



# SUNY DOWNSTATE Medical Center

September 9, 2013

**TO: Prospective Vendor**

**SUBJECT: Skilled Nursing Facility Services for Patients Awaiting PRUCOL Medicaid Approval**

Dear Vendor:

As part of the New York State Executive Budget, the legislature passed Chapter 56, Part Q of the Laws of 2013 ("Part Q"), pursuant to which SUNY-DMC was granted procurement flexibility applicable to certain categories of procurements that are for the purpose of implementing its sustainability plan. The stated purpose of the procurement flexibility is to enable SUNY-DMC to enter into contracts in an expedited manner to facilitate implementation of the sustainability plan and resultant attainment of sustainability. The instant procurement is conducted under Part Q. Accordingly, interested vendors must commit to acting expeditiously (in complying with the requirements set forth below and otherwise in the posting). By submitting a proposal in response to the Posting, each vendor agrees to comply strictly with the timetable and other requirements described herein.

**By way of this legislation, the State University of New York – Downstate Medical Center ("SUNY-DMC") seeks to procure skilled nursing facility services for patients presently residing at its Long Island College Hospital ("LICH") facility.**

Proposals must include all the items set forth in the enclosed checklist, and arranged in the order enumerated. Any objections to the template contract must be stated in your proposal. Please note, however, that the terms therein were crafted under direction from the applicable New York State regulatory bodies, and SUNY-DMC's ability to negotiate said terms is very limited. Moreover, it is SUNY-DMC policy not to incorporate separate vendor terms and conditions- should incorporation of such terms be necessary, please ensure that all terms contradictory to the template contract are stricken from your submission.

The due date for proposals is Monday, September 25, 2013, and they must be submitted to the following address:

SUNY - Downstate Medical Center  
Department of Contracts, MSC 63  
Attention: Howah Hung, Contracts Attorney  
450 Clarkson Avenue  
Brooklyn, NY 11203-2908  
Email: [Howah.Hung@downstate.edu](mailto:Howah.Hung@downstate.edu)  
Fax: (718) 270-3342

Sincerely,



Howah Hung  
Contracts Attorney  
SUNY Downstate Medical Center  
Department of Contracts, MSC 63  
450 Clarkson Avenue  
Brooklyn, NY 11203  
(718) 613-8748

ATTACHMENTS:

- |             |   |
|-------------|---|
| Section I   | Part Q Procurement General Terms and Conditions<br>Specifications List and Vendor Selection Criteria (4 Pages)<br>Proposal Grid and Cost Proposal Matrix (1 Page)   |
| Section II  | SUNY Downstate Form Contract (13 Pages)<br>Exhibit A (3 Pages)<br>Exhibit A-1 (3 Pages)<br>BAA (6 Pages)<br>DRA (4 Pages)   |
| Section III | Mandatory Submission Checklist for Part Q Procurement<br>139 (j) & (k) Acknowledgement Form (2 Pages)<br>Policy and Procedure 139 (j) & (k) Forms A,B, & C (4 Pages)<br>Vendor Responsibility Questionnaire (10 Pages)<br>Tax Certification ST-220-CA and ST-220-TD (6 Pages)<br>Consultant Disclosure Legislation Bulletin G-226 (7 Pages) |

