a Project having an insurable value of \$1,500,000 or more.
- (4) The University, the Contractor and its subcontractors, as their interests may appear, will be named as the parties insured under said policy.
- (5) The Contractor shall have the sole responsibility to promptly report any loss to the insurer and/or its representatives and to furnish the latter with all necessary details relating to the occurrence of the loss and the amount thereof. The University, the Contractor and all subcontractors of the Contractor waive all rights, each against the others, for damages caused by fire or other perils covered by insurance provided under the terms of this Section, except such rights as they may have to the proceeds of insurance received; provided, however, this waiver shall not apply to any manufacturer, supplier or similar agent under any guarantee or warranty.
- (6) The Contractor shall not violate or permit to be violated any condition of such policy and shall at all times satisfy the fire safety requirements of the University and the insurance company issuing the same.
- (7) The procurement and maintenance of said policy shall in no way be construed or be deemed to relieve the Contractor from any of the obligations and risks imposed upon it by this Contract or to be a limitation on the nature or extent of such obligations and risks.
- (8) Such policy shall contain a provision that it shall not be changed or canceled and that it will be automatically renewed upon expiration and continue in force until final acceptance by the University of all the work covered by the Contract, unless the University is given fifteen (15) days' written notice to the contrary. Before the Contractor shall be entitled to have any progress payment rendered on account of the work which is to be insured pursuant to this Section, it shall furnish to the University a certificate in duplicate of the



insurance herein required. Such insurance must be procured from an insurance company approved by the University and authorized to do business in the State of New York.

**Section 5.08 Effect of Procurement of Insurance**

Neither the procurement nor the maintenance of any type of insurance by the University or the Contractor shall in any way be construed or be deemed to limit, discharge, waive or release the Contractor from any of the obligations and risks imposed upon it by the Contract or to be a limitation on the nature or extent of such obligations and risks.

**Section 5.09 Intentionally Omitted**

**ARTICLE VI- Intentionally omitted**

**ARTICLE VII- Intentionally omitted**

**Section 7.04 Wage Rates**

The Contractor shall post the appropriate prevailing wage schedules in a conspicuous place at the construction site. The Department of Labor shall provide the Contractor with posters relating to prevailing wage rates and the same shall be displayed by the Contractor in a conspicuous place at the construction site. The Contractor shall also distribute wallet cards, to be provided by the Department of Labor, to all workers engaged at the construction site containing information relating to wage rates and telephone numbers to call if a worker believes his or her rights are being violated. The Contractor shall provide each worker with a written notice, informing them of the applicable prevailing wage requirements, and the Contractor must obtain a signed statement or declaration from such worker attesting to the fact that he or she has been given this information. Further, the Contractor is required to keep certified copies of its payrolls at the construction site.

**Section 7.05 Contractor Responsibility**

The State University of New York at Downstate Medical Center will undertake an affirmative review of the proposed Contractor's responsibility in accordance with the standards outlined in Comptroller's Bulletin G 221, and based upon such review, will determine if it is reasonably assured that the proposed Contractor is responsible.

**Agency Certification:** "In addition to the acceptance of this Contract, it is certified that an originally executed copy of this signature page will be attached to an exact copy of the Contract Documents, and forwarded to the Contractor".

**STATE UNIVERSITY OF NEW YORK**

By: \_\_\_\_\_ Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Agency Code \_\_\_\_\_  
(campus official)

**CONTRACTOR**

*(If Corporation, Affix Seal)*

By: \_\_\_\_\_ Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

*(If Corporation, Affix Seal)*

Approved as to Form:

**ATTORNEY GENERAL OF THE STATE OF NEW YORK**

By: \_\_\_\_\_ Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**COMPTROLLER OF THE STATE OF NEW YORK**

By: \_\_\_\_\_ Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**ACKNOWLEDGMENTS**  
(ACKNOWLEDGMENT BY AN INDIVIDUAL)

STATE OF NEW YORK        )  
  ) ss.:  
COUNTY OF                 )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_  
\_\_\_\_\_, to me known and known to me to be the person(s) described in and who executed  
the foregoing instrument and he/she acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public

**(ACKNOWLEDGMENT BY A PARTNERSHIP)**

STATE OF NEW YORK        )  
  ) ss.:  
COUNTY OF                 )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_  
\_\_\_\_\_, to me known and known to me to be the person who executed the above instrument,  
who, being duly sworn by me, did for themselves depose and say that they are a member of the firm of \_\_\_\_\_  
\_\_\_\_\_, consisting of themselves and \_\_\_\_\_  
\_\_\_\_\_, that he/she executed the foregoing instrument in the firm name \_\_\_\_\_  
\_\_\_\_\_, and that he/she had authority to sign the same, and that he/she did duly acknowledge to me  
that he/she executed the same as the act and deed of the aforementioned firm for the purposes mentioned therein.

\_\_\_\_\_  
Notary Public

**(ACKNOWLEDGMENT BY A CORPORATION)**

STATE OF                        )  
  ) ss.:  
COUNTY OF                 )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_  
\_\_\_\_\_, to me known, who, being duly sworn, did depose and say that he/she reside in  
\_\_\_\_\_; that he/she is the \_\_\_\_\_  
of the \_\_\_\_\_, the corporation described in and which executed  
the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal;  
that if it was affixed by the order of the Board of Directors of said corporation, and that he/she signed their name thereto by like order.

\_\_\_\_\_  
Notary Public

## SCHEDULE I

The following Unit Prices shall apply for additional work authorized by Change Order:

### UNIT PRICES

Description of Unit Price

Amount of Unit Price

NONE

The total bid includes the following Allowances:

### ALLOWANCES

**Exhibit “E” – Reference Form**

**CUSTOMER FOR WHOM SERVICES WERE PERFORMED:**

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**CUSTOMER ADDRESS:**

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**SYSTEM OFFERED (Please provide a brief description of the machine and functionalities)**

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**PROJECT DESCRIPTION: (Please attach additional sheets as necessary)**

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**PROJECT REFERENCES: (REQUIRED AND WILL BE VERIFIED)**

**Reference #:**

**CONTACT NAME:**

---

**PHONE NUMBER AND EMAIL:**

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# EXHIBIT F

## SUNY DOWNSTATE MEDICAL CENTER BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT is made by and between THE STATE UNIVERSITY OF NEW YORK ("SUNY"), an educational corporation organized and existing under the laws of the State of New York, having its principal offices located at State University Plaza, Albany, New York 12246, acting for and on behalf of

**SUNY DOWNSTATE MEDICAL CENTER**

"Covered Entity"

with its address at:

**450 Clarkson Avenue  
Brooklyn, NY 11203**

Re. Contract Number(s): \_\_\_\_\_

and

\_\_\_\_\_  
"Business Associate"

with its principal offices at

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip

Facsimile Number: \_\_\_\_\_

Covered Entity and Business Associate, collectively, may hereinafter be referred to as the "Parties," as in the parties to this Agreement.

The Parties have entered into one or more certain agreements (each and together, the "Underlying Agreement") under which the Business Associate uses and/or discloses PHI in its performance of the Services described below. The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") and the Standards for Security of Electronic Protected Health Information (the "Security Rule") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including the 2013 HIPAA Omnibus Rule. This Agreement, in conjunction with the Privacy and Security Rules, sets forth the terms and conditions pursuant to which PHI (electronic and non-electronic) that is created, received, maintained, or transmitted by, the Business Associate from or on behalf of Covered Entity, will be handled between the Business Associate and Covered Entity and with third parties during the term of their Underlying Agreement and after its termination. The Parties agree as follows:

### 1. PERMITTED USES AND DISCLOSURES OF PHI

**1.1 Services.** Pursuant to the Underlying Agreement, Business Associate provides services ("Services") for Covered Entity that involve the use and disclosure of PHI. Except as otherwise specified herein,

the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Underlying Agreement. All other uses not authorized by this Agreement are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Agreement only: (a) to its employees, subcontractors and agents, in accordance with Section 2.1(d), or (b) as otherwise permitted by or as required by the Privacy or Security Rule.

**1.2 Business Activities of the Business Associate.** Unless otherwise limited herein and if such use or disclosure of PHI would not violate the Privacy or Security Rules if done by the Covered Entity, the Business Associate may:

- (a) use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws.
- (b) disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to Covered Entity, in writing, that (i) the disclosures are required by law, as provided for in 45 CFR § 103 or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 CFR § 164.504(e)(4) and § 164.314, and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

**1.3** Business Associate understands and agrees that its access to Protected Health Information stored in databases and information systems at the Covered Entity is subject to review and audit by the Covered Entity or agents of the State of New York at any time, that remote audits of such access may occur at any time, if remote access exists, that on-site audits of such access will be conducted during regular business hours, and that any review or audit may occur with or without prior notice by the Covered Entity.

### 2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

**2.1 Responsibilities of the Business Associate.** With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

- (a) Not use or disclose PHI other than as permitted or required by the Agreement or as required by law;

- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- (c) Report, in writing, to Covered Entity within five (5) business days any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware, and cooperate with the Covered Entity in any mitigation or breach reporting efforts; this notice shall be deemed sufficient if it is delivered to the Parties at their respective addresses listed above and the Privacy Officer using the following contact information:

**SUNY Downstate Medical Center  
Office of Compliance & Audit Services  
Attn: Privacy Officer  
450 Clarkson Ave., Box 1248  
Brooklyn, NY 11203**

**Telephone Number: (718) 270 - 4033  
Facsimile Number: (718) 270 - 4312  
(Please confirm receipt)**

- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- (e) Except as provided in this subsection, ensure that any agent or subcontractor to whom the Business Associate provides PHI, as well as Business Associate, shall not export PHI beyond the borders of the United States of America. If the Business Associate or its agent or subcontractor exports PHI beyond the borders of the United States of America, then, subject to the United States and New York State export control and foreign outsourcing laws, rules and regulations, the Business Associate will provide to Covered Entity prior to such export, a reasonable assurance, evidenced in writing, that the Business Associate, subcontractor, or agent will comply with the privacy and security obligations of Business Associate the set forth either in this Agreement or in applicable law, rules and regulations with respect to such PHI.
- (f) Agrees to provide the Covered Entity, at the Covered Entity's request, a list of all agents and subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate.
- (g) Within five (5) business days of a request from Covered Entity, make available PHI in a designated record set, if applicable, to Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524.

- (h) Within five (5) business days of a request from Covered Entity, make any amendment(s) to PHI, if applicable, in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526.
- (i) As applicable, maintain and make available the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.
- (j) To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- (k) Upon request, may make its internal practices, books, and records available to the Secretary and to the Covered Entity for purposes of determining compliance with the HIPAA Rules.
- (l) Comply with minimum necessary requirements under the HIPAA Rules.

2.2 Business Associate hereby acknowledges and agrees that Covered Entity has notified Business Associate that Business Associate is required to comply with the confidentiality, Disclosure and re-Disclosure requirements of 10 NYCRR Part 63 to the extent such requirements may be applicable.

2.3 If, in the performance of the Services, Business Associate extends, renews or continues credit to patients or regularly allows patients to defer payment for services including setting up payment plans in connection with one or more covered accounts, as defined at 15 USC 1681m(e)(4), the Business Associate must comply with the Federal Trade Commission's "Red Flag" Rules, if applicable, or develop and implement a written identity theft prevention program designed to identify, detect, mitigate and respond to suspicious activities that could indicate that identity theft has occurred in the Business Associate practice or business.

2.4 Business Associate acknowledges that if Business Associate or any of its agents or subcontractors violate any Security provision as Required By Law specified in subparagraph 2.1(b) above, sections 1176 and 1177 of the Social Security Act 42 USC §1320d-5, 1320d-6 shall apply to Business Associate with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such Security provision, thus resulting in civil or criminal penalties.

2.5 Covered Entity and Business Associate recognize that unsecured PHI may contain the social security numbers, financial account information or driver's license number or non-driver identification card number ("private information" as defined in the New York State Information Security Breach and Notification Act, as amended ("ISBNA"), General Business Law § 889-aa; State Technology Law § 208). Subject to the issue of

interim final regulations by the Secretary and any periodic updates thereof all of which are incorporated by reference in this Agreement, in the event of a Breach of unsecured PHI containing an Individual's private information, Business Associate shall, in addition to notifying Covered Entity as required under in subparagraph 2.1(c), comply with the provisions of the New York State ISBNA. Business Associate shall be liable for the costs associated with such Breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.

### 3. RESPONSIBILITIES OF COVERED ENTITY.

3.1 With regard to the use and/or disclosure of PHI by the Business Associate, Covered Entity hereby agrees:

- (a) to inform the Business Associate of any limitations in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) to inform the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (c) to notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement. except if the Business Associate will use or disclose PHI for (and the Underlying Agreement includes provisions for) data aggregation or management and administration and legal responsibilities of the Business Associate.
- (d) Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by the Covered Entity.

### 4. REPRESENTATIONS AND WARRANTIES

**4.1 Mutual Representations and Warranties of the Parties.** Each Party represents and warrants to the other Party:

- (a) that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws.
- (b) that neither the execution of this Agreement, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another

agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. Each Party represents and warrants to the other Party that it will not enter into any agreement the execution and/or performance of which would violate or interfere with this Agreement.

- (c) that it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition.
- (d) that all of its employees and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that Business Associate has agreed to adhere to with regards to the use and disclosure of PHI of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted under the Standard will be communicated to the Business Associate, in writing, and in a timely fashion.
- (e) that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.
- (f) that neither the Party, nor its shareholders, members, directors, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deferred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (i) the neglect or abuse of a patient, (ii) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (iii) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (iv) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (v)



interference with or obstruction of any investigation into any criminal offense.

4.2 Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect at any time during the term of this Agreement.

## 5. TERMS AND TERMINATION

5.1 **Term.** The Term of this Agreement shall commence on the Effective Date, and shall terminate on the termination date of the relevant Underlying Agreement or on the date Covered Entity terminates this Agreement for cause as authorized in paragraph 5.2 of this Section, whichever is sooner.

5.2 **Termination for Cause.** Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

5.3 **Obligations of Business Associate upon Termination.** Business Associate agrees to return or destroy all PHI pursuant to 45 CFR § 164.504(e)(2)(i). Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said PHI, the Business Associate will notify Covered Entity in writing and the Covered Entity may disagree with the Business Associate's determination. Said notification shall include: (a) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (b) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to Covered Entity and require such subcontractor or agent to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractor's and/or agent's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

5.4 **Automatic Termination.** This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Underlying Agreement.

## 6. CONFIDENTIALITY

6.1 **Confidentiality Obligations.** In the course of performing under this Agreement, each Party may receive, be exposed to or acquire the Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other Party. For purposes of this Agreement, "Confidential Information" shall not include PHI, the security of which is the subject of this Agreement and is provided for elsewhere. The Parties including their employees, agents, representatives and subcontractors: (a) shall not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Agreement, (b) only permit use of such Confidential Information by employees, agents, representatives and subcontractors having a need to know in connection with performance under this Agreement, and (c) advise each of their employees, agents, representatives and subcontractors of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (d) after it becomes publicly available through no fault of either Party; (e) which is later publicly released by either Party in writing; (f) which is lawfully obtained from third parties without restriction; or (g) which can be shown to be previously known or developed by either Party independently of the other Party.

## 7. INSURANCE AND INDEMNIFICATION

7.1 **Insurance.** Business Associate will procure and maintain in effect during the term of this Agreement: (a) general liability insurance coverage with minimum limits of \$1 million per occurrence and \$3 million aggregate; and (b) as applicable, professional liability insurance coverage within minimum limits of \$1 million per occurrence and \$3 million in aggregate; and (c) workers' compensation insurance coverage within statutory limits of state law in which Business Associate is located. Upon request, Business Associate shall provide evidence of continuous coverage to Covered Entity.

7.2 **Indemnification.** The Business Associate agrees to indemnify, defend and hold harmless Covered Entity and Covered Entity's employees, trustees, officers, agents and other members of its workforce from any costs, damages, expenses, judgments, losses, and attorney's fees arising from any breach of this Agreement by Business Associate or any of its agents or subcontractors, or arising from any negligent or wrongful acts or omissions of Business Associate or any of its agents or subcontractors, including failure to perform its obligations under the Privacy Rule. The Business

Associate's indemnification obligation shall survive the expiration or termination of this Agreement for any reason.

## 8. MISCELLANEOUS

8.1 **Business Associate.** For purposes of this Agreement, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a Covered Entity under the Privacy or Security Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 CFR § 164.504(a), as the Business Associate for purposes of this Agreement.

8.2 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Agreement, shall survive termination of this Agreement indefinitely.

8.3 **Amendments; Waiver.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

8.4 **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

8.5 **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

8.6 **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given above, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed above. A copy of any such notice shall also be given in the same manner to the Privacy Officer listed above. Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

8.7 **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

8.8 **Disputes.** If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

8.9 **LIMITATION OF LIABILITY.** COVERED ENTITY SHALL NOT BE LIABLE TO BUSINESS ASSOCIATE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES

OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

8.10 **Changes in Law.** The Parties recognize that this Agreement is at all times subject to applicable state, local, and federal laws. The Parties further recognize that this Agreement may become subject to amendments in such laws and regulations and to new legislation. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Agreement, or that would cause one or both of the Parties hereto to be in violation of law, shall be deemed to have superseded the terms of this Agreement and, in such event, the Parties agree to use their best efforts to modify in an executed written agreement the terms and conditions of this Agreement to be consistent with the requirements of such law(s) in order to effectuate the purposes and intent of this Agreement within thirty (30) days of receipt of notice from one Party to the other Party setting forth the proposed changes. If the Parties fail to so modify this Agreement, then either Party may, by giving the other an additional sixty (60) days written notice, terminate this Agreement, unless this Agreement would terminate earlier by its terms. In the event amendments or changes in existing law, general instructions, or new legislation, rules, regulations, or decisional law preclude or substantially preclude a contractual relationship between the Parties similar to that expressed in this Agreement, then, under such circumstances, where renegotiation of the applicable terms of this Agreement would be futile, either Party may provide the other at least sixty (60) days advance written notice of termination of this Agreement, unless this Agreement would terminate earlier by its terms. Upon termination of this Agreement as hereinabove provided, neither Party shall have any further obligation hereunder except for (a) obligations occurring prior to the date of termination, and (b) obligations, promises or covenants contained herein which are expressly made and intended either to arise upon the termination of this Agreement or to extend beyond the term of this Agreement.

8.11 **Construction of Terms.** The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by the Department of Health and Human Services of the Office of Civil Rights from time to time.

8.12 **Contradictory Terms.** Any provision of the Underlying Agreement that is directly contradictory to one or more terms of this Agreement ("Contradictory Term") shall be superseded by the terms of this Agreement as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity's compliance with the Privacy Rule and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.