## PART Q PROCUREMENT GENERAL TERMS AND CONDITIONS

- I. **Background.** As part of the New York State Executive Budget, the legislature passed Chapter 56, Part Q of the Laws of 2013 ("Part Q"), pursuant to which SUNY-DMC was granted procurement flexibility applicable to certain categories of procurements that are for the purpose of implementing its sustainability plan. The stated purpose of the procurement flexibility is to enable SUNY-DMC to enter into contracts in an expedited manner to facilitate implementation of the sustainability plan and resultant attainment of sustainability. The instant procurement is conducted under Part Q. Accordingly, interested vendors must commit to acting expeditiously (in complying with the requirements set forth below and otherwise in the posting). By submitting a proposal in response to the Posting, each vendor agrees to comply strictly with the timetable and other requirements described herein.
- II. **Required Submissions.** To be eligible for consideration, prospective vendors must submit the documents listed in the attached "Submission Checklist," in the order and on the schedule set forth therein.
- III. **Restricted Period/Designated Contacts.** In accordance with the requirements of New York State Finance Law Sections 139j and 139k ("Lobbying Law"), the Restricted Period for this procurement is now in effect. Therefore, all communications regarding this procurement must be handled through SUNY-DMC's "Designated Contacts" ONLY. Please see the 139(j) & (k) Acknowledgement Form for Designated Contact(s) and additional information on Lobbying Law compliance.
- IV. **The Contract.** Pursuant to applicable regulatory requirements, SUNY-DMC uses a standard form agreement that incorporates various mandatory New York State contract terms. A copy of the SUNY-DMC form agreement (the "Form Agreement") is attached for reference.
  - a. **Contract Exhibits.** The contract ultimately awarded as a result of this Posting will include the following:
    - i. SUNY Exhibits A and A-1 and Attachment A;
    - ii. SUNY-DMC's Deficit Reduction Act Appendix;
    - iii. SUNY-DMC's standard Business Associates Agreement (if applicable);
    - iv. The Posting; and
    - v. Prevailing vendor's proposal (submitted in response to the Posting).
  - b. **Exceptions to the Form Agreement.** Given both the need to act expeditiously and the regulatory foundation for the provisions of the Form Agreement, SUNY-DMC implores vendors to accept the terms thereof without exception. However, in the event a vendor identifies clause(s) that are unacceptable, the vendor shall submit a list of exceptions (along with proposed revisions thereto) along with its proposal.
    - i. **Mandatory Clauses.** Notwithstanding the foregoing, there are certain clauses that are required, without exception. Those clauses include, without limitation, liability, indemnity,
  - c. **Vendor Contracts.** Given the need to act expeditiously, the basis of the Part Q procurement flexibility, SUNY-DMC's policy dictates vendor contracts generally will not incorporate vendor contracts. However, in the limited instances, where a vendor insists on using its form contract, it shall submit:
    - i. A copy of its contract (with any terms that are inconsistent with the Form Agreement either stricken or revised to resolve any such inconsistency); and
    - ii. A reasonably detailed explanation of the basis for its request to incorporate its contract (e.g. the extenuating circumstances that necessitate incorporation of the vendor contract).

SUNY-DMC reserves the right to determine, in its sole discretion, whether to incorporate the vendor's contract into the final agreement.

## SECTION I

## **Vendor Specifications**

### **Background**

In order to provide safe, effective and appropriate care in a cost-effective manner, Downstate Medical Center is seeking qualified Skilled Nursing Facilities to provide care and other appropriate health care services in line with the current skilled nursing facility standard of care and any other services as deemed necessary to enable these patients to receive PRUCOL Medicaid status approval.

### **Minimum Vendor Requirements**

The vendor must meet all of the following criteria:

- Licensed Nursing Home in good standing with the State of New York
- Medicaid provider in good standing with the State of New York
- Able to provide skilled nursing care in line with current skilled nursing facility standards of care and appropriate to each individual patient's needs 24 hours a day/7 days a week/365 days a year
- Have access to hemodialysis for patients either through an onsite licensed provider or arrangement with a licensed off-site provider and appropriate transportation arrangements
- Able to perform services to attain Medicaid coverage through the PRUCOL process for patients requiring this service

### **Daily Rate**

- The daily rate shall be \$300 per patient per day which shall be inclusive of care, food, medications and all other items associated with each patient's individual care needs. This rate shall be considered the maximum reimbursement per patient per day.
- Any patient requiring additional outpatient services (including but not limited to hemodialysis) shall receive this treatment at no additional cost to Downstate Medical Center. The skilled nursing facility shall be responsible for filing the appropriate Emergency Medicaid claims to facilitate payment for the outpatient service as appropriate.

- Payment of daily rate by Downstate Medical Center shall cease for individual patients when said patient receives Medicaid coverage approval.
- Payment of monthly invoices shall be in accordance with Downstate Medical Center policies.

#### **Agreement Terms**

- The agreement shall begin September 15, 2013 or sooner if mutually agreed upon by both parties, and the agreement shall end on September 14, 2016.
- The agreement shall be for a maximum of 3,285 days of care provided and a maximum cash value of \$985,500.
- Downstate Medical Center reserves the right to cancel this agreement at any time with a 30-day notice period. Such notice shall contain a final Cancellation Date no less than 30 days past the notice of cancellation. Upon cancellation, Downstate Medical Center shall only be liable for payment of those days where patient care was provided up to and including the Cancellation Date.