8.13 **Governing Law.** This Agreement and any Underlying Agreement shall be governed by New York law notwithstanding any conflicts of law provisions to the contrary.

**9. DEFINITIONS.**

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

9.2 Specific definitions include:

- (a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the Party identified as the Business Associate above.
- (b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Party identified as the Covered Entity above.
- (c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (d) Electronic Protected Health Information or Electronic PHI. "Electronic PHI" shall mean PHI which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.
- (e) Privacy Officer. "Privacy Officer" shall have the meaning as set out in its definition at 45 CFR § 164.530(a)(1) as such provision is currently drafted and as it is subsequently updated, amended or revised, and in reference to this Agreement, shall mean the person identified as the Privacy Officer above.
- (f) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164.
- (g) Security Rule. "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162, and 164.
- (h) A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

THE STATE UNIVERSITY OF NEW YORK on behalf of COVERED ENTITY

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Contract Number/Purchase Order Number: \_\_\_\_\_

BUSINESS ASSOCIATE

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

I	<b>LINAC UNIT SPECIFICATIONS:</b>	
	The System must be fully equipped to perform radiation therapy and radiosurgery, with all the additional functionalities described in the requirements herein.	
	The System must be a digital unit that is capable of performing Flattening Filter Free (FFF) a high dose mode of > 1000 mu/min @ isocenter mode for 6MV.	Or Comparable
	The System must be capable of performing FFF energies at 1400MU/min @ 6MV, 2200MU/min @10MV.	Or Comparable
	The System leaf speed must be at least 2.5cm/second	Or Comparable
	Radiation Oncologic specific information system software.	Or Comparable
	Information system support including licenses, training, and workflow consultation including migration of previous patient data.	Or Comparable
	The System must include at least 2 treatment planning systems with software, hardware, and training for the physicist, dosimetrist, and staff.	Or Comparable
	Physics Commissioning support,including Daily QA and other phantoms required for QA program.	Or Comparable
	The System must include a treatment planning system that is capable of placing the Isodose Curve on top of a Cone Beam CT.	Or Comparable
	The System must be equipped with VMAT, IMRT, IGRT, and SRT/S functionalities.	Or Comparable
	The System must have photon energy settings of 6MV, 10MV, and high with and without wedges, with a minimum normal clinical operating dose rate of 300 cGy/min and a radiosurgery treatment dose rate of at least 1000 cGy/min for a 10cm by 10cm field with an isocenter of 100cm.	Or Comparable
	The System must have electron energy settings of 6, 9, 12, 15, and 18 MeV and include at least 5 cone sizes with a minimum dose rate of no less than 300 cGy/min for a 10cm by 10cm field with an isocenter of 100cm.	Or Comparable
	The System must be able to perform single and multiple arc VMAT treatments within a single plan corresponding to a single treatment fraction for treatments involving one fraction per day at photon beams settings of 6MV, 10MV, and High.	Or Comparable
	The System must be able to perform IMRT at photon beam settings of 6MV 10MV and High.	Or Comparable
	The System must be equipped to perform X-ray kilovoltage, cone-beam CT using the Vendor's largest detector area imaging device available for both gated and non-gated IGRT functionality and registration of X-ray CT-based images with planning CT and produce shifts in at least cartesian 3 axes.	Or Comparable

	<b>The System must have a maximum treatment field of view of no less than 40cm by 40cm at a machine isocenter of 100cm.</b>	<b>Or Comparable</b>
	<b>The System must be equipped with multi-leaf collimators (MLC) usable for the entirety of the above FOV with leaf widths that are at most a nominal 1 cm at the 100 cm isocenter. The nominal leaf width of the MLC leaf for the middle 20cm of the treatment FOV must be no greater than 0.5cm at the Isocenter.</b>	<b>Or Comparable</b>
	<b>The System must be equipped with a treatment couch with automated movement from the operator's console outside of the LINAC treatment vault on at least three Cartesian axes from the console( in 6 dimensions: 3 translation an 3 rotations). Specifically, it must be moveable without entering the LINAC vault.</b>	<b>Or Comparable</b>
	<b>The System must have a fully electronic record and verify system. The system must allow Dicom query import and export, and visualization of RT dose, RT plan and RT Structure set. There should be at least 10 Workstations and current user licenses.</b>	<b>Or Comparable</b>
	<b>The system should track patient dose automatically after being treated on the machine and fully integrate with the electronic record and verify system of a vendor provided ROMIS. (Radaition Oncology Medical Information System).</b>	<b>Or Comparable</b>
	<b>The system must have capability for complete electronic treatment chart with electronic dynamic documents and revision history</b>	<b>Or Comparable</b>
	<b>The system must include hardware and software allow visualization of isodose line and 3D dose on cone beam CT taken of the patient on the treatment table. The visualization of isodose line on all treatment Cone beam CT for intra fraction dose analysis</b>	<b>Or Comparable</b>
	<b>The System must be capable of performing intra-cranial and extra-cranial SRT/S using cones.</b>	<b>Or Comparable</b>
	<b>The System must be equipped with at least 2 treatment planning systems WS's for the planning and treatment of SRT/S cases,3D conformal radiation therapy w/MLC's which IMRT and VMATincludes all necessary hardware, software, licenses and interfaces to enable complete functionality with an electronic record and verify ROMIS that will be provided by vendor. The calculation of electron doses in the TPs must be done with a Monte Carlo algorithm.</b>	<b>Or Comparable</b>
	<b>If applicable, the Vendor must supply the dedicated computer systems necessary for full operation and utilization of the System.</b>	<b>Or Comparable</b>
	<b>Vendor must supply all accessories generally associated with the immobilization of patients during radio-surgery for intra-cranial and extracranial sites.</b>	<b>Or Comparable</b>

	<p>Upon installation, vendor must provide all data collection services and cover all costs associated with the necessary acceptance testing and commissioning data collection of ALL clinical treatment systems (photon and electron data collection, IGRT, IMRT, VMAT, SRT/S, etc) and BOTH existing (Nucletron Oncentra) and new (SRT/S treatment planning system) treatment planning systems associated with this IFB under the direction and personal participation of the Chief Physicist and/or their designee. Any hardware, software, license, interfaces, phantoms and other equipment necessary for all routine quality assurance recommended or required by the Vendor, NYC, NYS and Federal law shall be provided by the Vendor for those purposes. This includes but is not limited to equipment necessary to perform quality assurance of: a) both the gated and non-gated IGRT system, b) per patient-plan IMRT, VMAT and SRT/S, c) the SRT/S system's positional and dose delivery accuracy, d) photon and electron beam AAPM TG-51 dose calibration, flatness and symmetry profile checks, e) X-ray to light field congruence, f) all aspects of a modern LINAC's mechanical systems checks according to AAPM's TG#142, g) the total system's performance on an annual basis as part of an annual calibration using a water scanning phantom and reservoir tank system capable of full 40 cm by 40 cm field measurements to depths of up to 30 cm with full scatter conditions at a machine isocenter of 100 cm set at the water surface, h) the LINAC's daily output, symmetry and X-ray/light field congruence constancy.</p>	<p>Or Comparable</p>
	<p>An intercom system shall be provided between the LINAC vault and the LINAC console. At least 3 neutron-hardened cameras with pan/tilt/zoom capability as part of a video surveillance or remote monitoring systems shall be provided and installed in the LINAC vault with viewing, monitoring and controls at the TX console. At least 2 additional cameras with pan/tilt/zoom capability as part of a video surveillance or remote monitoring systems shall be provided and installed at the LINAC control console area. Both of the video systems above shall be accessible via secure, password protected intranet network connection using common web browser software with PTZ control capability and must have DVR systems provided which will record and store high resolution video from all of the installed cameras for a period of at least 1 month.</p>	<p>Or Comparable</p>
	<p>A full, solid state laser isocenter alignment system with overhead, left/right side, sagittal and overhead lasers shall be provided and installed in the LINAC vault.</p>	<p>Or Comparable</p>
	<p>System must be equipped to perform SBRT, SRS, and respiratory gating procedures.</p>	<p>Or Comparable</p>
	<p>System must be equipped to perform 1 and 2 arc VMAT for SBRT procedures.</p>	<p>Or Comparable</p>
	<p>The system must allow for auto field sequencing and automation of treatment fields.</p>	<p>Or Comparable</p>



	The system could allow on the fly addition of imaging field sequence by the therapist.	Or Comparable
	On board KV imaging (2D and 3D CBCT) with automated record and verify compatibility (online and offline fusion)	Or Comparable
	The system must include the ability to allow remote access for monitoring of LINAC performance.	Or Comparable
	Minimum 80cm bore.	Or Comparable
	Dual photon Energy Linear accelerator (6MV and High with optional 6X High Intensity Mode energy 6X FFF mode).	Or Comparable
	<0.5mm radius run-out for gantry and collimator axes.	Or Comparable
	<0.75mm radius run-out for gantry, collimator and couch axes.	Or Comparable
	Max field size 40x40cm.	Or Comparable
	Dose rate for 6MV and High.	Or Comparable
	Electron energy (6, 9, 12, 15, 18 MeV).	Or Comparable
	Image guided couch with <1mm motion accuracy.	Or Comparable
	Remote couch motion option.	Or Comparable
	IMRT capabilities for entire 40 x 40cm FOV.	Or Comparable
		Or Comparable
	Advanced Dynamic MLC (MLC motion for ARC and dose dynamic beams).	
	Sliding window capabilities.	Or Comparable
	Electronic Portal imaging capabilities with automated record and verify compatibility (online and offline registration).	Or Comparable
	40cm by 30cm active imaging area.	Or Comparable
	Radiographic 2D images.	Or Comparable
	Fluoroscopic 2D images.	Or Comparable
	Cone beam CT 3D images.	Or Comparable
	Volumetric modulated arc therapy capabilities (VMAT).	Or Comparable
	Enhanced or Universal wedges.	Or Comparable
	Auto field sequencing.	Or Comparable
	Integrated treatment console.	Or Comparable
	Treatment delivery functionality including treatment , setup, verification and record of treatment from a single file.	Or Comparable
	MLC and portal images acquisition from a single application.	Or Comparable
	KV images including CBCT from a single application.	Or Comparable
	Photos, activity and setup info display.	Or Comparable
	Integrate with record and verify.	Or Comparable
	Record of interrupted or partial treatment.	Or Comparable
	Multi user login.	Or Comparable
	Offer Marketing assistance.	Or Comparable
		Or Comparable
	Offer medical coding updates based on functions of selected equipment.	
	The system must have a digital central control system for safety and better performance.	Or Comparable

	Selected vendor must be able to complete the installation of equipment including all ancillary systems, as well as provide beam data collection and other data for physics acceptance testing and commissioning under the supervision of the physics group for compliance with regulatory requirements.	Or Comparable
		Or Comparable
<b>II</b>	<b>LINAC SOFTWARE &amp; HARDWARE MAINTENANCE SPECIFICATIONS:</b>	Or Comparable
<b>A</b>	<b><i>Service Contract Requirements:</i></b>	Or Comparable
	Principal Coverage Period: 8am-5pm Mon – Friday	Or Comparable
	Uptime Guarantee: 99%	Or Comparable
	Service call reply/response time: 30 minutes	Or Comparable
	Service on-site: Certified Service Engineer arrival time: 4 hours	Or Comparable
	Part(s) order requirement: by Noon Eastern Standard time to assure next day delivery.	Or Comparable
	Unlimited labor coverage on-site during the principle coverage period.	Or Comparable
	Provision of labor rates for service hours outside of principle coverage period, including holidays.	Or Comparable
	Up to 10 year contract covering the useful life of the equipment.	Or Comparable
	Parts Delivery: within 24 hours of part order.	Or Comparable
<b>B</b>	<b><i>Hardware Support Package:</i></b>	Or Comparable
	For all hardware used and associated with the operation of the System, Bidder shall supply a comprehensive support, service, and maintenance package (“Hardware Maintenance Package”) with the following specifications:	Or Comparable
	The Hardware Maintenance Package shall commence upon the complete installation of the system, as defined above in paragraph 3 of this Section III(C), IFB Requirements/Detailed Specifications.	Or Comparable
	The Hardware Maintenance Package shall encompass, but not be limited to: (i) service visits upon SUNY-DMC’s request, necessary to remedy malfunctions in the System; (ii) installation and replacement of all malfunctioning and/or necessary parts, to ensure the System's proper function; (iii) supply, delivery, and transportation of all necessary spare parts; (iv) two preventive maintenance visits per twelve month period; and (v) training, instruction, and assistance in the operation of the System, given by Vendor’s licensed and trained personnel to SUNY-DMC’s designated personnel.	Or Comparable
	The Hardware Maintenance Package shall include an uptime guarantee of 99%.	Or Comparable



	<b>Technical support through the Hardware Maintenance Package shall operate from Monday through Friday, from the hours of 8:00 A.M. E.S.T through 9:00 P.M. E.S.T. Vendors should also include rates associated with technical support provided outside of this time range.</b>	<b>Or Comparable</b>
	<b>Planned Maintenance: the manufacturer's recommended amount of PM's per year.</b>	<b>Or Comparable</b>
	<b>Technical Phone Support with hardware &amp; software: 24 hours/7days per week including Holidays.</b>	<b>Or Comparable</b>
	<b>Real time technical support via remote service connection.</b>	<b>Or Comparable</b>
	<b>Single point of contact such as a centralized call center provided by the manufacturer for all service calls.</b>	<b>Or Comparable</b>
	<b>Quality Assurance supports to maintain the quality specification as per the equipment/unit specifications, which should include testing, physical safety, electrical, and support system evaluations. A log with the reporting of any findings and their corrective actions should be provided for quality assurance data generation and tracking.</b>	<b>Or Comparable</b>
	<b>Ancillary systems maintenance for all ancillary components of the magnet and coolant/refrigeration units.</b>	<b>Or Comparable</b>
	<b>American College Radiology or American College of Radiation Oncology accreditation assistance to aide in confirming quality of the TG142, record and verify, and other system requirements for accreditation. Moreover, unlimited technical and clinical application support pertaining to the readiness of the system, including tips and training relative to the ACR or ACRO accreditation process.</b>	<b>Or Comparable</b>
	<b>Inclusion of an ARRTaccredited self-study program that is relative to the latest trends in therapeutic imaging which will provide up to 12 category A credits.</b>	<b>Or Comparable</b>
	<b>Provision of system software upgrades, at least 1 successful system computer hardware replacement.</b>	<b>Or Comparable</b>
	<b>Application support including troubleshooting by a certified advanced applications expert, either remotely or direct (hands-on) via remote access to be providing during principle coverage period.</b>	<b>Or Comparable</b>
	<b>Subscription to internet learning for up to 3 technologists for up to 12 category A continuing education credits that are recognized by the ARRT.</b>	<b>Or Comparable</b>
	<b>Coverage of IT service calls concerning server hardware.</b>	<b>Or Comparable</b>

	Access to a web-based portal or website that can provide utilization data including the ability to produce reports that can be exported or saved by the user. Moreover should have access to information related to diagnostic imaging equipment such as service, PM management tools, service documentation, service contract management tools, asset management tools, equipment performance reports, etc.	Or Comparable
	Provision of a workstation engines that can be used for post-image generation manipulation, including support of the licensed workstation engines.	Or Comparable
	Non-Inclusion of travel time for Service Engineer to and from our facility during the principal coverage period.	Or Comparable
	Inclusion of on-site parts and labor costs during principle coverage period.	Or Comparable
<b>C</b>	<b><i>Software Support Package:</i></b>	Or Comparable
	For all software used and associated with the operation of the System, Bidder shall supply a comprehensive support, service, and maintenance package (“Software Support Package”) with the following specifications:	Or Comparable
	The Software Support Package shall commence from the complete installation of the system, as defined above in paragraph 3 of this Section III(C), IFB Requirements/Detailed Specifications.	Or Comparable
	The Software Support Package shall encompass, but not be limited to: (i) troubleshooting of all software malfunctions; and (ii) periodic updates, patches, and fixes necessary for the System’s optimal functionality.	Or Comparable
	The Software Support Package shall include an uptime guarantee of 99%.	Or Comparable
	Technical support through the Software Support Package shall operate from Monday through Friday, from the hours of 8:00 A.M. E.S.T through 9:00 P.M. E.S.T. Vendors should also include rates associated with technical support provided outside of this time range.	Or Comparable
	Should SUNY-DMC seek support under the Software Support Package, Vendor shall react to SUNY-DMC’s reports of the malfunctioning System by phone call, within twenty four (24) hours. If the malfunction cannot be remedied by Vendor’s phone support, Vendor shall undertake the necessary on-site repair or dispatch of spare parts within one business day of such phone assessment. Should emergency repair be required, Vendor shall utilize best efforts to provide such service, with such emergency service to be charged at a reasonable rate demarcated in the Contract arising hereunder.	Or Comparable

	<b>Technical support through the Software Support Package shall be available both telephonically and in-person.</b>	<b>Or Comparable</b>
	<b>Out of Scope Services: Should SUNY-DMC require Vendor to render any services outside the hours contemplated herein, Vendor shall utilize best efforts to provide such services. SUNY-DMC shall compensate Vendor for these services at the rate provided in Vendor's Cost Proposal.</b>	<b>Or Comparable</b>
	<b>Should SUNY-DMC seek support under the Software Support Package, Vendor shall react to SUNY-DMC's reports of the malfunctioning System by phone call, within twenty four (24) hours. If the malfunction cannot be remedied by Vendor's phone support, Vendor shall undertake the necessary on-site repair or dispatch of spare parts within one business day of such phone assessment.</b>	<b>Or Comparable</b>
	<b>Technical support through the Hardware Maintenance Package shall be available both telephonically and in-person.</b>	<b>Or Comparable</b>
	<b>Out of Scope Services: Should SUNY-DMC require Vendor to render any services outside the hours contemplated herein, Vendor shall utilize best efforts to provide such services. SUNY-DMC shall compensate Vendor for these services at the rate provided in Vendor's Cost Proposal.</b>	<b>Or Comparable</b>

# **EXHIBIT H( 27 pages)**

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1. A design and Construction Project Description & Outline Scope Design( 3 pages)
2. C1 UHB- SB 01-08-14 Drawing ( 1 page)
3. C2 UHB-SB\_MECH BIG Drawing(1 page)
4. Consultant Agreement( 17 pages)
5. Labor & Material Bond( 4 pages)
6. Liquidated Damages ( 1 page)

## **Linear Accelerator Replacement Project Description and Outline Scope of Design Services and Construction Work**

### Project Description

The Project is a direct replacement of University Hospital of Brooklyn's LINAC Radiation Therapy System. The system is replacing an existing unit in the same vault, using the same equipment and control rooms. There is no change to extents, area or physical adjacencies of the vault or its adjacent spaces. The Project includes replacement of all necessary HVAC, mechanical, electrical, plumbing, fire detection / suppression, and related systems as required to accommodate the new system; as well all finishes, fixtures and furnishings in the spaces.

This procurement is for the acquisition and installation of the LINAC system, including all design – professional architectural, engineering and other sub-consultants as may be necessary -- and construction services necessary for a complete installation of the system and delivery of the Project as required. The selected vendor shall provide full architectural and engineering design services in compliance with the State University of New York Consultant Agreement (for Construction Projects); attached hereto as part of **Exhibit D**; all Construction services shall be in accordance with State University of New York Agreement for Construction Services – also included in **Exhibit D**, hereto.

The term of this Project, including all phases – design, demolition, construction, equipment installation, commissioning and User training -- shall not **exceed 275 calendar days**, commencing ten (10) calendar days after the full execution date on the Agreement.

### Architectural and Engineering Services

The Design Consultant selected by the LINAC Vendor, and approved by the University, shall provide full professional services as generally described in Exhibit D, *SUNY Consultant Agreement*, to renovate the spaces for the new radiation therapy system, and existing or associated infrastructure systems, including, but not limited to the following phases and services.

- Concept / Programming Phase
- Design Development Phase
- Construction Document Phase
- Bid Period
- Construction Administration
- Detailed survey of the existing conditions of the spaces prior to the start of Program / Design to properly inform the process.
- Meetings and coordination with the University's selected LINAC vendor to incorporate the manufacturer's equipment requirements into the design documents. This includes, but is not limited to the chiller for the LINAC, which shall be specified by, and provided, by the equipment vendor, and any and all other physical, or engineering equipment.
- Survey of condition and performance of existing HVAC systems serving the procedure room and related spaces, recommendations as any necessary modifications to "house" systems and modifications or replacement of any supplemental systems serving these spaces.

- Meetings, presentations and reviews of all schemes, layouts, finishes, etc., with the User Department and Design and Construction / FM+D as necessary during each phase.
- Formal approval and acceptance of the documents of each phase by User Department and Design and Construction / FM+D prior to the Consultant proceeding to the successive phase. This approval shall include review and acceptance by the University of a Construction Cost Estimate at the end of each Design Phase, and a Final Estimate of Construction Cost, with the completion of Construction Documents.
- The Consultant shall coordinate its design services, as directed by the University, with the any vendor of the University, and shall incorporate vendors' input with its design. This shall include, but not be limited to products and systems currently standardized for the Campus or the Hospital, such as fire alarm systems, building management controls, etc.
- Minimum Mandatory Qualifications for Design Consultants
  - The Design Consultant, and any sub-consultant firms, shall have key design professionals (*architects, engineers and related disciplines*) licensed by, and currently registered to practice their respective disciplines in the State of New York. All work of the Project shall be performed by, or directly supervised by said licensed professionals, Further, any and all design and construction documents, issued for construction, shall bear the seal and signature of the licensed design professional that prepared or supervised the documents for that discipline. The Design Consultant must have completed no less than two LINAC Projects, new or replacement, of similar scale and scope in the last three years.
  - The Design Consultant must have been in the business, practicing architecture for a minimum of ten (10) years;
  - and shall have successfully completed, in that aforementioned period, a minimum of five (5) projects involving diagnostic and treatment medical imaging, radiation therapy systems of similar scale and scope;
  - And no less than two of those projects shall have included radiation therapy systems.
  - And no less than two of the above projects shall been within a functioning acute care hospital in New York State.

#### Construction Services

The Construction Contractor selected by the LINAC Vendor shall provide complete construction services to renovate the spaces for the new radiation therapy system, and existing or associated infrastructure systems, in accordance with Exhibit D, SUNY Construction Agreement (included in this Procurement within the part labeled *IFB 15-14 – LINAC*, as **EXHIBIT “D” – SUNY-DMC Constructions Terms and Conditions**).

- The work of the Contractor, shall meet the full intent of the Plans and Specifications prepared by the Design Consultant and approved by the University, notwithstanding that means and methods of construction and sequence of operations shall be the responsibility of the Contractor.
- The Contractor shall coordinate its work, as directed by the University, with any vendor of the University, and shall incorporate vendors' input with its work.
- The Contractor shall specifically use the products and vendors of systems that the University deems standard for the Campus or the Hospital; such specific systems include, but may not be limited to the fire alarm systems (Simplex Grinnell) and the Building Management System (Honeywell).

#### Minimum Mandatory Qualifications of Construction Contractor

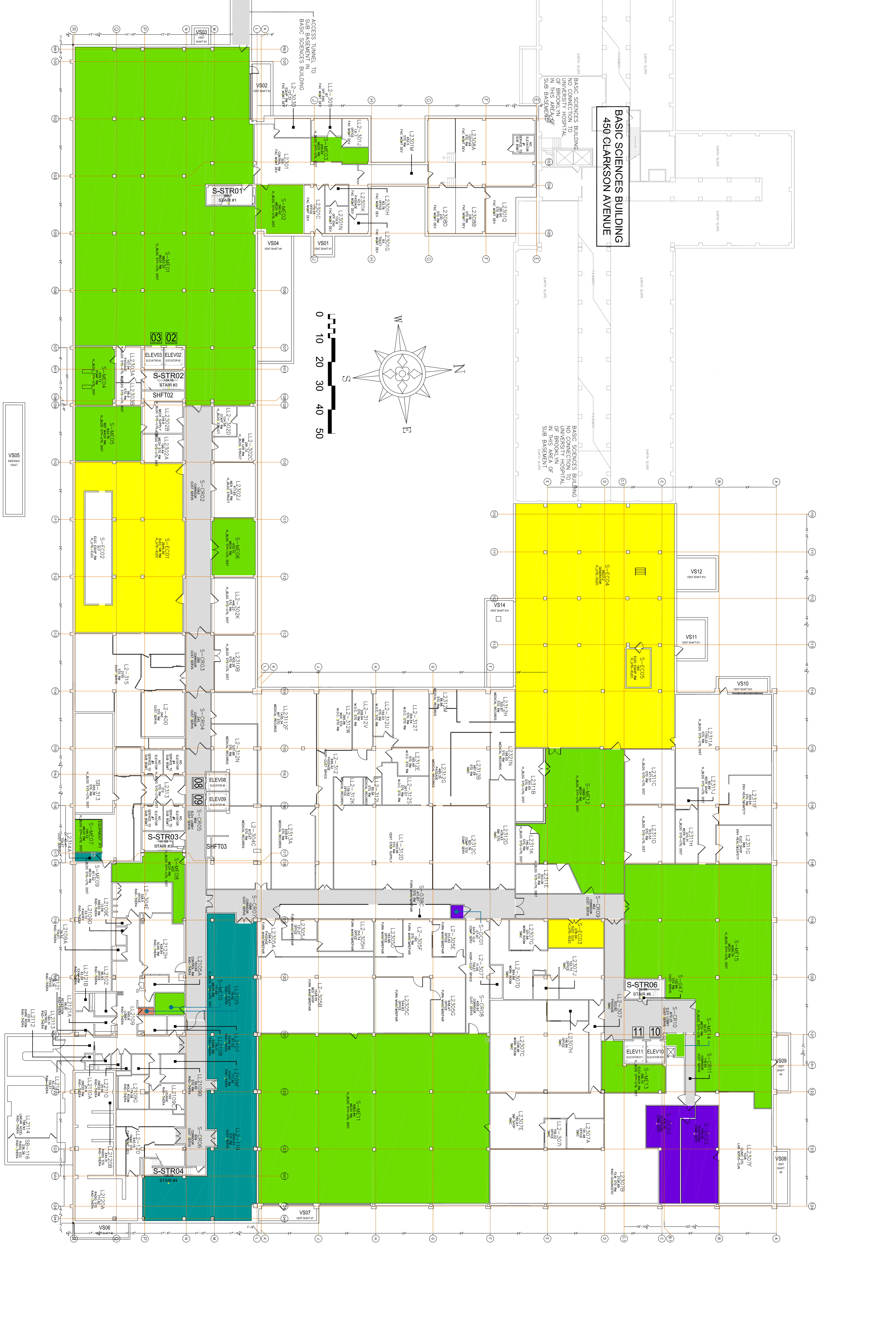
- The Construction Contractor is hereby notified that, on request of the University, they must be able to prove to the satisfaction of the University that they have the skill and experience, as well as the necessary facilities, ample financial resources, organization and general reliability to do the work, as described in the Project Description, to be performed under the provisions of the Contract in a satisfactory manner and within the time specified.

- The Construction Contractor will be responsible for obtaining all required construction permits from authorities having jurisdiction. Permits will be required from the City of New York for work outside the Hospital building and on the Street; permits from the State of New York are required for construction on and in the Hospital and such will be issued by the University. All rigging and permits required for rigging the linear accelerator and its associated equipment are the responsibility of the equipment vendor.
- The Construction Contractor must be prepared to show to the satisfaction of the University that it has working capital available for the Project in an amount equal to 15 percent of the first \$100,000 of the amount of the final estimated cost of construction as defined by the Consultant plus 10 percent of the next \$900,000 plus 5 percent of the remainder of the final estimated cost of construction. Working capital is defined as the excess of current assets over current liabilities. The University defines current assets as assets which can be reasonably expected to be converted into cash within a year, and current liabilities as debts which will have to be paid within a year.
- The Construction Contractor must also be prepared to prove, to the satisfaction of the University, that it has successfully completed a contract of similar work in an acute care hospital, of an amount of not less than 75 percent (75%) of the final estimated cost of construction of this Project. That prior work must have included construction or gut renovation of a radiation therapy suite of similar scale in a continuously functioning acute care hospital. Such work shall have been designed and constructed under the same applicable codes, guidelines and standards as are referenced by the Consultant and the University for this Project. Contractors must further be thoroughly familiar with OSHA, CMS, NYSDOH, ICRA/ILSM, NYS Building Code and Codes for the Construction of Hospitals, and the 2010 Guidelines for Health Care Facilities, published by FGI. For the purposes of this bid a gut renovation shall be defined as the complete demolition of the space including the existing department interior walls and existing infrastructure systems followed by the reconstruction of that area including new infrastructure systems. A qualifying gut renovation must, specifically, include new mechanical / electrical / plumbing / fire protection / suppression systems.
- A Construction Contractor must be prepared to prove, to the satisfaction of the University, that it has the capacity with its own forces, and those of its major subcontractors, to perform the work of the Project in the sequence and simultaneous manner as may be described in the documents prepared by the Consultant, and complete all the work within the stipulated Contract term.
- A Construction Contractor must be able to demonstrate that it has been in the business of general construction for no less than ten (10) years and has at least seven (7) years of experience in similar work to this project. Similar work is defined for this Project as a linear accelerator radiation therapy project in an operating NYS Hospital.
- A Construction Contractor shall provide upon request of the University references from 5 (five) sources for projects of similar type, size and scope.

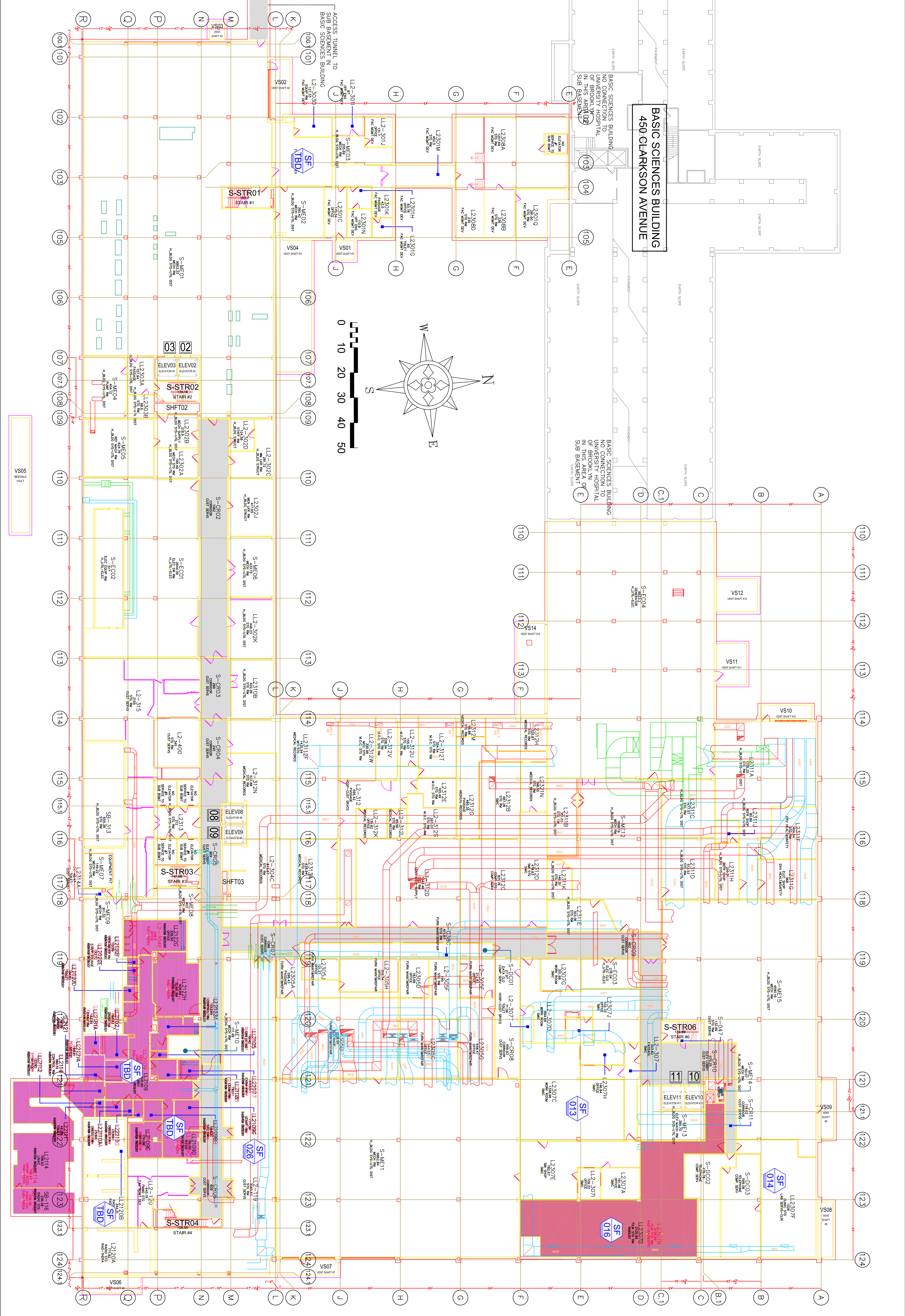


- *Consultant Agreement\_7555-10.pdf*









**STATE UNIVERSITY OF NEW YORK  
CONSULTANT AGREEMENT  
(For Construction Projects)**

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This Agreement made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for Contract Number \_\_\_\_\_ by and between STATE UNIVERSITY OF NEW YORK, a corporation organized and existing under the laws of the State of New York, with its principal office located at State University Plaza, Albany, New York 12246, on behalf of State University of New York at \_\_\_\_\_, located at \_\_\_\_\_, hereinafter referred to as "University" and \_\_\_\_\_ having its principal office located at \_\_\_\_\_, hereinafter referred to as "Consultant".

WITNESSETH:

WHEREAS, the University desires the design of the work contained in Project Number \_\_\_\_\_, titled \_\_\_\_\_

at \_\_\_\_\_, Agency Code \_\_\_\_\_, for a total fee of \$ \_\_\_\_\_, (  
*in figures* \_\_\_\_\_, (*in words* \_\_\_\_\_), and

WHEREAS the Consultant is willing to undertake the design of such Project for the compensation stated above,  
NOW, THEREFORE, the parties in consideration of the mutual covenants herein contained agree as follows:

**Article I  
CONSULTANT'S BASIC SERVICES**

The Consultant shall provide such professional services as may be necessary to complete the design and construction of the Project. The same shall include, but are not limited to, the following:

**SECTION A - GENERAL SERVICES**

1. Determination of the staffing and subconsultants necessary for the timely performance of the services required hereunder to meet the University's program requirements.
2. Periodically advising the University of the progress of the planning, design and construction of the Project and any anticipated delay in the same.
3. Attendance, together with its subconsultants, at all conferences reasonably required by the University and the taking, preparation and distribution of minutes of all such conferences.
4. Coordination of all the services to be provided hereunder with related projects of the University being undertaken by the Consultant or by others.

**SECTION B - SPECIFIC SERVICES**

**1. Program Phase**

- a. Attendance at orientation meetings at the Project site and University office to review the terms of this Agreement, University procedural requirements at various development phases and the Program

of the Project. For the purposes of the Agreement, the term "Program" includes: this Agreement, the Letter of Intent, the Scope of Services, State University Construction Fund Directives, and the comprehensive Project program addenda and the Program Budget.

- b. Preparation of an analysis of the following factors: educational requirements; site and property requirements; environmental influences; availability, relocation, provision and extension of all utilities; local building practices; time schedules for all phases of the Project; budget and cost forecasts; pedestrian access and egress patterns; public transportation facilities; vehicular traffic, and parking availability and nature.
- c. Review of the Program, function, scope and intent of the Project, and, when deemed necessary by the University, the preparation of drawings indicating the contract limits of the proposed construction contract.
- d. Preparation of an analysis of the site and, in the case of the rehabilitation of an existing building, the existing condition of the building, including, but not limited to, determining the location, measurement and submitting a report to the University setting forth such analysis and specifying additional information, such as topography, soil data, and municipal agency and utility company projects that may be required for the development of the Project and containing recommendations for the action necessary to obtain such information.
- e. Preparation of diagrammatic studies of the Project showing, in the case of a project involving a structure, the utilities and other structures; and, in the case of a project involving site work, the relationship of site systems to the site, services, utilities and structures.
- f. Preparation of an analysis of the probable cost of the Project, based upon square foot area, volume and/or systems involved.
- g. Preparation and submission to the University for its approval of a Program Phase Report, prepared in a format acceptable to the University, setting forth in detail the function, scope and intent of the Project. Submission of the aforesaid report by the Consultant shall constitute its acceptance of the Program, unless otherwise specified and agreed to by the University in writing.