#### **Vendor Responsibilities**

In exchange for the daily rate as described above, the vendor agrees to all of the following responsibilities:

- Providing safe and appropriate care to each patient at a licensed Skilled Nursing Facility in good standing within the State of New York.
- Services to facilitate obtaining Medicaid approval through the PRUCOL status for each patient, where applicable.
- Delivery of one detailed invoice each month to Downstate Medical Center to enable payment via a process which will be mutually agreed upon between the vendor and Downstate Medical Center. This invoice shall contain sufficient detail describing each patient and the number of days care was provided.
- Provide Downstate Medical Center with monthly updates on the progress of obtaining Medicaid through the PRUCOL process. If updates are not provided on a monthly basis, Downstate Medical Center reserves the right to withhold payment of invoices until such updates are provided.

#### **Contingencies**

At the point where either \$27,000 or 90 days remain in the agreement and patients have not yet received Medicaid coverage, Downstate Medical Center has the option to pursue renegotiation of this agreement. If terms cannot be mutually agreed upon by the two parties, Downstate Medical Center agrees to receive the remaining patients without Medicaid coverage in to their care.

**Vendor Selection Criteria:**

- Cost
- Licensed Nursing Home in good standing with the State of New York
- Medicaid provider in good standing with the State of New York
- Able to provide skilled nursing care in line with current skilled nursing facility standards of care and appropriate to each individual patient's needs 24 hours a day/7 days a week/365 days a year
- Have access to hemodialysis for patients either through an onsite licensed provider or arrangement with a licensed off-site provider and appropriate transportation arrangements
- Able to perform services to attain Medicaid coverage through the PRUCOL process for patients requiring this service



**Skilled Nursing Facility Services for Patients Awaiting PRUCOL Medicaid Approval  
Bid # Q14-05**

**Proposal Grid and Cost Matrix**

Submitted by: \_\_\_\_\_  
Vendor Name

A. Summary of Vendor and Staff Experience (please append marketing materials to this matrix, if necessary)
B. Summary of how Vendor can satisfy SUNY Downstate's needs.
C. Three (3) Hospital References, including contact name, telephone, and email address.
D. Proposed Annual Cost Per Patient (for providing all services set forth in specifications)
TOTAL COST FOR THREE YEARS:

**\*\*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).**

## SECTION II

Contract Number: XXXXXXXX

Agency Code: 3320218

AGREEMENT (this "Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between the State University of New York, an educational 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 ("SUNY-DMC") and [CONTRACTOR'S FULL LEGAL NAME, TYPE OF ENTITY], a corporation organized and existing under the laws of the State of [STATE OF INCORPORATION], with its principal place of business located at [PRIMARY CORPORATE ADDRESS] ("Contractor").

WITNESSETH:

WHEREAS, SUNY-DMC requires a qualified firm to provide certain [high level description of covered services] services;

WHEREAS, pursuant to Part Q of Chapter 56 of the Laws of 2013 ("Part Q"), SUNY-DMC solicited proposals for the aforesaid services by publication on its website (the "Posting"), a copy of which is annexed hereto as *Exhibit "B"* and made a part hereof;

WHEREAS, Contractor submitted a timely proposal, a copy of which is attached hereto as *Exhibit "C"* and made a part hereof;

WHEREAS, Contractor is normally engaged in the business of providing the services described above, and appears duly qualified to provide the services required by SUNY-DMC; and

WHEREAS, SUNY-DMC and the Contractor desire to enter into an agreement setting forth the terms and conditions by which the Contractor will perform the desired services; 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. All of the capitalized terms not otherwise defined below, shall have the same meanings set forth in (i) the Posting, a copy of which is attached hereto as *Exhibit B*; (ii) the Proposal, a copy of which is attached hereto as *Exhibit C*; and/or (iii) any other documents incorporated herein as exhibits hereto.
2. Unless terminated earlier as provided herein, the term of this shall be [initial term of the Agreement], (the "Term"), commencing [beginning date] and expiring [end].