## **2. Schematic Design Phase**

- a. Preparation, submission and presentation to the University of the architectural concept of the Project (Schematic Approach) to illustrate the fundamental character of one or more design concepts which satisfy the basic program requirements of the Project, including but not limited to, preparation of sketches in plan of the Project.
- b. Preparation and submission to the University for its approval of a Schematic Design Report, which shall include, but not be limited to:
  1. Such graphic material, code analysis, and information as is necessary to fully illustrate the proposed design and the construction materials of the Project and the relationship of the Project to other projects on the campus, either existing or proposed, and such other factors that may affect the design of the Project or otherwise involve or relate to the Project.
  2. Engineering reports analyzing and economically justifying the proposed structural, mechanical, electrical and other technical systems included in the Project.
  3. A cost estimate, hereinafter referred to as the "Schematic Cost Estimate", of sufficient detail to indicate that the proposed design can be constructed within the limitations of the Program Budget.

## **3. Design Manual Phase**

- a. Preparation of preliminary plans of the Project, including elevations and/or sections, which plans shall be based on the approved schematic design and the University's comments thereon and shall fully develop graphically the design, scope and concept of various systems of the Project.



- b. Preparation of outline specifications describing in narrative style design decisions in each of the technical areas, performance criteria and materials of various components and systems of the type of structure and/or site work, systems and such other work and details as may be required to complete the design of the project.
- c. Preparation, in the case of a project involving a structure, of furniture, furnishings and equipment layouts of all rooms and spaces in the Project.
- d. Preparation, in the case of a project involving a structure, of an analysis of the relationship of the designed gross and net square foot areas to programmed areas of the Project.
- e. Preparation of study perspectives and models illustrating in detail the architectural design of the Project.
- f. Preparation and submission for approval, during the preparation of preliminary plans and outline specifications, of a detailed cost estimate based upon a preliminary quantity takeoff of all work necessary for the complete construction of the Project, which estimate is hereinafter referred to as the "Design Manual Cost Estimate." The Design Manual Cost Estimate shall be in sufficient detail to demonstrate to the University that the work designed is within the University's Program Budget.
- g. Preparation and submission for approval of scope descriptions and cost estimates of such feasible design alternatives as will allow for construction contract award flexibility.
- h. Preparation and submission for approval of a Design Manual Report, incorporating design decisions, preliminary plans, outline specifications, cost estimate, time schedules and such other information required by the Design Manual Report.
- i. Presentation of the approved Design Manual Report to University representatives.

#### **4. Construction Document Phase**

- a. Preparation and submission for approval of complete final working drawings which shall clearly define all additive and/or deductive alternates and all graphic illustrations necessary to accurately bid and complete the construction of the Project. The Consultant's compensation, if any, for services in connection with alternates shall be determined in accordance with the provisions of Section D (8) of Article III hereof.
- b. Preparation and submission for approval of a complete set of final specifications in University format setting forth in detail and describing the work to be performed by the contractor and the finish and the quality of materials and workmanship to be required of the contractor.
- c. Preparation and submission for approval of a detailed cost estimate, based upon the complete contract documents, of all work necessary for the complete construction of the Project, which estimate is hereinafter referred to as the "Pre-Bid Cost Estimate." In the event the bids of all qualified, responsible and reliable contractors for the construction of the Project are in excess of the amount of the Program Budget, as of the approved bid date, the Consultant, to the extent necessary in the University's judgment to bring the cost of the Project within said Program Budget, shall revise, subject to the approval and acceptance by the University, all or any part of the drawings and specifications of the Project that the University may deem advisable or, if the construction contract for the Project has been awarded by the University, the Consultant shall prepare all credit change orders, including any necessary revisions to the drawings and specifications that the University may deem advisable to bring the cost of the Project within said Program Budget. Notwithstanding any other provisions of this Agreement, all of the foregoing services to be provided by the Consultant, under the provisions of this paragraph, shall be provided by it without reimbursement of costs or any additional compensation therefor unless the Consultant can justify to the satisfaction of the University that the factors that caused the variance between the low bid and said Program Budget were not the responsibility of the diligence and its best efforts. For the purposes of this subdivision only, the term Program Budget shall be the amount that the University is willing to spend for construction of the Project.

- d. Application to the Labor Department of the State of New York for wage schedules for each construction contract and incorporation of the same in the specifications for each contract.
- e. Preparation and submission for approval of a Pre-Bid Report, which shall include, but not be limited to, the final working drawings and specifications and "Final Cost Estimate" to the University for its review and approval a minimum of four (4) weeks prior to the date set for the advertisement for bids from contractors. The Consultant assumes complete responsibility for the correctness, accuracy and completeness of the final working drawings and final specifications and for their coordination with the work of its subconsultants. The approval of such drawings and specifications by the University shall in no way affect or limit this responsibility of the Consultant.
- f. The assemblage and distribution of the bid documents to prospective bidders and plan rooms.
- g. The seeking of bidders, opening and analysis of bids, investigation and selection of bidders and recommendations relative to the award of each contract for the construction of each Project.

#### **5. Construction Phase - General Administration of Construction Contracts**

- a. Furnishing general administration of each construction contract awarded for the Project until final completion and acceptance by the University of the construction of the Project.
- b. Furnishing such field administration of each construction contract and inspection of the work of each contractor in an effort to guard the University against inferior materials or workmanship. The Consultant shall use all reasonable care and diligence and exercise its best efforts to see that the Project is constructed in accordance with the drawings and specifications. Through the use of such care, diligence and efforts and any action taken by the Consultant in accordance with this Agreement or under each construction contract, the Consultant does not, however, guarantee that a contractor will not breach its construction contract, but the Consultant shall use all reasonable care and diligence and exercise its best efforts to discover any breach and after it becomes aware of any breach it shall immediately notify the University thereof. In the event of such breach, the Consultant shall submit to the University its recommendations for appropriate remedial action.
- c. Arranging for and/or providing, at regular intervals, and at special times as directed by the University, field administration and inspection of each construction contract by home office personnel of the Consultant and its subconsultants who are expert in the technical areas of work involved in the Project. The Consultant shall provide such field administration and inspection on an average of not less than twice a month during the Construction Phase and shall require its subconsultants to provide such field administration and inspection not less than twice a month during the Construction Phase when work in the subconsultant's specialty is in progress. Said services shall be provided without additional compensation except that, when the total direct labor cost of the same, and a sum equal to 150 percent thereof, equals one-half of the Construction Phase Fee, additional services in the field, unrelated to any fault or omission of the Consultant or its subconsultants, required and approved in writing by the University, will be paid for by the University in accordance with the provisions of subdivision (3) of Section D and subdivision (2) of Section E of Article III hereof.
- d. Furnishing a Field Representative and such assistants as are required, where the same are requested and approved in writing by the University, to give full-time personal field administration of each construction contract and inspection of and attention to all the work to be performed by each contractor. The field administration, inspection and attention provided by the Field Representative and/or assistants shall not be in lieu of or a substitute for the administration, inspection and attention required to be furnished by the Consultant hereunder but shall be in addition thereto. The Consultant's compensation for such Field Representative and assistants shall be determined in accordance with the provisions of Section D (2) and (7) of Article III hereof.
- e. Obtaining, reviewing and approving, when the same is satisfactory, each contractor's time progress schedule. The Consultant shall use all reasonable care and diligence and exercise its best efforts to see

that the completion date for the construction of the Project, as set forth in each construction contract, is met, and, to this end, it shall periodically review the construction progress and performance and advise the University of the same. Each construction contract for the Project shall provide that time is of the essence for the completion and construction of the Project and the Consultant agrees to assist the University in an effort to achieve the specified completion date by advising the University of actions that could be taken to prevent or eliminate delays. The Contractor shall have responsibility for its time, means and methods of construction and for construction site safety.

- f. Development with each contractor of a time schedule covering the preparation and submission of all shop drawings and samples, which schedule shall be designed to avoid delays during construction and to assure an even flow of work. The Consultant shall utilize all reasonable care and diligence and exercise its best efforts to see that each contractor adheres to such schedules. The Consultant shall review and comment upon shop drawings and samples furnished by each contractor within fifteen (15) working days of receipt of the same; provided, however, the same are submitted in accordance with the aforesaid time schedule.
- g. Assumption of complete responsibility in the first instance for the interpretation of the substitution, prior concurrence of the interpretation must be obtained from the University.
- h. Taking of positive action, within the limits of the Consultant's authority hereunder and under the provisions of the applicable construction contract, to safeguard the interest of the University whenever the necessity for such action comes to the Consultant's attention.
- i. The preparation of technical documents, if any, and procedural forms for the execution of Change Orders. The solicitation of price quotes from the Contractor for proposed Change Orders and the evaluation and recommendation of the Contractor's responses. The authorization, together with the University, of all Change Orders. Except in the case of an emergency which threatens loss or injury to persons or property, neither the consultant nor any of its representatives can authorize any change order to a construction contract or change in the work covered by the construction contract. The Consultant's compensation, if any, for services in connection with change orders shall be determined in accordance with the provisions of Section D (6) of Article III.
- j. Keeping of records setting forth the field progress, the submission and processing of shop drawings and samples and the progress of the Project as it relates to each requisition for payment of each contractor.
- k. Reviewing and approving, when the same are satisfactory, partial and final requisitions submitted by construction work.
- l. Conducting of field meetings, held at regular intervals, with representatives of the various trades and of the contractors engaged in the construction of the Project and the preparation and distribution of the minutes of such meetings.
- m. Monthly submission of progress reports to the University during the Construction Phase of the Project based upon personal observation of the Consultant or its staff, which reports shall include, but are not limited to, an analysis of the construction time schedule as contrasted to field progress and anticipated delays in construction.
- n. Assemblage of written guarantees, manuals and as-built drawings required of each contractor and submission of the same to the University.
- o. Inspection of the Project thirty (30) to forty-five (45) days prior to the time the University is to take over, use, occupy or operate any part or all of the Project and furnishing a punch list and/or report to the University of contractor. The Consultant shall use all reasonable care and diligence and exercise its best efforts to see that such work items until they are satisfactorily completed.
- p. Using all reasonable care and diligence and exercising its best efforts to see that all discrepancies and deficiencies covered by guarantees provided by each contractor are promptly remedied; inspection of the

Project forty-five (45) to sixty (60) days prior to the end of the one (1) year general guarantee period; furnishing a list and/or report to the University of observed discrepancies and deficiencies covered by contractor guarantees; and monitoring and inspecting the performance of the required remedial work.

## **Article II ADDITIONAL OBLIGATIONS AND RESPONSIBILITIES**

### **SECTION A - SEQUENCE OF SERVICES**

Except as herein provided, the services described in Article I shall be rendered in the same sequence as they appear in this Agreement, and, where the Project includes more than one construction contract to be let by the University, the Consultant shall provide all of the services required under this Agreement for each such construction contract.

### **SECTION B - SUBCONSULTANTS**

The Consultant shall not engage, contract with or use the services of any subconsultant without obtaining the prior written approval of the University. The Consultant shall submit for approval a report of the scope of services to be provided by each of its subconsultants, with the latter's acknowledgment thereof. No provision of this Agreement and no approval by the University of the scope of the services to be provided by the subconsultants shall, however, be construed as an agreement between the University and any subconsultant of the Consultant or with any person, firm or corporation engaged by, contracted with, or whose services are utilized by the Consultant, or in any way affect the responsibilities of the Consultant hereunder, and, unless otherwise agreed to in writing by the University, the fees of any subconsultants retained by the Consultant shall be deemed covered by the Total Fee to be paid by the University to the Consultant.

### **SECTION C - CONSULTANT'S PERSONNEL**

All personnel assigned by the Consultant to the Project shall be required to cooperate fully with personnel assigned by the University to the Project, and, in the event the Consultant's personnel fail to so cooperate, they, on request of the University, shall be relieved of their duties in connection with the Project.

### **SECTION D - COORDINATION**

The Consultant shall designate one person who, on its behalf, shall be responsible for coordinating all of the services to be rendered by the Consultant hereunder. Such designee shall be subject to the approval of the University.

### **SECTION E - DRAWINGS AND SPECIFICATIONS**

The drawings and specifications prepared by the Consultant shall be in conformity with all applicable laws, governmental rules and regulations, and the requirements of the Program. The Consultant shall be responsible for obtaining all required permits, approvals and clearances from the appropriate state and local authorities with the exception only of such permits, approvals and clearances as are required to be obtained by the contractor or contractors for the Project.

### **SECTION F - PATENTS**

The drawings and specifications prepared by the Consultant shall not, without the prior written approval of the University, specify or require any patented article, design or process which requires payment by the University of royalties for its use or is of a proprietary nature.

### **SECTION G - GRANTS AND LOANS**

In the event that the University is a recipient of or applicant for a grant or loan for the Project from any individual,

firm, association, corporation or foundation or from any governmental department or agency, the Consultant, without additional compensation for up to forty (40) direct labor cost hours, shall attend all conferences requested by the party making the grant or loan, submit all necessary drawings, specifications, documents, forms and estimates for the approval of such party, prepare reports for grant or loan requirements during the Construction Phase and revise any and all drawings and specifications for the Project to comply with the requirements of the aforesaid party in connection with the grant or loan; provided, however, that if, in the judgment of the University, any of such revisions are caused by a change in the requirements of the party making the grant or loan and are found to be necessary after the Consultant's performance of part of the work to be revised, the Consultant will be entitled to extra compensation for such revisions and related extra work in accordance with the provisions of Section D (3) of Article III hereof.

## **SECTION H - REPRODUCTIONS**

The Consultant, at its own cost and expense, shall supply reproductions of plans, specifications, reports and other data and documents pertaining to the Project for its own use, for interoffice use with its sub-consultants. The University shall be entitled to be supplied with a maximum of six (6) reproductions of any plans, specifications, reports and other data and documents required to be prepared by the Consultant pursuant to Article I hereof. Reproduction of Contract Documents for bidding/construction purposes shall be the responsibility of the Consultant, if requested by the University, and shall be reimbursed by the University for the actual cost plus 10 percent.

## **SECTION I - CLAIMS**

In the event any claim is made or any action brought in any way relating to the design or construction of the Project, the Consultant, without additional compensation therefor, will diligently render to the University any and all architectural and engineering assistance which the University may require of the Consultant, including, but not limited to, the making of analyses and reports. Notwithstanding the foregoing, the Consultant shall not be required by the University, without extra compensation therefor, to prepare mock-ups, make tests or testify at a trial or pre-trial proceeding; provided, however, that the Consultant shall furnish such services at its own cost and expense where it is established by a judicial decree or finding that the aforesaid claim or action has arisen from the negligence of the Consultant or the failure of the Consultant to properly and fully perform its obligations and responsibilities under this Agreement.

## **SECTION J - CHANGES AND/OR REVISIONS**

At any time during the term of this Agreement, the Consultant, upon request of the University, shall change and/or revise any and all drawings and specifications of or for the Project.

## **SECTION K - BUDGETS**

The University shall establish a Program Budget based on the amount that the University would be willing to spend for the Project at the time the construction contract or contracts are scheduled to be bid. The estimated cost of construction of the Consultant's design of the Project shall at all times be within the applicable Program Budget unless revised in writing by the University. In the event that such estimated cost is at any time in excess of the University's Program Budget, the Consultant, to the extent necessary in the University's judgment to bring the cost of the Project within said Budget, shall revise, at its own cost and expense, subject to the acceptance and approval by the University, all or any part of the drawings and specifications of the Project that the University may deem advisable. Unless otherwise directed by the University, the cost analysis and all cost estimates referred to in subsections (1)f, (2)b, (3)f, (4)c and (4)e of Section B of Article I hereof shall be prepared by a cost analyst approved by the University.

## **SECTION L - SUPERVISION AND DIRECTION**

The services to be performed by the Consultant hereunder shall at all times be subject to the general supervision and direction of the University. The University shall determine every question of fact which may arise in relation to the interpretation of this Agreement and performance by the parties hereto of their respective obligations and responsibilities hereunder and the decision of the University thereon shall be final, conclusive and binding upon the Consultant unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so



grossly erroneous as to necessarily imply bad faith.

The University reserves the right to have the State University Construction Fund (Fund) act on its behalf at any time or during any phase of the project authorized by this Agreement. Such designation of the Fund to act on behalf of the University shall be in writing addressed to the Consultant and signed by the University.

## **Article III PAYMENT FOR SERVICES**

### **SECTION A - BASIC COMPENSATION**

1. For the purposes of this Agreement, the term "Total Fee" shall mean the total compensation payable to the Consultant under the provisions of subdivisions (1), (2), (3) and (4) of this Section. The Total Fee shall be a negotiated lump sum and shall include any and all costs for subconsultants, telephone, postage, travel, meals, expressly provided in the Agreement, all of the services required to be provided by the Consultant hereunder shall be deemed to be covered by the Total Fee and the Consultant shall not be entitled to extra compensation or reimbursement of its expenses in providing the same.
2. Except as otherwise provided for herein, payment of the fee shall be divided into two parts. The first part shall correspond to the Design Phase of the work and shall equate to 80 percent of the Total Fee. The second part shall correspond to the Construction Administration Phase of the work and shall equate to 20 percent of the Total Fee.

The value of each of the design phases shall be computed as follows:

- a. Upon completion and acceptance by the University of the Program and Schematic Design Phase, a sum to 20 percent of the Total Fee.
  - b. Upon completion and acceptance by the University of the Design Manual Phase, a sum equal to 20 percent of the Total Fee.
  - c. Upon completion and acceptance by the University of the Construction Documents Phase, a sum equal to 40 percent of the Total Fee.
3. Notwithstanding the foregoing, in the event that the University, during one of the Phases of the Project, suspends all or any part of the Project, the Consultant, in lieu of the method hereinabove provided, shall be paid for its services during such Phases as follows: (1) for services performed by the Consultant prior to such suspension, a sum equal to the percentage of completion prior to the suspension; and (2) for services performed by the Consultant following the resumption of all or any part of the Project, a renegotiated sum determined by the Revised Program Budget for the work to be resumed, by the percentage of completion following the resumption of all or any part of the Project.

Substantive program changes made by the University shall, in no way, affect previous payments made to the Consultant.

4. Notwithstanding the provisions of subdivisions (1), (2) and (3) above, if the amount of the bid of the lowest qualified, responsible and reliable contractor does not exceed the University's Program Budget and if the bid is not accepted by the University within six (6) months after its approval of the final working drawings and final specifications, then, the Consultant, unless it and the University otherwise agree in writing, shall be paid only the fee earned under the Design Phase and it shall be deemed to have been released by the University from rendering any additional services hereunder.

### **SECTION B - TIME OF PAYMENT OF BASIC COMPENSATION**

During the Program and Schematic Design Phase, the Design Manual Phase, the Construction Documents Phase, and the Construction Phase of the Project the University shall make monthly installment payments to the Consultant. The amount of the monthly installment payments shall be in proportion to the amount of services rendered by the Consultant as determined by the University on its receipt of reports from the Consultant as to the progress of the services to be furnished in the respective phases.

### **SECTION C - REIMBURSABLE EXPENSES**

Except as otherwise provided for in Section H of Article II hereof, all reproductions of plans, specifications, reports and other data and documents requested by and furnished to or on behalf of the University and all required application fees in connection with the Project shall be paid for by the University on the basis of the Consultant's actual expenditure therefor; provided, however, that the Consultant shall not be entitled to any reimbursement for the cost of typing or drafting of the same.

### **SECTION D - EXTRA COMPENSATION**

1. Final models, photographs and other architectural renderings, as contrasted to study or preliminary models, photographs or other architectural renderings, will be paid for either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent thereof; the manner of payment to be determined by the University prior to the completion of performance of such services.
2. The furnishing of a Site Representative at the frequency and duration directed by the University. Payment for this service shall be on the basis of the Consultant's direct labor costs plus 35 percent, inclusive of all benefits and overhead. The individual and the hourly rate shall be approved by the University.
3. Special technical, engineering and/or consultation services will be paid for either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent thereof; the manner of payment to be determined by the University prior to the completion of performance of such services.
4. Testing laboratory services, topographic, utility, traffic volume, air/water quality and property surveys, test borings, construction progress photos, and, in case of the rehabilitation of an existing building, determining the location, measurement and other essential data of existing architectural, structural, mechanical, electrical and utility features, the details of which, in the judgment of the University, are grossly deficient from a review of existing information and drawings and/or a physical inspection, shall be paid for either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent services.
5. Except for changes and/or revisions prepared by the Consultant pursuant to Section B (4) c of Article I hereof, all changes and/or revisions to drawings or specifications, resulting from a significant program change of the University prior to the award of a construction contract shall be paid for either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent thereof; the manner of payment to be determined by the University prior to the completion of performance of such services. Notwithstanding any of the other provisions hereof, whenever any program change results in an increase or decrease in the estimated cost of the Project, the Consultant's Basic Design Fee for services rendered prior to said change shall be based on the last approved Program Budget and the Consultant's Basic Design Fee for all services rendered after such change shall be based on the approved Revised Program Budget for the phase submission after the change was made.
6. All services rendered by the Consultant in connection with any work item, included in a change order to a construction contract, which results from either: (a) a program change of the University, or (b) conditions which, in the judgment of the University, could not have been reasonably anticipated or foreseen by the Consultant at the time bids for construction of the Project were received, will be paid for by the University on the basis of the approved value of said item multiplied by 5 percent. All services rendered by the Consultant in connection with all other extra work items and all deleted work items, included in a change order to a construction contract, shall be deemed to be covered by the Total Fee.

7. Notwithstanding any of the other provisions of this Section, the University will reimburse the Consultant for such field office expenses, other than salaries and fringe benefits, required or approved in writing by the University which, as a result of the nature of the Project, are, in the judgment of the University, substantially in excess of those field office expenses normally incurred by a Consultant in furnishing field administration of a construction contract and inspection of construction work.
8. Additive and deductive alternates, in which changes in design are involved, as contrasted to a material or equipment substitution or addition which, in the judgment of the University, does not involve design changes, will be paid for either on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent thereof or on the basis of the amount the Construction Documents Payment would have been increased had the value of such alternates been added to the amount of the approved Pre-Bid Cost Estimate; the manner of payment to be determined by the University within sixty (60) days after the award of the construction contract. For the purposes of the preceding sentence, deductive alternates shall be added to, rather than subtracted from, the Pre-Bid Cost Estimate and the value of all alternates shall be deemed to be an amount equal to the bid quoted for the alternates by the lowest bidder or, in the event that the lowest bidder does not submit a bid for such alternates, an average of all bids submitted therefor. Notwithstanding the foregoing, unless otherwise agreed to in writing by the University, the Consultant shall not be entitled to reimbursement of costs or any additional compensation in connection with any alternates for any construction contract or part thereof which is being rebid because all bids previously received by the University were in excess of the amount of the Program Budget of the University therefor and were rejected by the University.

Notwithstanding the foregoing, all services rendered by the Consultant in connection with alternates that involve a material or equipment substitution, addition or deletion which, in the judgment of the University, does not involve design changes, and all services rendered by the Consultant in connection with any additive or deductive alternates prior to the Construction Document Phase shall be deemed covered by the Total Fee unless otherwise agreed to in writing by the University.

9. In the event the Consultant is caused to furnish services, not provided for herein and not previously performed, as a result of the University declaring a contractor in default, damage to the Project by fire or other casualty, or a delay, through no fault or omission of the Consultant, in completion of construction of more than one (1) year after the specified completion date in a construction contract, the University shall pay the Consultant for such services, but, in the case of delayed construction completion, for only those services performed after said one (1) year period, on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent thereof; provided, however, that the Consultant shall not be entitled to extra compensation for monitoring and inspecting either punch list, work or guarantee work items except monitoring and inspection service performed by the Consultant after the expiration of eighteen (18) months from the commencement of the one (1) year general guarantee period.
10. Notwithstanding the foregoing, the Consultant shall not be entitled to extra compensation under any of the preceding subdivisions of this Section unless the services to be provided by the Consultant hereunder have been requested and approved in writing by the University.

#### **SECTION E - PAYMENT OF REIMBURSABLE EXPENSES**

1. The reimbursable expenses and extra compensation provided by the above Sections C and D of this Article shall in each case become due and payable by the University within thirty (30) days after its approval of an invoice to be submitted by the Consultant describing the respective items and services furnished and/or performed and the computation of the cost thereof.
2. The term "direct labor cost" as used in this Agreement refers only to labor furnished by the Consultant. Such cost shall be determined by multiplying the amount of time directly and exclusively devoted to the applicable services by non-technical assistants to the Site Representative and technical personnel of the Consultant by the respective charges for such personnel's time; provided, however, that no charge shall be included for time of such personnel if they are not paid for the same. Charges for employees' time will be computed on the basis of their regular rates of gross pay, exclusive of any premiums paid for overtime, except where the University

authorizes and agrees in writing to pay for such overtime, which rates shall be filed with and approved by the University. Charges for time of the Consultant's officers or members of the firm will be computed on the basis of a rate of fifty dollars (\$50) per hour. Except as otherwise specifically provided herein, no charges shall be included for time of non-technical personnel or the cost of benefits, required by law or otherwise, to non-technical or technical personnel.

When services for which the Consultant would be entitled to extra compensation under Section D (1) through (9) of Article III hereof are furnished, upon request and approval in writing by the University, by a person, firm or corporation other than the Consultant, the University, in lieu of the payments hereinabove provided, which would have been made had such services been furnished by the Consultant, will only pay the Consultant for such services on the basis of the Consultant's actual expenditure therefor plus a sum equal to 10 percent thereof; provided, however, that the Consultant shall not be entitled to said 10 percent override when, in connection with or related to the services furnished by said other person, firm or corporation, it has been or will be compensated by the University for the direct labor costs of its own technical personnel.

3. Notwithstanding anything to the contrary hereinabove set forth, where labor and/or materials utilized by the Consultant in furnishing the services to be provided by it hereunder are furnished by a person, firm or corporation Consultant shall not be entitled to any further payments hereunder until it submits proof that such labor and/or materials have been paid for by it or until the University has determined that the Consultant with good cause has otherwise sufficiently provided for the payment and satisfaction of the same.
4. Whenever any payment to or fee of the Consultant is dependent in whole or in part on the Consultant's or its subconsultants' cost or costs, the Consultant shall maintain efficient and accurate cost and accounting records as to all such costs and the Consultant shall require its subconsultants to maintain similar records. The Consultant, at any time during the term of this Agreement or within six (6) years thereafter, shall make such records and requires its subconsultants to make their records available to the University or its authorized representatives for review and audit. In the event all or any part of such records are not maintained or made available to the University, any item not supported by reason of the unavailability of such records shall, at the election of the University, be disallowed and, if payment therefor has already been made, the Consultant, upon demand, shall refund to the University the amounts so disallowed. Payment to the Consultant and/or approval by the University of any invoice submitted by the Consultant shall in no way affect the Consultant's obligations hereunder or the right of the University to obtain a refund of any payment to or fee of the Consultant which was in excess of that to which it was lawfully entitled.
5. For purposes of participating in a survey, the Consultant agrees to maintain efficient and accurate cost and accounting records as to all costs it incurs in connection with the performance of services provided or required under Article I hereof, and the Consultant shall require its subconsultants to maintain similar records. The Consultant, at any time during the term of this Agreement or within six (6) years hereafter, shall make such records and require its consultants to make their records available to the University or its authorized representatives for review and audit.

#### **SECTION F - SPECIAL COMPENSATION**

For the special services, if any, listed in the Scope of Services, which is attached hereto and made a part hereof, that the Consultant agrees to furnish and perform, the University shall pay the Consultant the fees listed on said Scope of Services.

Upon completion and approval by the University of each of said services, the fee therefor shall become due and payable by the University within thirty (30) days after submission by the Consultant of an invoice describing the services furnished and performed and the computation of the cost thereof.

#### **SECTION G - CREDIT ADJUSTMENT TO THE UNIVERSITY**

The University shall receive a credit in connection with the contracts listed in the Scope of Services, which is attached hereto and made a part hereof, in the amount or percentage listed thereon. For each of such contracts the applicable credit, if any, shall be first applied, until extinguished in its entirety, against any fee, compensation or expense of the Consultant in connection with such contract for which payment is to be made by the University

pursuant to any of the provisions of this Agreement.

## **Article IV OWNERSHIP OF DOCUMENTS**

The plans, drawings, specifications, reports, renderings, models, and other documents to be prepared and furnished by the Consultant pursuant to this Agreement shall be the property of the University. The Consultant shall not publish or disseminate to third parties information pertaining to the Project, or any part or aspect thereof, without first obtaining written approval from the University for such publication or dissemination and of the format and content thereof.

Notwithstanding the foregoing, in the event that the University uses all or a substantial portion of the final working drawings for the construction of another project, the University shall compensate the Consultant therefor in such amount as it deems fair and reasonable. In the event of such use, the University shall remove the Consultant's name and seal from the documents and the Consultant shall have no liability or responsibility for such use.

## **Article V SURVEYS, BORINGS AND TEST DATA**

The University shall furnish the Consultant such topographic, utility and property surveys, borings and test pit data as it may have and the Consultant shall obtain such additional topographic, utility and property surveys, borings and test pit data as may be required to complete the final working drawings and final specifications for each of the construction contracts. Such additional surveys, borings and data, the obtainment of which is approved in writing by the University, shall be paid for by the University in accordance with the provisions of Section D (4) of Article III. The Consultant agrees that it will make no claim against the University by reason of such surveys, borings and data unless the same are found to be inaccurate and solely as a result thereof the Consultant, in the opinion of the University, is caused to revise and/or redesign all or any part of the Project, in which case the University will compensate the Consultant for such revision and/or redesign pursuant to the provisions of Section D (5) of Article III hereof.

## **Article VI TERMINATION OF AGREEMENT**

### **SECTION A - PERSONAL SERVICES**

It is understood between the parties that this Agreement is intended to secure the personal services of the Consultant or Consultants (if a partnership) because of its or their ability or reputation and that this Agreement shall not be assigned, sublet or transferred without the prior written consent of the University.

### **SECTION B - DEATH OR DISABILITY**

In case of the death or disability of one or more but not all of the persons referred to as Consultant, the rights and duties of the Consultant shall, at the election of the University, devolve upon the survivor or survivors of them who shall be obligated to perform the services required under this agreement and the University shall make all payments due under this Agreement to the survivors.

### **SECTION C - TERMINATION**

At any time during the effectiveness of this Agreement, the University shall have the right upon seven (7) calendar days' written notice to the Consultant to terminate this Agreement, for cause, convenience or in the event the State Finance Law sections 139-j and 139-k certifications are found to be false or incomplete or to postpone, delay, suspend or abandon all or any part of the Project. In the event of such termination, postponement, delay, suspension or abandonment, the Consultant shall deliver to the University all plans, drawings, specifications, reports and other data and records pertaining to the Project and the University shall pay to the Consultant all amounts due in

accordance with Article III hereof; provided, however, that if the University, after commencement of the Consultant's performance of services hereunder, postpones, delays or suspends the Project and subsequently, after a lapse of time, directs the resumption of performance of services by the Consultant, the Consultant, if it, in the judgment of the University, is caused to do extra work, which it would not have otherwise had to do, as a result thereof, will be entitled to extra compensation for such extra work in accordance with the provisions of Section D (3) of Article III hereof. Except as expressly provided in the previous sentence, such termination, postponement, delay, suspension or abandonment shall not give rise to any cause of action or claim against the University for damages, extra remuneration or loss of anticipated profits. In the event such termination, postponement, delay, suspension or abandonment is caused because of the Consultant's failure to fulfill its obligations or responsibilities under this Agreement, the Consultant shall remain liable to the University for all damages suffered by it by reason of such failure, including, but not limited to, any excess costs incurred in completing the Project by the use or employment of other Consultants or otherwise.

## **Article VII LIABILITY OF THE CONSULTANT**

In addition to any liability or obligations of the Consultant to the University that may exist under any other provisions of this Agreement or by statute or otherwise, the Consultant shall be liable to and hold harmless and indemnify the University from and against any damages, lawsuits, claims and liabilities, excluding the University's attorney fees and court costs, which the University may sustain, be subject to or be caused to incur by virtue of as a result of any claim, demand, lawsuit, proceeding, action or cause of action in connection with the Project for:

1. Any infringement of any claimed copyright or patent right of designs, plans, drawings or specifications resulting from the use or adoption of any designs, plans, drawings or specifications furnished by the Consultant; or
2. Any negligence of the Consultant, its agents, employees, officers, subconsultants or subcontractors for which the Consultant is legally liable.

The Consultant represents that its subconsultants, subcontractors, agents, employees and officers shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform in connection with the Project.

The Consultant shall procure and maintain at its own cost and expense, until final acceptance by the University of all of the construction work of the Project and the expiration of the one (1) year general guarantee, errors and omissions insurance, including contractual liability, from an insurance company that cites the University as a named insured. Such policy shall be approved by the University and authorized to do business in the State of New York, covering the Consultant for all services performed hereunder with a limit for each occurrence equal to one-half of the University's budget for the Project or one million dollars (\$1,000,000), whichever shall be the lesser amount. The Consultant shall furnish to the University, with its Pre-Bid Report, a certificate of insurance which shall contain a provision that the insurance will not be canceled unless the insurer shall provide the University with fifteen (15) days' written notice of cancellation. Neither the procurement nor the maintenance of such insurance shall in any way affect or limit the obligations, responsibilities or liabilities of the Consultant hereunder.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the Consultant or the University beyond such as may legally exist irrespective of this Article or this Agreement.

## **Article VIII AFFIRMATIVE ACTION**

The Consultant agrees to comply with the requirements of Exhibit A-I, attached hereto and made a part hereof.

## **Article IX**

## **PROVISIONS REQUIRED TO BE INSERTED BY LAW**

Each and every provision required by law to be inserted in this Agreement, including, but not limited to, the provisions set forth in Exhibit "A" which is attached hereto and made a part hereof and State Finance Law Section (163) (4) (g) imposes certain reporting requirements on contractors doing business with New York State. In furtherance of these reporting requirements, the Contractor agree to complete and submit an initial planned employment data report and annual employment report, which are attached as Forms A and B. respectively.

### **Article X RELEASE OF THE UNIVERSITY**

The acceptance by the Consultant or any person claiming under the Consultant of final payment made under this Agreement shall operate as and shall be a release of the University from all claims by and liability to the Consultant, its successors, legal representatives and assigns, for anything done or furnished under the provisions of this Agreement or in connection with the Project.

### **Article XI GENERAL PROVISIONS**

#### **SECTION A - APPROVAL**

Wherever in this Agreement action is to be taken by or approval given by the University, such action or approval may be taken or given by any officer or employee of the University duly designated to act on behalf of the University.

#### **SECTION B - DEFINITION**

In the event that the principals of the party referred to in the Agreement as the "Consultant" are architects, engineers, landscape consultants or surveyors, then and in that event, wherever the word or designation "Consultant" appears in this Agreement, such word or designation shall be deemed to be "Architect", "Engineer", "Landscape Consultant", or "Surveyor", as the case may be. For the purpose of this Agreement, the terms "inspection" and/or "administration" shall not be interpreted as the Consultant's guarantee of workmanship or that the Contractor will not breach its construction contract.

#### **SECTION C - DELAYS OR OMISSIONS**

No delay or omission by the University or the Consultant to exercise any right or remedy accruing to it under the terms of this Agreement or existing at law or in equity or by statute or otherwise shall be construed as a waiver of any of the provisions of this Agreement or of any such right or remedy and no such delay or omission shall impair any such right or remedy or be construed to be a waiver of or acquiescence in the act or acts or omission or omissions to act giving rise to the accruals of such right or remedy, nor shall it affect the University's or the Consultant's rights or remedies upon the occurrence of any subsequent event of the same or of a different nature.

#### **SECTION D - CAPTIONS**

The captions of Articles and Sections of this Agreement are intended for convenience and for reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement or in any way affect this Agreement.

#### **SECTION E - SINGULAR/PLURAL; MALE/FEMALE**

As used in this Agreement, the singular of any word or designation, whenever necessary or appropriate, shall include the plural and vice versa, and the masculine gender shall include the female and neuter genders and vice versa.

**SECTION F - ACTIONS OR PROCEEDINGS AGAINST THE UNIVERSITY**

No action or proceeding shall lie or be maintained by the Consultant, or anyone claiming under or through the Consultant, against the University or any of its trustees, officers, agents or employees, upon any claim arising out of or based upon this Agreement or any breach thereof or by reason of any act or omission of the University or its trustees, officers, agents or employees, unless such action or proceeding is commenced within one (1) year after the University's acceptance of the construction work.

**SECTION G - ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties hereto and supersedes all previous understandings and agreements with respect to the Project or any of the provisions hereof. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**STATE UNIVERSITY OF NEW YORK:**

\_\_\_\_\_ *by* \_\_\_\_\_ *title* \_\_\_\_\_ *date*

**CONSULTANT:**

\_\_\_\_\_ *by* \_\_\_\_\_ *title* \_\_\_\_\_ *date*

\_\_\_\_\_ *Federal ID Number*

(If Corporation, affix Corporate Seal)



**ACKNOWLEDGMENTS**

**(Acknowledgment by Individual)**

STATE OF NEW YORK )  
COUNTY OF ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person(s) described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public

**(Acknowledgment by Partnership)**

STATE OF NEW YORK )  
COUNTY OF ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for theirself dispose and say that he/she is a member of the firm of \_\_\_\_\_, consisting of theirself and \_\_\_\_\_, that he/she executed the foregoing instrument in the firm name of \_\_\_\_\_, and that he/she had authority to sign the same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of the aforementioned firm for the purposes mentioned therein.