3. **Contractor** shall provide to **SUNY-DMC** the ~~[[General Description]]~~ services described in detail in the Posting and the Proposal (the "Services"), subject to the terms hereof.
4. Upon written notification by **SUNY-DMC** to **Contractor** that this Agreement has been executed and approved by all necessary parties, **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, subject to regulatory approval, where applicable, it shall perform only the services set forth in this Agreement in strict compliance with the terms hereunder. **Contractor** shall retain 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, without limitation, performing services beyond the scope of this Agreement and/or exceeding or otherwise deviating from any payment terms hereunder (absent a valid amendment hereto), shall be at **Contractor's** sole cost and expense
5. In consideration of performing the Services in accordance with the provisions of this Agreement, provided that **Contractor** complies with the provisions hereof (including those governing invoicing hereunder), **SUNY-DMC** shall pay **Contractor**, in arrears, in the all-inclusive amount of ~~[[MUTUALLY AGREED UPON PAYMENT TERMS]]~~

Fees paid for which it is subsequently determined that **Contractor** was not entitled must be promptly reimbursed to **SUNY-DMC**. **Contractor** acknowledges **SUNY-DMC** may effectuate such reimbursement by subtracting such fees (due **SUNY-DMC** in accordance with the preceding sentence) from any payments that later become due to **Contractor** hereunder.

6. As a condition of **Contractor's** entitlement to payment hereunder, **Contractor** shall submit Proper Invoices (as defined hereinafter) to **SUNY-DMC** in the manner described hereinbelow, provided, however, that **Contractor** shall not submit more than one invoice per billing period. Each invoice shall (i) be accurate and correct; (ii) reference this Agreement (specifically, the reference number assigned hereto (and set forth at the top of the first page hereof)), (iii) include an itemized statement of all charges set forth therein as well as a detailed description of such charges, including, the specific services provided, date(s) of performance (and/or period(s) covered by such charges), identification of covered equipment/systems (e.g. model/serial number), if applicable, and any substantiating or other supporting documentation or information necessary to validate or verify the charges contained in such invoice or any other information reasonably requested by **SUNY-DMC** or the Office of the State Comptroller; and (iv) shall be submitted as follows (an invoice that satisfies the criteria set forth in (i) – (iv) above is a "Proper Invoice," collectively "Proper Invoices"):

Original to:

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

Copy to:

**SUNY – Downstate Medical Center  
Director of Contracts and Procurement Management – Box #63  
450 Clarkson Avenue  
Brooklyn, New York 11203-2098  
Attention: Director of Contracts**

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

**[CONTRACTOR'S NAME, ADDRESS and TAX ID#]**

Payment for invoices submitted by the **Contractor** shall only be rendered electronically unless payment by paper check is expressly approved by an authorized individual, in his or her sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York State procedures and practices. **Contractor** shall comply with the New York State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the OSC website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm).

In the event that **Contractor** has not received payment when due in accordance with the foregoing, **Contractor** shall immediately send a certified letter to the attention of both the notice recipient hereunder and **SUNY-DMC's** Director of Expenditure Processing informing the same of the failure to receive payment (and including any supporting documentation in connection with the outstanding charges). **Contractor's** failure to comply with the foregoing may result in its ineligibility to receive any interest payments to which it may be entitled hereunder.

Notwithstanding anything to the contrary herein (or in any exhibit hereto), timeliness of payment and any interest to be paid to **Contractor** for late payment, to the extent required by law, shall be governed by Article 11-A of the New York State Finance Law. **Contractor's** sole and exclusive remedy for **SUNY-DMC's** failure to make payments when due shall be the interest payments described in the foregoing sentence.

8. **SUNY-DMC** is exempt from any and all taxes related to the services provided under this agreement.
9. **Contractor** represents and warrants that it possesses and shall maintain in effect (and that **Contractor's** employees assigned to perform hereunder and any permitted subcontractors (and assigned employees thereof) shall possess and 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.