\_\_\_\_\_  
Notary Public

**(Acknowledgment by Corporation)**

STATE OF NEW YORK )  
COUNTY OF ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being duly sworn, did depose and say that he/she resides in \_\_\_\_\_; that he/she is the \_\_\_\_\_ of \_\_\_\_\_ the \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his name thereto by like order.

\_\_\_\_\_  
Notary Public



(hereinafter called the "Surety") are held and firmly bound to the State University of New York (hereinafter called the University) in the full and just sum of:

\_\_\_\_\_ dollars (\$) \_\_\_\_\_  
(in words) (in figures)

good and lawful money of the United States of America, for the payment of which sum of money, well and truly to be made and done, the Principal binds itself, its heirs, executors, administrators, successors and assigns and the Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, with the University for the work contained in Project No. \_\_\_\_\_, a copy of which Contract is annexed to and hereby made a part of this Bond as though herein set forth in full; and

WHEREAS, the University has required this Bond guaranteeing prompt payment of monies due to all persons furnishing the Principal or any subcontractor of the Principal with labor or materials in the prosecution of the work provided in such Contract;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall promptly pay all monies due to all persons furnishing the Principal or any subcontractor of the Principal with labor or materials in the prosecution of the Contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, the said Surety, for value received, hereby stipulates and agrees that no change, extension, alteration or addition to the terms of the said Contract or Specifications accompanying the same, shall in any way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension, alteration or addition; and further.

PROVIDED, HOWEVER, the place of trial of any action on this Bond shall be in the county in which the said Contract was to be performed, or if said Contract was to be performed in more than one county, then in any such county, and not elsewhere; and further

PROVIDED, HOWEVER, this Bond shall be enforceable in accordance with the terms and provisions of Section 137 of the State Finance Law.

IN WITNESS WHEREOF, the Principal has hereunto set its hand and seal and the Surety has caused this instrument to be signed by its attorney in-fact on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Principal

\_\_\_\_\_  
By

\_\_\_\_\_  
Surety

\_\_\_\_\_  
By

(hereinafter called the "Surety") are held and firmly bound to the State University of New York (hereinafter called the University) in the full and just sum of:

\_\_\_\_\_ dollars (\$) \_\_\_\_\_ )  
(in words) (in figures)

good and lawful money of the United States of America, for the payment of which sum of money, well and truly to be made and done, the Principal binds itself, its heirs, executors, administrators, successors and assigns and the Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, with the University for the work contained in Project No. \_\_\_\_\_, a copy of which Contract is annexed to and hereby made a part of this Bond as though herein set forth in full; and

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, its representatives or assigns, shall well and faithfully comply with and perform all the terms, covenants and conditions of said Contract on its part to be kept and performed and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to the true intent and meaning of said Contract, including repair and/or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the University from all cost and damage which it may suffer by reason of failure to do so, and shall fully reimburse and repay the University for all outlay and expense which the University may incur in making good any such default, and shall protect the said University against, and pay any and all amounts, damages, costs and judgments which may or shall be recovered against said University or its trustees, officers, agents or employees or which the said University may be called upon to pay to any person or corporation by reason of any damages arising or growing out of the doing of said work, or the repair of maintenance thereof, or the manner of doing the same, or the neglect of the said Principal, or its agents, or the improper performance of the said work by the said Principal, or its agents, or the infringement of any patent or patent rights by reason of the use of any materials furnished or work done as aforesaid or otherwise, then this obligation shall be null and void, otherwise to remain in full force and effect;

PROVIDED, HOWEVER, the said Surety, for value received, hereby stipulates and agrees, if requested to do so by the University, to fully perform and complete the work mentioned and described in said Contract, pursuant to the terms, conditions, and covenants thereof, if for any cause the Principal fails or neglects to so fully perform and complete such work and the Surety further agrees to commence such work of completion within ten (10) calendar days after written notice thereof from the University and to complete such work within ten (10) calendar days from the expiration of the time allowed the Principal in the Contract for the completion thereof; and further

PROVIDED, HOWEVER, the Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety and its Bond shall be in no way impaired or affected by an extension of time, modification, omission, addition, or change in or to the said Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer of any work to be performed or any monies due or to become due thereunder or by the University's takeover, use,

occupancy or operation of any part or all of the work covered by the Contract; and said Surety does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts, transfers, takeovers, uses, occupancies or operations, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to said Surety as though done or omitted to be done by or in relation to said Principal.

IN WITNESS WHEREOF, the Principal has hereunto set its hand and seal and the Surety has caused this instrument to be signed by its attorney-in-fact on this \_\_\_\_\_ day \_\_\_\_\_ of,20\_\_\_\_\_

\_\_\_\_\_  
Principal By

\_\_\_\_\_  
Surety By

# PERFORMANCE BOND

## (Acknowledgment by Principal, unless it is a Corporation)

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, before me personally came \_\_\_\_\_  
\_\_\_\_\_, to me known and known to me to be the person(s) described in and who  
executed the foregoing instruments and acknowledged that he / she executed the same.

\_\_\_\_\_  
Notary Public

## (Acknowledgment by Principal, if a Corporation)

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, before me personally came \_\_\_\_\_  
\_\_\_\_\_, to me known, who, being duly sworn, did depose and say  
that he / she resides in \_\_\_\_\_;  
that he / she is the \_\_\_\_\_  
of the \_\_\_\_\_,  
the corporation described in and which executed the foregoing instruments; that he / she knows the seal of said corporation; that the seal  
affixed to said instruments is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he / she  
signed their name thereto by like order.

\_\_\_\_\_  
Notary Public

## (Acknowledgment by Surety Company)

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, before me personally came \_\_\_\_\_  
\_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say  
that he / she resides in \_\_\_\_\_;  
that he / she is the \_\_\_\_\_  
of the \_\_\_\_\_,  
the corporation described in and which executed the foregoing instruments; that he / she knows the seal of said corporation; that the  
seal affixed to said instruments is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that  
he / she signed their name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner  
provided by the laws of the State of New York.

\_\_\_\_\_  
Notary Public

NAME OF BIDDER

ADDRESS OF BIDDER

**PROPOSAL  
FOR**

SUNY PROJECT NO \_\_\_\_\_ - PROJECT TITLE \_\_\_\_\_  
\_\_\_\_\_, SUNY CAMPUS \_\_\_\_\_

**TO THE STATE UNIVERSITY OF NEW YORK:**

1. The Work Proposed Herein Will Be Completed Within \_\_\_\_\_ Calendar Days, Starting 10 Calendar Days After The Contract Approval Date Of The New York State Comptroller. In the event the bidder fails to complete such work by said date or dates, or within the time to which such completion may have been extended in accordance with the Contract Documents, the bidder agrees to pay the University liquidated damages in an amount equal to the values indicate in the Liquidated Damages Schedule below for each calendar day of delay in completing the work.

=====

**LIQUIDATED DAMAGES SCHEDULE**

<u>Contract Amount</u>	<u>Liquidated Damages</u>
Under \$100,000.....	\$100/day
\$100,000-\$499,999.....	\$200/day
\$500,000-\$999,999.....	\$300/day
\$1MM-\$1,999,999.....	\$400/day
\$2MM-\$3,499,999.....	\$500/day
\$3.5MM-\$5MM.....	\$700/day
Over \$5MM (to be determined by the University in each instance)	
\$_____/day	

=====

2. The bidder hereby declares that it has carefully examined all Bidding and Contract Documents and that it has personally inspected the actual location of the work, together with the local sources of supply, has satisfied itself as to all the quantities and conditions, and understands that in signing this Proposal, it waives all right to plead any misunderstanding regarding the same.

3. The bidder further understands and agrees that it is to do, perform and complete all work in accordance with the Contract Documents and to accept in full compensation therefor the amount of the Total Bid.

4. The bidder further agrees to accept the unit prices, if any, set forth in paragraph (5) hereof, except as the same may be modified pursuant to the provisions of Section 5 of the Information to Bidders, as full payment for the amount of the credit to the University for any deletions, additions, modifications or changes to the portion or portions of work covered by said unit prices.

5. a. **TOTAL BID** \$ \_\_\_\_\_  
(in numbers)

\_\_\_\_\_  
(in words)

## EXHIBIT I: MANDATORY SUBMISSION CHECKLIST FOR IFB 15-14

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Procurement # and Name: \_\_\_\_\_

Vendor Name: \_\_\_\_\_ Vendor Contact: \_\_\_\_\_

Contact E-Mail: \_\_\_\_\_ Contact Phone Number: \_\_\_\_\_

---

### Administrative Forms (in required documentation order)

1.  NYSFL §§139(j) & (k) Acknowledgement Form (**Please complete and return immediately upon receipt of the procurement package, and include a copy with your proposal submission**).
  2.  NYSFL §§139(j) & (k) Forms A, B, and C
  3.  Vendor Responsibility Questionnaires( Non-Construction & Construction)
  4.  ST220-CA Form
  5.  Copy of the completed ST220-TD Form (**Please send the original to the NYS Tax Department**)
  6.  Consultant Reporting Disclosure Form A & Form B
  7.  C-105.2 Form (to be completed by your current NYS Workers' Compensation Insurance provider)
  8.  DB-120.1 Form (to be completed by your NYS Disability Benefits Insurance provider)
  9. MWBE Forms 104 & 107
  10. G-226
- 

### Vendor Proposal Components

11.  Company Background
12.  Reference Form (Exhibit E)
13.  Technical Proposal
  - Response to each specification  List of deliverables
  - Implementation/Project Plan  All applicable timelines
  - Expectations from, and requirements of, SUNY-DMC
  - Eligibility Requirement Grids (pg. 22 of IFB)
14. Completed Construction Proposal
15.  Completed Cost Proposal – Exhibit C



16. Completed LINAC System Equipment and Maintenance Detailed Specifications and Requirements- Exhibit G
  17. Completed Consultant Agreement, Labor & Material bond & Liquidated Damages Documents- Exhibit H
  18.  Contract Cover Letter
-

New York State Department of Labor  
Prevailing Wage

Unemployment  
Benefits

Career  
Services

Business  
Services

Worker  
Protection

Forms and  
Publications

Home

[Wage Schedule](#) · [Submit Notice Of Award](#) · [Submit Notice Of Project Completion](#)

PRC#: 2015006607

Acceptance Status: Accepted Article 8

Type of Contracting Agency: SUNY / Colleges

Contracting Agency

Send Reply To

SUNY Downstate Medical Center  
Donovan Lorde  
Contracts Specialist  
450 Clarkson Ave  
Brooklyn NY 11203  
  
(718) 270-1134  
donovan.lorde@downstate.edu

Empty box for sending reply to.

Project Information

Project Title	Installation of Linac
Description of Work	Installation of Linear Accelerator.
Contract Id No.	3320218
Project Location(s)	SUNY Downstate
Route No / Street Address	450 Clarkson Ave
Village / City	Brooklyn
Town	
State / Zip	NY 11203
Nature of Project	Other Reconstruction, Maintenance, Repair or Alteration
Approximate Bid Date	07/15/2015
Checked Occupation(s)	Construction (Building, Heavy & Highway, Sewer, Water, Tunnel)

Applicable Counties

Kings

# State Required Forms ( 46 pages)

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1. Vendor Responsibility Questionnaire For- Profit ( Non –Construction)
2. Vendor Responsibility Questionnaire For- Profit (Construction)
3. Tax Forms ST 220TD & ST 220CA
4. G-226
5. Proof of NYS Workers Compensation Insurance FORM DB 120.1
6. Proof Of Disability Benefits Insurance Form C105.2
7. Deficit Reduction Act
8. MWBE Forms (104& 107)
9. Policy and Procedure Forms A,B,C

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

### COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

### NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the OSC Help Desk at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us) or call 866-370-4672.

### DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at [www.osc.state.ny.us/vendrep/documents/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/definitions.pdf). These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

### RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

### REPORTING ENTITY

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

### ASSOCIATED ENTITY

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

### STRUCTURE OF THE QUESTIONNAIRE

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

I. LEGAL BUSINESS ENTITY INFORMATION			
<u>Legal Business Entity Name</u> *		<u>EIN</u> (Enter 9 digits, without hyphen)	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone ext.	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u> )		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>		Date of Organization	
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u> )		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If ‘No,’ indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available.			
<input type="checkbox"/> United States State _____			
<input type="checkbox"/> Other Country _____			
Explain, if not available:			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide <u>CIK Code</u> or Ticker Symbol			
1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” Enter <u>DUNS</u> Number			

\* All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” which can be found at [www.osc.state.ny.us/vendrep/documents/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/definitions.pdf).

**I. LEGAL BUSINESS ENTITY INFORMATION**

1.4 If the Legal Business Entity's Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State?  Yes  No  
 N/A  
 (Select "N/A," if Principal Place of Business is in New York State.)

If "Yes," provide the address and telephone number for one office located in New York State.

1.5 Is the Legal Business Entity a New York State certified Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), New York State Small Business (SB) or a federally certified Disadvantaged Business Enterprise (DBE)?  Yes  No

If "Yes," check all that apply:

- New York State certified Minority-Owned Business Enterprise (MBE)
- New York State certified Women-Owned Business Enterprise (WBE)
- New York State Small Business (SB)
- Federally certified Disadvantaged Business Enterprise (DBE)

1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

Name	Title	Percentage Ownership <i>(Enter 0% if not applicable)</i>

## II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

Legal Business Entity

*Note: If selecting this option, “Reporting Entity” refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)*

Organizational Unit within and operating under the authority of the Legal Business Entity

SEE DEFINITIONS OF “REPORTING ENTITY” AND “ORGANIZATIONAL UNIT” FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.

*Note: If selecting this option, “Reporting Entity” refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)*

### IDENTIFYING INFORMATION

a) Reporting Entity Name

Address of the Primary Place of Business (street, city, state, zip code)

Telephone

ext.

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?

Yes  No

If “Yes,” enter DUNS Number

e) Identify the designated manager(s) responsible for the business of the Reporting Entity.

*For each person, include name and title. Attach additional pages if necessary.*

Name

Title

**INSTRUCTIONS FOR SECTIONS III THROUGH VII**

For each “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each “Other,” provide an explanation which provides the basis for not definitively responding “Yes” or “No.” Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

<b>III. LEADERSHIP INTEGRITY</b> <i>Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:</i>	
3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
For each “Yes” or “Other” explain:	

<b>IV. INTEGRITY – CONTRACT BIDDING</b> <i>Within the past five (5) years, has the reporting entity:</i>	
4.0 Been <u>suspended or debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” explain:	



**V. INTEGRITY – CONTRACT AWARD***Within the past five (5) years, has the reporting entity:*

5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

**VI. CERTIFICATIONS/LICENSES***Within the past five (5) years, has the reporting entity:*

6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

**VII. LEGAL PROCEEDINGS***Within the past five (5) years, has the reporting entity:*

7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious</u> or <u>willful</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 Other than previously disclosed: a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

**VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY**

8.0 Within the past five (5) years, has the Reporting Entity received any formal unsatisfactory performance assessment(s) from any government entity on any contract?  Yes  No

If “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.1 Within the past five (5) years, has the Reporting Entity had any liquidated damages assessed over \$25,000?  Yes  No

If “Yes,” provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.2 Within the past five (5) years, have any liens or judgments (not including UCC filings) over \$25,000 been filed against the Reporting Entity which remain undischarged?  Yes  No

If “Yes,” provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant’s name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.3 In the last seven (7) years, has the Reporting Entity initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?  Yes  No

If “Yes,” provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as “Initiated,” “Pending” or “Closed.” Provide answer below or attach additional sheets with numbered responses.

8.4 During the past three (3) years, has the Reporting Entity failed to file or pay any tax returns required by federal, state or local tax laws?  Yes  No

If “Yes,” provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the Reporting Entity failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.

8.5 During the past three (3) years, has the Reporting Entity failed to file or pay any New York State unemployment insurance returns?  Yes  No

If “Yes,” provide the years the Reporting Entity failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.6 During the past three (3) years, has the Reporting Entity had any government audit(s) completed?  Yes  No

a) If “Yes,” did any audit of the Reporting Entity identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any material disallowance?  Yes  No

If “Yes” to 8.6 a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

**IX. ASSOCIATED ENTITIES**

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity. (See definition of “associated entity” for additional information to complete this section.)*

<p>9.0 Does the <u>Reporting Entity</u> have any <u>Associated Entities</u>?</p> <p>Note: All questions in this section must be answered if the <u>Reporting Entity</u> is either:</p> <ul style="list-style-type: none"> <li>- An <u>Organizational Unit</u>; or</li> <li>- The entire <u>Legal Business Entity</u> which controls, or is controlled by, any other entity(ies).</li> </ul> <p>If “No,” SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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<p>9.1 Within the past five (5) years, has any <u>Associated Entity Official</u> or <u>Principal Owner</u> been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for:</p> <ul style="list-style-type: none"> <li>a) Any business-related activity; or</li> <li>b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

If “Yes,” provide an explanation of the issue(s), the individual involved, his/her title and role in the Associated Entity, his/her relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).

<p>9.2 Does any <u>Associated Entity</u> have any currently undischarged <u>federal</u>, New York State, New York City or New York local government <u>liens</u> or <u>judgments</u> (not including <u>UCC filings</u>) over \$50,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

If “Yes,” provide an explanation of the issue(s), identify the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant’s name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

<p>9.3 Within the past five (5) years, has any <u>Associated Entity</u>:</p>	
<p>a) Been <u>disqualified</u>, <u>suspended</u> or <u>debarred</u> from any <u>federal</u>, New York State, New York City or other New York local <u>government contracting process</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>b) Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>c) Been <u>suspended</u>, <u>cancelled</u> or <u>terminated for cause</u> (including for <u>non-responsibility</u>) on any <u>federal</u>, New York State, New York City or New York local <u>government contract</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>d) Been the subject of an <u>investigation</u>, whether open or closed, by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u> for a civil or criminal violation with a penalty in excess of \$500,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>e) Been the subject of an indictment, grant of immunity, <u>judgment</u>, or conviction (including entering into a plea bargain) for conduct constituting a crime?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” provide an explanation of the issue(s), identify the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

**X. FREEDOM OF INFORMATION LAW (FOIL)**

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

If "Yes," indicate the question number(s) and explain the basis for the claim.

**XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE**

Name	Telephone ext.	Fax
Title	Email	

## Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State contracting entities in making responsibility determinations regarding an award of a contract or approval of a subcontract; (2) recognizes that the Office of the State Comptroller (OSC) will rely on information disclosed in the questionnaire in making responsibility determinations and in approving a contract or subcontract; (3) acknowledges that the New York State contracting entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (4) acknowledges that intentional submission of false or misleading information may constitute a misdemeanor or felony under New York State Penal Law, may be punishable by a fine and/or imprisonment under Federal Law, and may result in a finding of non-responsibility, contract suspension or contract termination.

**The undersigned certifies that he/she:**

- is knowledgeable about the Reporting Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Reporting Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State will rely on the information disclosed in the questionnaire when entering into a contract with the Reporting Entity; and
- is under obligation to update the information provided herein to include any material changes to the Reporting Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State contracting entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Officer \_\_\_\_\_

Printed Name of Signatory \_\_\_\_\_

Title \_\_\_\_\_

Reporting Entity Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ ;

\_\_\_\_\_ Notary Public

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

You have selected the For-Profit Construction questionnaire, commonly known as the “CCA-2,” which may be printed and completed in this format or, **for your convenience, may be completed online using the [New York State VendRep System](#).**

### COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor’s business and operations. An owner or official must certify the questionnaire and the signature must be notarized.

### NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at [ITServiceDesk@osc.state.ny.us](mailto:ITServiceDesk@osc.state.ny.us) or call 866-370-4672.

### DEFINITIONS

All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” found at <http://www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf>. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

### RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

BUSINESS ENTITY INFORMATION				
<u>Legal Business Name</u>		<u>EIN</u> _____		
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>		
		Telephone ext.		Fax
		Website		
Authorized Contact for this Questionnaire				
Name		Telephone ext.		Fax
Title		Email		
Additional <u>Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years, the state or county where filed and the status (active or inactive).				
Type	Name	EIN	State or County where filed	Status

I. BUSINESS CHARACTERISTICS				
1.0 <u>Business Entity</u> Type – Check appropriate box and provide additional information:				
a) <input type="checkbox"/> <u>Corporation</u> (including <u>PC</u> )	Date of Incorporation			
b) <input type="checkbox"/> <u>Limited Liability Company</u> ( <u>LLC</u> or <u>PLLC</u> )	Date Organized			
c) <input type="checkbox"/> <u>Limited Liability Partnership</u>	Date of Registration			
d) <input type="checkbox"/> <u>Limited Partnership</u>	Date Established			
e) <input type="checkbox"/> <u>General Partnership</u>	Date Established	County (if formed in NYS)		
f) <input type="checkbox"/> <u>Sole Proprietor</u>	How many years in business?			
g) <input type="checkbox"/> Other	Date Established			
If Other, explain:				
1.1 Was the <u>Business Entity</u> formed in New York State?				<input type="checkbox"/> Yes <input type="checkbox"/> No
If “No,” indicate jurisdiction where the <u>Business Entity</u> was formed:				
<input type="checkbox"/> United States	State			
<input type="checkbox"/> Other	Country			

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

<b>I. BUSINESS CHARACTERISTICS</b>			
1.2 Is the <u>Legal Business Entity</u> publicly traded?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes," provide the <u>CIK code</u> or Ticker Symbol:			
1.3 Is the <u>Business Entity</u> currently <u>registered to do business in New York State</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<i>Note: Select "Not Required" if the Business Entity is a Sole Proprietor or General Partnership</i>			
If "No," explain why the <u>Business Entity</u> is not required to be <u>registered to do business in New York State</u> :			
1.4 Is the responding <u>Business Entity</u> a <u>Joint Venture</u> ? Note: If the submitting <u>Business Entity</u> is a <u>Joint Venture</u> , also submit a separate questionnaire for each <u>Business Entity</u> comprising the <u>Joint Venture</u> .	<input type="checkbox"/> Yes <input type="checkbox"/> No		
1.5 If the <u>Business Entity's</u> <u>Principal Place of Business</u> is not in New York State, does the <u>Business Entity</u> maintain an office in New York State?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<i>(Select "N/A" if <u>Principal Place of Business</u> is in New York State.)</i>			
If "Yes," provide the address and telephone number for one office located in New York State.			
1.6 Is the Business Entity a New York State certified <u>Minority-Owned Business Enterprise</u> , or <u>Women-Owned Business Enterprise</u> , or <u>New York State Small Business</u> , or federally certified <u>Disadvantaged Business Enterprise</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes," check all that apply:			
<input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE)			
<input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE)			
<input type="checkbox"/> <u>New York State Small Business</u>			
<input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)			
1.7 Identify each person or business entity that is, or has been within the past five (5) years, <u>Principal Owner</u> of 5.0% or more of the firm's shares; a Business Entity Official; or one of the five largest shareholders, if applicable. <i>(Attach additional pages if necessary.)</i>			
<u>Joint Ventures</u> : Provide information for all firms involved.			
Name <i>(For each person, include middle initial)</i>	Title	Percentage of ownership (Enter 0%, if not applicable)	Employment status with the firm
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former
			<input type="checkbox"/> Current <input type="checkbox"/> Former



## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

<b>II. AFFILIATE and JOINT VENTURE RELATIONSHIPS</b>		
2.0 Are there any other <u>construction</u> -related firms in which, now or in the past five years, the submitting <u>Business Entity</u> or any of the individuals or business entities listed in question 1.7 either owned or owns 5.0% or more of the shares of, or was or is one of the five largest shareholders or a director, officer, partner or proprietor of said other firm? ( <i>Attach additional pages if necessary.</i> )		<input type="checkbox"/> Yes <input type="checkbox"/> No
Firm/Company Name	Firm/Company EIN (If available)	Firm/Company's Primary Business Activity
Firm/Company Address		
Explain relationship with the firm and indicate percent of ownership, if applicable (enter N/A, if not applicable):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting <u>Business Entity</u> has in common with this firm?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name ( <i>Include middle initial</i> )	Position/Title with Firm/Company	
2.1 Does the <u>Business Entity</u> have any <u>construction</u> -related <u>affiliates</u> not identified in the response to question 2.0 above? ( <i>Attach additional pages if necessary.</i> )		<input type="checkbox"/> Yes <input type="checkbox"/> No
Affiliate Name	Affiliate EIN (If available)	Affiliate's Primary Business Activity
Affiliate Address		
Explain relationship with the affiliate and indicate percent of ownership, if applicable ( <i>enter N/A, if not applicable</i> ):		
Are there any shareholders, directors, officers, owners, partners or proprietors that the submitting Business Entity has in common with this affiliate?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual's Name ( <i>Include middle initial</i> )	Position/Title with Firm/Company	
2.2 Has the <u>Business Entity</u> participated in any <u>construction-related Joint Ventures</u> within the past three (3) years? ( <i>Attach additional pages if necessary.</i> )		<input type="checkbox"/> Yes <input type="checkbox"/> No
Joint Venture Name	Joint Venture EIN (If available)	Identify parties to the Joint Venture

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

### III. CONTRACT HISTORY

3.0 Has the Business Entity completed any construction contracts?

Yes  No

*If "Yes," list the ten most recent construction contracts the Business Entity has completed using Attachment A – Completed Construction Contracts, found at [www.osc.state.ny.us/vendrep/documents/questionnaire/ac3294s.doc](http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3294s.doc).*

*If less than ten, include most recent subcontracts on projects up to that number.*

3.1 Does the Business Entity currently have uncompleted construction contracts?

Yes  No

*If "Yes," list all current uncompleted construction contracts by using Attachment B – Uncompleted Construction Contracts, found at [www.osc.state.ny.us/vendrep/documents/questionnaire/ac3295s.doc](http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3295s.doc).*

*Note: Ongoing projects must be included.*

### IV. INTEGRITY – CONTRACT BIDDING

***Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:***

4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement?

Yes  No

4.1 Been subject to a denial or revocation of a government prequalification?

Yes  No

4.2 Had any bid rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?

Yes  No

4.3 Had a proposed subcontract rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?

Yes  No

4.4 Had a low bid rejected on a government contract for failure to make good faith efforts on any Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract?

Yes  No

4.5 Agreed to a voluntary exclusion from bidding/contracting with a government entity?

Yes  No

4.6 Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity?

Yes  No

*For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, project(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.*

### V. INTEGRITY – CONTRACT AWARD

***Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:***

5.0 Defaulted on or been suspended, cancelled or terminated for cause on any contract?

Yes  No

5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution (except any disputed work proceeding) in connection with any government contract?

Yes  No

5.2 Entered into a formal monitoring agreement, consent decree or stipulation settlement as specified by, or agreed to with, any government entity?

Yes  No

5.3 Had its surety called upon to complete any contract whether government or private sector?

Yes  No

5.4 Forfeited all or part of a standby letter of credit in connection with any government contract?

Yes  No

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

### V. INTEGRITY – CONTRACT AWARD

**Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:**

For each “Yes,” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity/owners involved, project(s), contract number(s), relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

### VI. CERTIFICATIONS/LICENSES

**Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:**

- |  |  |
|--|--|
| 6.0 Had a revocation or <u>suspension</u> of any business or professional permit and/or license?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or a federal certification of <u>Disadvantaged Business Enterprise</u> status, for other than a change of ownership? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.

### VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

**Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:**

- |  |  |
|--|--|
| 7.0 Been the subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?   | <input type="checkbox"/> Yes <input type="checkbox"/> No   |
| 7.1 Been the subject of:<br>(i.) An indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime; or<br>(ii.) Any criminal <u>investigation</u> , felony indictment or conviction concerning the formation of, or any business association with, an allegedly false or fraudulent <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , or a <u>Disadvantaged Business Enterprise</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No<br><br><input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2 Received any <u>OSHA</u> citation, which resulted in a final determination classified as <u>serious</u> or <u>willful</u> ?  | <input type="checkbox"/> Yes <input type="checkbox"/> No   |
| 7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation?   | <input type="checkbox"/> Yes <input type="checkbox"/> No   |
| 7.4 Had a New York State Labor Law violation deemed willful?   | <input type="checkbox"/> Yes <input type="checkbox"/> No   |
| 7.5 Entered into a consent order with the New York State Department of Environmental Conservation, or a <u>federal</u> , state or local government enforcement determination involving a violation of <u>federal</u> , state or local environmental laws?  | <input type="checkbox"/> Yes <input type="checkbox"/> No   |

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

### VII. LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS

*Within the past five (5) years, has the Business Entity, an affiliate, or any predecessor company or entity:*

7.6 Other than previously disclosed, been the subject of any <u>citations</u> , notices or violation orders; a pending administrative hearing, proceeding or determination of a violation of: <ul style="list-style-type: none"> <li>• <u>Federal</u>, state or local health laws, rules or regulations;</li> <li>• <u>Federal</u>, state or local environmental laws, rules or regulations;</li> <li>• Unemployment insurance or workers compensation coverage or <u>claim</u> requirements;</li> <li>• Any labor law or regulation, which was deemed willful;</li> <li>• Employee Retirement Income Security Act (ERISA);</li> <li>• <u>Federal</u>, state or local human rights laws;</li> <li>• <u>Federal</u>, state or local security laws?</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

*For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.*

*Note: Information regarding a determination or finding made in error, which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required.*

### VIII. LEADERSHIP INTEGRITY

*If the Business Entity is a Joint Venture Entity, answer "N/A - Not Applicable" to questions in this section.*

*Within the past five (5) years has any individual previously identified or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the Business Entity with any government entity been:*

8.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.1 <u>Suspended, debarred or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.2 The subject of a criminal <u>investigation</u> , whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or <u>federal</u> law?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
8.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: <ul style="list-style-type: none"> <li>(i.) Any business-related activity, including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or</li> <li>(ii.) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

*For each "Yes," provide an explanation of the issue(s), the individual involved, the relationship to the submitting Business Entity, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with numbered responses.*

## NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT CONSTRUCTION (CCA-2)

<b>IX. FINANCIAL AND ORGANIZATIONAL CAPACITY</b>		
9.0 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the <u>government entity</u> involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.1 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liquidated damages</u> assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.2 Within the past five (5) years, has the <u>Business Entity</u> or any <u>affiliate</u> had any <u>liens, claims or judgments</u> over \$25,000 filed against the <u>Business Entity</u> which remain undischarged or were unsatisfied for more than 90 days? (Note: Including but not limited to tax warrants or liens. Do not include UCC filings.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If "Yes," provide an explanation of the issue(s), the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, relevant dates, the Lien holder or Claimants' name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</i>		
9.3 In the last seven (7) years, has the <u>Business Entity</u> or any <u>affiliate</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If "Yes," provide the <u>Business Entity</u> involved, the relationship to the submitting <u>Business Entity</u>, the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.</i>		
9.4 What is the <u>Business Entity's</u> Bonding Capacity?		
a. Single Project	b. Aggregate (All Projects)	
9.5 List <u>Business Entity's</u> Gross Sales for the previous three (3) Fiscal Years:		
1st Year (Indicate year ) Gross Sales	2nd Year (Indicate year ) Gross Sales	3rd Year (Indicate year ) Gross Sales
9.6 List <u>Business Entity's</u> Average Backlog for the previous three (3) fiscal years: (Estimated total value of uncompleted work on outstanding contracts)		
1st Year (Indicate year ) Amount	2nd Year (Indicate year ) Amount	3rd Year (Indicate year ) Amount
9.7 Attach <u>Business Entity's</u> most recent annual <u>financial statement</u> and accompanying notes or complete Attachment C – Financial Information, found at <a href="http://www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls">www.osc.state.ny.us/vendrep/documents/questionnaire/ac3296s.xls</a> . (This information must be attached.)		

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

**X. FREEDOM OF INFORMATION LAW (FOIL)**

10.0 Indicate whether any information provided herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).  
*Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL. Attach additional pages if necessary.*

Yes  No

*If "Yes," indicate the question number(s) and explain the basis for the claim.*

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT CONSTRUCTION (CCA-2)**

**Certification**

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

**The undersigned certifies that he/she:**

- is knowledgeable about the submitting Business Entity’s business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity’s responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity’s responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official \_\_\_\_\_

Printed Name of Signatory \_\_\_\_\_

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_;

\_\_\_\_\_ Notary Public

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS**

**Vendor Name:**

**NYS Vendor ID:**

<b>Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:</b>						
<b>1.</b>	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
<b>2.</b>	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
<b>3.</b>	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
<b>4.</b>	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
<b>5.</b>	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	



**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT A – COMPLETED CONSTRUCTION CONTRACTS**

**Vendor Name:**

**NYS Vendor ID:**

<b>Question 3.0: List the ten most recent construction contracts the Business Entity has completed. If less than ten, include most recent subcontracts on projects up to that number:</b>						
<b>6.</b>	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
<b>7.</b>	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
<b>8.</b>	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
<b>9.</b>	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	
<b>10.</b>	Agency/Owner			Award Date	Amount	Date Completed
	Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable		EIN of JV, if applicable	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

**Vendor Name:**

**NYS Vendor ID:**

<b>Question 3.1: List all current uncompleted construction contracts:</b>								
<b>1.</b>	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
<b>2.</b>	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
<b>3.</b>	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	
<b>4.</b>	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others		Uncompleted Amount	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

**Vendor Name:**

**NYS Vendor ID:**

<b>Question 3.1: List all current uncompleted construction contracts:</b>								
<b>5.</b>	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
<b>6.</b>	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
<b>7.</b>	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		
<b>8.</b>	Agency/Owner						Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer			
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable				EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount		

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT B – UNCOMPLETED CONSTRUCTION CONTRACTS**

**Vendor Name:**

**NYS Vendor ID:**

<b>Question 3.1: List all current uncompleted construction contracts:</b>							
<b>9.</b>	Agency/Owner					Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount	
<b>10.</b>	Agency/Owner					Award Date	Completion Date
	Contact Person			Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Prime or Sub	Joint Venture (JV) Name, if applicable			EIN of JV, if applicable	
				Total Contract Amount	Amount Sublet to others	Uncompleted Amount	
<b>Grand Total All Uncompleted Contracts</b>						<b>\$0.00</b>	

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: \_\_\_\_\_

As of Date: \_\_\_\_\_

**ASSETS**

Current Assets

1. Cash		\$	-	
2. Accounts receivable - less allowance for doubtful accounts	\$	-		
Retainers included in accounts receivable	\$	-		
Claims included in accounts receivable not yet approved or in litigation	\$	-		
Total Accounts Receivable	\$	-		
3. Notes receivable - due within one year	\$	-		
4. Inventory - materials	\$	-		
5. Contract costs in excess of billings on uncompleted contracts	\$	-		
6. Accrued income receivable				
Interest	\$	-		
Other (list) _____	\$	-		
_____	\$	-		
Total Accrued Income Receivable	\$	-		
7. Deposits				
Bid and Plan _____	\$	-		
Other (list) _____	\$	-		
_____	\$	-		
Total Deposits	\$	-		
8. Prepaid Expenses				
Income Taxes	\$	-		
Insurance	\$	-		
Other (list) _____	\$	-		
_____	\$	-		
Total Prepaid Expenses	\$	-		
9. Other Current Assets				
Other (list) _____	\$	-		
_____	\$	-		
Total Other Current Assets	\$	-		
10. Total Current Assets				\$
11. Investments				
Listed securities-present market value	\$	-		
Unlisted securities-present value	\$	-		
Total Investments	\$	-		

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: \_\_\_\_\_

12. Fixed Assets

Land	\$	-	
Building and improvements	\$	-	
Leasehold improvements	\$	-	
Machinery and equipment	\$	-	
Automotive equipment	\$	-	
Office furniture and fixtures	\$	-	
Other (list) _____	\$	-	
	\$	-	
<b>Total</b>			\$ -
Less: Accumulated depreciation			\$ -
<b>Total Fixed Assets - Net</b>			\$ -

13. Other Assets

Loans receivable			
Officers	\$	-	
Employees	\$	-	
Shareholders	\$	-	
Cash surrender value of officers' life insurance	\$	-	
Organization expense – net of amortization	\$	-	
Notes receivable - due after one year	\$	-	
Other (list) _____	\$	-	
	\$	-	
<b>Total Other Assets</b>			\$ -

14. TOTAL ASSETS

\$ -

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\$ -

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**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: \_\_\_\_\_

**LIABILITIES**

Current Liabilities

15. Accounts payable	\$	-
16 a. Loans from shareholders - due within one year	\$	-
16 b. Other Loans - due within one year	\$	-
17. Notes payable - due within one year	\$	-
18. Mortgage payable - due within one year	\$	-
19. Other payables - due within one year		
Other (list) _____	\$	-
_____	\$	-
_____		
Total Other Payables - due within one year	\$	-
20. Billings in excess of costs and estimated earnings	\$	-
21. Accrued expenses payable		
Salaries and wages	\$	-
Payroll taxes	\$	-
Employees' benefits	\$	-
Insurance	\$	-
Other	\$	-
Total Accrued Expenses Payable	\$	-
22. Dividends payable	\$	-
23. Income taxes payable		
State	\$	-
Federal	\$	-
Other	\$	-
Total Income Taxes Payable	\$	-
24. Total current liabilities	\$	-
25. Deferred income taxes payable		
State	\$	-
Federal	\$	-
Other	\$	-
Total Deferred Income Taxes	\$	-
26. Long Term Liabilities		
Loans from shareholders - due after one year	\$	-
Other Loans - due within one year		
Principle	\$	-
Interest	\$	-
Notes payable - due after one year	\$	-
Mortgage - due after one year	\$	-
Other payables - due after one year	\$	-
Other (list) _____	\$	-
_____	\$	-
_____		
Total Long Term Liabilities	\$	-

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE  
ATTACHMENT C - FINANCIAL INFORMATION**

NYS Vendor ID: \_\_\_\_\_

27. Other Liabilities

Other (list)	_____	\$ _____	-
	_____	\$ _____	-

Total Other Liabilities \$ \_\_\_\_\_ -

28. TOTAL LIABILITIES \$ \_\_\_\_\_ -

**NET WORTH**

29. Net Worth (if proprietorship or partnership) \$ \_\_\_\_\_ -

30. Stockholders' Equity

Common stock issued and outstanding \$ \_\_\_\_\_ -

Preferred stock issued and outstanding \$ \_\_\_\_\_ -

Retained earnings \$ \_\_\_\_\_ -

Total \$ \_\_\_\_\_ -

Less: Treasury stock \$ \_\_\_\_\_ -

31. TOTAL STOCKHOLDERS' EQUITY \$ \_\_\_\_\_ -

32. TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY \$ \_\_\_\_\_ -





# Contractor Certification

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-TD

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name				
Contractor's principal place of business		City	State	ZIP code
Contractor's mailing address (if different than above)				
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		Contractor's telephone number ( )
Covered agency or state agency	Contract number or description		Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address			Covered agency telephone number	

## General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006). See *Need help?* for more information on how to obtain this publication.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

## Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

## Need help?



Visit our Web site at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features



### Telephone assistance

**Sales Tax** Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
*(name)* *(title)*  
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

**Complete Sections 1, 2, and 3 below. Make only one entry in each section.**

**Section 1 — Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 — Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 — Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
*(sign before a notary public)*

\_\_\_\_\_  
*(title)*

**Schedule A — Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold**

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to Contractor	B Name	C Address	D Federal ID Number	E Sales Tax ID Number	F Registration in progress

Column A – Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.

Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C – Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.

Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E – Sales tax ID number - Enter only if different from federal EIN in column D.

Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

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

[Mark an X in the appropriate box and complete the accompanying statement.]

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

Notary Public
Registration No. \_\_\_\_\_



# Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-CA

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name				For covered agency use only	
Contractor's principal place of business				Contract number or description	
City		State		ZIP code	
Contractor's mailing address (if different than above)				Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		\$	
Contractor's telephone number		Covered agency name			
Covered agency address				Covered agency telephone number	

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

(sign before a notary public)

(title)

## Instructions

### General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

### When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

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

[Mark an X in the appropriate box and complete the accompanying statement.]

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

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?

Visit our Web site at www.tax.ny.gov
• get information and manage your taxes online
• check for new online services and features

Telephone assistance
Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center. 174 of 184



SUNY Downstate Medical Center Health Science Center at Brooklyn (DMC) is committed to conducting business in compliance with all applicable laws. To this end, we have an extensive Compliance Program in place to be followed by all employees and certain persons or entities with which we have contractual agreements.

As a participant in the Medicaid Program, we are obligated to comply with the terms and requirements of the Deficit Reduction Act of 2005 (DRA). In accordance with the DRA, we have adopted written policies for all employees that provide detailed information about the Federal & New York False Claims Acts, the Program Fraud Civil Remedies Act, other relevant state laws, the whistleblower protections under such laws and DMC's policies for detecting and preventing waste, fraud and abuse.

The DRA also requires that we provide this information to all contractors and agents for your adoption. Accordingly, we are providing you with this exhibit which contains information regarding the applicable laws, as well as our Compliance Program which sets forth, in detail, our compliance policies and procedures for detecting and preventing fraud, waste and abuse. In addition, DMC has a Code of Ethics & Business Conduct that outlines the expected legal and ethical conduct of its personnel.

Please note that the Compliance Program and related materials are living documents that are subject to change as new regulations become effective and as policies & procedures are revised. In order to ensure that you are utilizing the most up-to-date version, you may always access our Compliance materials on our website at [www.downstate.edu/compliance](http://www.downstate.edu/compliance).

DMC has established a 24/7 Compliance Line as a mechanism for reporting activities, confidentially and anonymously, that may involve ethical violations or criminal conduct:

**DMC COMPLIANCE LINE:**  
**877-349-SUNY** (telephone report)  
**OR**  
**"COMPLIANCE LINE" link on the bottom of DMC's web- page:**  
**www.downstate.edu** (web report)

DMC has a no tolerance policy for employees, agents, or vendors who are involved in any unlawful activity. To that end, we expect that you share our goals of eradicating fraud and abuse and, therefore, will comply with your obligations under the DRA.

.....  
The following is a summary of the Federal & New York False Claims Acts, the Program Fraud Civil Remedies Act and other relevant State laws as posted on the Office of Medicaid Inspector General's Provider Compliance website:  
[http://www.omig.state.ny.us/data/images/stories/relevant\\_fca\\_statutes\\_122209.pdf](http://www.omig.state.ny.us/data/images/stories/relevant_fca_statutes_122209.pdf)

### I. FEDERAL LAWS

#### 1) **Federal False Claims Act (31 USC §§3729-3733)**

The False Claims Act ("FCA") provides, in pertinent part, as follows:

##### § 3729. False claims

(a) Liability for certain acts. --

(1) In general.—Subject to paragraph (2), any person who—

- (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
- (D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
- (E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the

Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

- (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) note; Public Law 104-410, plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.—If the court finds that—

- (A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
  - (B) such person fully cooperated with any Government investigation of such violations; and
  - (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.
- (3) Costs of civil actions.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.—For purposes of this section—

(1) the terms “knowing” and “knowingly” —

(A) mean that a person, with respect to the information—

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term “claim” —

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government-

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual’s use of the money or property;

(3) the term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual,

grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure.—Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

While the False Claims Act imposes liability only when the claimant acts “knowingly,” it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act. 31 U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government, or submits a claim to entities administering government funds, that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called “reverse false claim” may include a hospital which obtains interim payments from Medicare or Medicaid throughout the year, and then knowingly files a false cost report at the end of the year in

order to avoid making a refund to the Medicare or Medicaid program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as “*qui tam* relators,” may share in a percentage of the proceeds from an FCA action or settlement.

Section 3730(d)(1) of the FCA provides, with some exceptions, that a *qui tam* relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall not be less than 25 percent and not more than 30 percent.

.....  
**3. Administrative Remedies for False Claims (31 USC Chapter 38, §§ 3801 – 3812)**

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, the agency receiving the claim may impose a penalty of up to \$5,000 for each claim. The agency may also recover twice the amount of the claim.

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted rather than when it is paid. Also unlike the False Claims Act, the determination of whether a claim is false and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

**II. NEW YORK STATE LAWS**

New York State False Claim Laws fall under the jurisdiction of both New York’s civil and administrative laws, as well as its criminal laws. Some apply to recipient false claims and some apply to provider false claims. The majority of these statutes are specific to healthcare or Medicaid. Yet, some of the “common law” crimes apply to areas of interaction with the government and so, are



applicable to health care fraud and will be listed in this section.

**A. CIVIL AND ADMINISTRATIVE LAWS**

**1) New York False Claims Act (State Finance Law §§187-194)**

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the federal FCA such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars per claim plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys' fees, of a civil action brought to recover any such penalty.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by the NYS Attorney General or a local government. If the suit eventually concludes with payments back to the government, the person who started the case can recover twenty-five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty-five percent if the government did participate in the suit.

**2) Social Services Law, Section 145-b – False Statements**

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Service program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The state or local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to ten thousand dollars per violation. If repeat violations occur within five

years, a penalty of up to thirty thousand dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

**3) Social Services Law, Section 145-c – Sanctions**

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the needs of the individual or that of his family shall not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), and five years for any subsequent occasion of any such offense.

.....

**B. CRIMINAL LAWS**

**1) Social Services Law, Section 145 - Penalties**

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

**2) Social Services Law, Section 366-b – Penalties for Fraudulent Practices**

- a. Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a class A misdemeanor.
- b. Any person who, with intent to defraud, presents for payment a false or fraudulent claim for furnishing services, knowingly submits false information to obtain greater Medicaid compensation, or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a class A misdemeanor.

**3) Penal Law Article 155 - Larceny**

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This statute has been applied to Medicaid fraud cases.

- a. Fourth degree grand larceny involves property valued over \$1,000. It is a class E felony.
- b. Third degree grand larceny involves property valued over \$3,000. It is a class D felony.
- c. Second degree grand larceny involves property valued over \$50,000. It is a class C felony.
- d. First degree grand larceny involves property valued over \$1 million. It is a class B felony.

**4) Penal Law Article 175 – False Written Statements**

Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

- a. §175.05 – Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a class A misdemeanor.
- b. §175.10 – Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.
- c. §175.30 – Offering a false instrument for filing in the second degree involves presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.
- d. §175.35 – Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

**5) Penal Law Article 176 – Insurance Fraud**

This law applies to claims for insurance payments, including

Medicaid or other health insurance, and contains six crimes

- a. Insurance Fraud in the 5<sup>th</sup> degree involves intentionally filing a health insurance claim knowing that it is false. It is a class A misdemeanor.
- b. Insurance fraud in the 4<sup>th</sup> degree is filing a false insurance claim for over \$1,000. It is a class E felony.
- c. Insurance fraud in the 3<sup>rd</sup> degree is filing a false insurance claim for over \$3,000. It is a class D felony.
- d. Insurance fraud in the 2<sup>nd</sup> degree is filing a false insurance claim for over \$50,000. It is a class C felony.
- e. Insurance fraud in the 1<sup>st</sup> degree is filing a false insurance claim for over \$1 million. It is a class B felony.
- f. Aggravated insurance fraud is committing insurance fraud more than once. It is a class D felony.

**6) Penal Law Article 177 – Health Care Fraud**

This statute, enacted in 2006, applies to health care fraud crimes. It was designed to address the specific conduct by health care providers who defraud the system including any publicly or privately funded health insurance or managed care plan or contract, under which any health care item or service is provided. Medicaid is considered to be a single health plan under this statute.

This law primarily applies to claims by providers for insurance payment, including Medicaid payment, and it includes six crimes.

- a. Health care fraud in the 5<sup>th</sup> degree – A person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan. This is a class A misdemeanor.
- b. Health care fraud in the 4<sup>th</sup> degree – A person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than three thousand dollars. This is a class E felony.
- c. Health care fraud in the 3<sup>rd</sup> degree – A person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over ten thousand dollars. This is a class D felony.

- d. Health care fraud in the 2<sup>nd</sup> degree – A person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over fifty thousand dollars. This is a class C felony.
- e. Health care fraud in the 1<sup>st</sup> degree – A person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over one million dollars. This is a class B felony.

.....  
**III. WHISTLEBLOWER PROTECTION**

**1) Federal False Claims Act (31 U.S.C. §3730(h))**

The Federal False Claims Act provides protection to *qui tam* relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

**2) New York State False Claims Act (State Finance Law §191)**

The New York State False Claims Act also provides protection to *qui tam* relators (individuals who commence in a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the *qui tam* relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

**3) New York State Labor Law, Section 740**

An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer is in violation of the law that creates a substantial and specific danger to the public health and safety or which constitutes health care fraud under Penal Law §177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

**4) New York State Labor Law, Section 741**

A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health care provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

**MINORITY AND WOMEN’S BUSINESS - EQUAL EMPLOYMENT  
OPPORTUNITY PROGRAM POLICY STATEMENT**

**Policy Statement**

The \_\_\_\_\_ commits to carrying out the intent of the New York State  
(Name of Campus, Consultant, Contractor)  
Executive Law, Article 15-A which assures the meaningful participation of minority and  
women’s business enterprises in contracting and the meaningful participation of minorities and  
women in the workforce on activities financed by public funds.

**Minority Business Officer**

\_\_\_\_\_ is designated as the Minority Business Enterprise Officer  
(Name of Designated Officer)  
responsible for administering the Minority and Women’s Business-Equal Employment  
Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

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

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

**EEO Contract Goals**

10% Minority Labor Force Participation

10% Female Labor Force Participation

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

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

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



## UNIVERSITY-WIDE MWBE PROGRAM UTILIZATION PLAN

SUNY Project No. \_\_\_\_\_  
 Contractor: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_

Bid Date: [Click here to enter a date.](#) Agreement/Contract Value: \_\_\_\_\_  
 Primary Contact: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Fax Number: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**GOALS:** MBE \_\_\_\_\_% WBE \_\_\_\_\_% **Campus:** \_\_\_\_\_

SUBCONTRACTOR	FEDERAL ID #	DOLLAR VALUE OF CONTRACT OR PURCHASE ORDER	DESCRIPTION OF WORK OR SUPPLIES	SUBCONTRACTOR/SUPPLIER SCHEDULE	
				START DATE	COMPLETION DATE
<b>Company Name:</b> _____ <b>Street Address:</b> _____ <b>Contact Name:</b> _____ <b>E-Mail Address:</b> _____ <b>Check One:</b> MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.
<b>Company Name:</b> _____ <b>Street Address:</b> _____ <b>Contact Name:</b> _____ <b>E-Mail Address:</b> _____ <b>Check One:</b> MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.
<b>Company Name:</b> _____ <b>Street Address:</b> _____ <b>Contact Name:</b> _____ <b>E-Mail Address:</b> _____ <b>Check One:</b> MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.
<b>Company Name:</b> _____ <b>Street Address:</b> _____ <b>Contact Name:</b> _____ <b>E-Mail Address:</b> _____ <b>Check One:</b> MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.

In accordance with the SUNY Contract Documents and Executive Law Article 15-A, my firm seriously expects to use the NYS certified MBE/WBE certified firms listed above. The Contractor shall immediately notify and request approval prior to any changes to this plan from the University-wide MWBE Program Office.

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_ COMPANY OFFICER'S SIGNATURE \_\_\_\_\_ DATE: [Click here to enter a date.](#)

APPROVED:  DEFICIENT:  MWBE PROGRAM COORDINATOR: \_\_\_\_\_ DATE: \_\_\_\_\_

## FORM A

### **Summary: Policy and Procedure of the State University of New York Relating to State Finance Law §§139-j and 139-k**

State Finance Law §§139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2006, regulate lobbying on government procurement, including procurements by State University to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency's procurement record must demonstrate compliance with these new requirements.

Accordingly, neither a potential vendor nor a person acting on behalf of the vendor should contact any individual at State University other than the person designated in this solicitation as State University's Designated Contact, nor attempt to unduly influence award of the contract. State University will make a record of all Contacts, and such records of Contact will become part of the procurement record for this solicitation. A determination that a vendor or a person acting on behalf of the vendor has made intentionally a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at [www.suny.info/policies](http://www.suny.info/policies).

**FORM B**

**Affirmation with respect to State Finance Law §§139-j and 139-k**

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at [www.suny.info/policies](http://www.suny.info/policies).

Procurement Description/ID No.: \_\_\_\_\_

Offeror **AFFIRMS** that it has reviewed and understands the Policy and Procedure of the State University of New York, relating to State Finance Law §§139-j and 139-k, and agrees to comply with State University's procedure relating to Contacts with respect to this procurement.

Name of Offeror: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Person Submitting Form:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

**FORM C**

**Disclosure and Certification with respect to State Finance Law §§139-j and 139-k**

Procurement Description/ID No.: \_\_\_\_\_

1. Has a Governmental Entity, as defined in State Finance Law §139-j(1)(a), made a determination of non-responsibility with respect to the Offeror within the previous four years where such finding was due to a violation of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of no responsibility?

No

Yes  If yes, provide the following details:

Governmental Entity which made the finding: \_\_\_\_\_

Date of finding: \_\_\_\_\_

Basis of finding: \_\_\_\_\_

2. Has a Governmental Entity terminated or withheld a procurement contract with the Offer because of violations of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility?

No

Yes  If yes, identify the following:

Governmental Entity which terminated the contract: \_\_\_\_\_

Date of contract termination or withholding: \_\_\_\_\_

Identify the related procurement contract: \_\_\_\_\_

SUNY Downstate Medical Center reserves the right to terminate this contract in the event it is found that the certification filed by the Offeror in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the Governmental Entity may exercise its termination right by providing written notification to the Offeror in accordance with the written notification terms of this contract.

Offeror **CERTIFIES** that all information provided by Offeror with respect to its compliance with State Finance Law §§139-j and 139-k is complete, true and accurate.

Name of Offeror: \_\_\_\_\_

Address: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_

Signature of Person Submitting Form: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

## **Model Form for Governmental Entity Report of Contact under State Finance Law §139-k(4)**

### **Background:**

New York State Finance Law §139-k(4) obligates every Governmental Entity during the Restricted Period of a Procurement Contract to make a written record of any Contacts made. The term “Contact” is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the Governmental Procurement. In addition to obtaining the required identifying information, the Governmental Entity must inquire and record whether the person or organization that made the Contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or Contact the Governmental Entity.

It should be noted that State Finance Law §139-k(6) provides:

[a]ny communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a “contact” within the meaning of this section and shall not be recorded by a governmental entity pursuant to this section.

### **Instructions:**

This model form is for use by the Governmental Entity and may be used for each Procurement Contract governed by State Finance Law §139-k. All recorded Contacts shall be included in the procurement record for the Procurement Contract. This model form was designed to collect information about initial and subsequent Contacts on the specified procurement contract during the Restricted Period. However, a separate form must be completed for **each** person or organization that Contacts the Governmental Entity about each Procurement Contract. Additional information and guidance on the “restricted period” and permissible Contacts can be found in the guidelines issued by the Advisory Council on Procurement Lobbying, which can be found on the OGS website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

It is recommended that Governmental Entities advise Offerers and those designated, employed or retained by Offerers of the intention to record the Contact. It is also recommended that information be provided regarding to Offerers and others about the statutory Restricted Period, Designated Contacts and the Permitted Contacts.

While the model form includes a section where the nature of the Contact may be recorded, such information is not statutorily required to be reported. Where such information is recorded, the Governmental Entity may in its discretion conform its collection with its other procurement practices.