10. **Contractor** shall perform the Services and its obligations hereunder in accordance with the highest professional standards for such services in the New York Metropolitan area and in accordance with all laws rules, ordinances and regulations of any national, state or local government, any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, commission, including without limitation the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO").
11. **Contractor** agrees to comply with the provisions contained in Exhibits "A" and "A-1" and Attachment A, all of which are attached to this Agreement and incorporated herein and made a part hereof. The term "Contractor" in the said Exhibits "A" and "A-1" and Attachment A shall be construed to denote the **Contractor** herein.
12. Subject to applicable disclosure laws, 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). Notwithstanding the foregoing or anything to the contrary herein, **Contractor** acknowledges that this Agreement is subject to the New York State Freedom of Information Law ("FOIL") as set forth in Article 6 of the New York State Public Officers Law and that only **Contractor's** proprietary information that satisfies the requirements of section 87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder. If **Contractor** believes that any information in the Agreement constitutes a trade secret or should otherwise be treated as confidential and wishes such information not to be disclosed if requested pursuant to Article 6 of the New York State Public Officers Law, **Contractor** shall submit with the Agreement a separate letter specifically identifying the page number(s), line(s), or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret and formally requesting that such information be confidential. Only **Contractor's** proprietary information that satisfies the requirements of section 87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder. Failure by **Contractor** to submit such a letter with the Agreement identifying trade secrets shall constitute a waiver by **Contractor** of any rights it may have under the New York State Public Officers Law relating to protection of trade secrets. To the extent that litigation arises over **Contractor's** invocation (or attempted invocation) of trade secret protection, under FOIL, **Contractor** shall be solely responsible to respond to, and defend, the litigation; and failure to do so shall constitute a waiver of **Contractor** of any rights it may have under the New York State Public Officers Law relating to protection of trade secrets. Upon termination of this Agreement, **Contractor** shall, at its sole cost and expense, return to **SUNY-DMC** any and all confidential information of **SUNY-DMC** then in its custody or possession (regardless of the medium held or stored).
13. 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.

14. To the extent applicable hereto, wages paid by **Contractor** (and/or by any subcontractor hereunder) for the required services shall be no less than the minimum wage rate, if any, prescribed by the New York State Department of Labor ("DOL") for the specific services applicable in the area where work will be performed. If the DOL should revise these rates prior to contract award or during the contract period, the Contractor and any subcontractors must then comply with any such new rates.
15. **Contractor** shall procure and 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:
    - (1) Contractor's Liability Insurance to cover all operations with respect to all services performed hereunder;
    - (2) Contractual Liability Insurance to cover the indemnification required hereunder.
    - (3) Products/Completed Operations;
    - (4) Protective Liability Insurance issued in the name of, and covering the liability of, the People of the State of New York with respect to all operations hereunder, the for the same limits as set forth above.
  - 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 Benefits 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.

All insurance policies must (i) name **SUNY-DMC**, **SUNY** and the State of New York as additional insureds and (ii) contain a thirty (30) day written notice of any cancellation, change, or termination of coverage. All certificates must be filed with the Director of Contracts prior to commencement hereof.

16. 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. Further information on such requirements (including copies of the forms **Contractor** must complete to satisfy such requirements - Planned Employment Form (Form A) and the Annual Employment Report (Form B)) is available via 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).
17. As a result of the Iran Divestment Act of 2012 (the "Act"), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), §165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services ("OGS") is charged with developing a "list" (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms under the law). Pursuant to SFL §165-a(3)(b), OGS is required to issue the initial list no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website, and to update the list every 180 days thereafter.

By entering into a renewal or extension of this Agreement, **Contractor** (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize, as a subcontractor, to perform its obligations under this Agreement, any entity identified on the prohibited entities list.

Additionally, **Contractor** understands that, during the term of this Agreement, should SUNY-DMC receive information that a "person" (for the purposes hereof, **Contractor** and its subsidiaries, parents, affiliates or other related individuals or entities that fall within the Act's definition of a person) is in violation of the above-referenced certification, SUNY-DMC will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its investment in violation of the Act, then SUNY-DMC shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages and/or declaring the Contractor in default.

SUNY-DMC reserves the right to reject any renewal, extension or request for assignment to an entity that appears on the prohibited entities list, 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.

18. **Contractor** and any of its agents, employees or sub-contractors engaged in the performance of the services contemplated under this Agreement shall at all times be deemed to be performing as an independent contractor, and not as an agent or employee of the **State University** or **SUNY-DMC**, and the acts and omissions of such agents, employees or sub-contractors shall be deemed to be those of **Contractor**. **Contractor** shall indemnify, defend and hold harmless the **State University of New York**, the **State of New York** and **SUNY-DMC** (the "Indemnified") and their officers, trustees, employees and agents from and against all loss, damage and expense (including, without limitation, reasonable attorneys', accountants' and consultants' fees and court costs) or other liability incurred by, imposed upon or threatened against the Indemnified in connection with any claim, suit, action, demand or judgment arising out of **Contractor's** (and/or its officers', employees' and agents'): (i) negligence or intentional misconduct; and/or (ii) failure to comply with the provisions hereof. Reciprocally, subject to the availability of lawful appropriations (as required by Section 41 of State Finance Law) and



consistent with Section 8 of the State Court of Claims Act, **SUNY-DMC** shall hold **Contractor** harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of **SUNY-DMC** or its officers and employees when acting within the course and scope of their employment.

19. 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, tangible personal property or intellectual property attributable to the negligence or other tort of **Contractor** or **Contractor's** officers, employees or agents.
20. **Termination by SUNY-DMC.**
  - (a) In the event of a breach by **Contractor** of any provision of this Agreement, **SUNY-DMC** shall give the **Contractor** fifteen (15) days to cure. If the breach is not remedied within the fifteen (15) day cure period, **SUNY-DMC** may, in addition to other rights and/or remedies that it may otherwise have, terminate this Agreement by giving the **Contractor** fifteen (15) days written notice.
  - (b) **SUNY-DMC** may terminate this Agreement immediately, without penalty, if: (i) in **SUNY-DMC's** reasonable determination, **Contractor's** acts or omissions: (a) pose a danger to **SUNY-DMC's** employees, patients and/or visitors; (b) might result in the loss of any license reasonably necessary for the operation of Customer's business, including accreditations (required pursuant to contractual arrangements); (ii) **Contractor's** insurance lapses; (iii) **Contractor**: (a) makes an assignment in contravention to the terms of this Agreement and/or applicable law; (b) is or becomes the subject of a bankruptcy or similar proceeding; or otherwise (c) becomes insolvent; (iv) lawful appropriations are not made (pursuant to Section 41 of State Finance Law); (v) the certifications filed by **Contractor** in accordance with: (a) State Finance Law sections 139-j and 139-k are found to be intentionally false or intentionally incomplete; or (b) Tax Law Section 5-a, if applicable, are found to be false or incomplete.
  - (c) **SUNY-DMC** reserves the sole right to terminate this Agreement, in whole or in part, for any reason, without penalty, by giving the **Contractor** thirty (30) days written notification.
  - (d) **SUNY-DMC** reserves the right at any time during the performance of this Agreement to omit any portion of the work as **SUNY-DMC** may deem, in its sole discretion, necessary without constituting grounds for any claim by **Contractor** for allowances for damages.
  - (e) In the event **SUNY-DMC** terminates this Agreement, for any reason, **Contractor** shall refund to **SUNY-DMC**: (i) if applicable, any compensation paid on account of any period during which **Contractor** was in breach of its obligations hereunder; and (ii) that portion of compensation already paid that is attributable to the balance of the term of this Agreement.
  - (f) The foregoing termination rights 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.
21. If at any time hereunder **Contractor** alleges breach by **SUNY-DMC** of any of the provisions hereunder, **Contractor** shall not, in any event, withhold performance under this or any other agreement it may have with **SUNY-DMC**. **Contractor** shall, instead, provide **SUNY-DMC** with notice, pursuant to provision governing notices hereunder which notice shall specifically detail the alleged breach and the remedial measure sought, and allow **SUNY-DMC** ninety (90) days to cure any such breach ("Curative Period"). In the event **SUNY-DMC** has commenced, but not completed, remedial actions during the Curative Period, **SUNY-DMC** shall confer with

**Contractor** in good faith and the parties shall negotiate a reasonable extension to the Curative Period.

22. Upon natural expiration, or earlier termination, of this Agreement, **Contractor** shall (at no additional cost to **SUNY-DMC**): (a) perform such activities as are reasonably necessary to ensure an orderly wind-down of its activities hereunder (which shall include, at a minimum, returning to **SUNY-DMC** (or, at **SUNY-DMC**'s request, to a third party (including a successor provider of the services hereunder) any materials, documents or other items held, or otherwise possessed, by **Contractor** for or on behalf of **SUNY-DMC** (or otherwise in **Contractor**'s possession); and (b) reasonably assist **SUNY-DMC** to facilitate transition of the services hereunder to either a successor provider or **SUNY-DMC**.
23. The parties agree that, if by reason of strike or other labor disputes, civil disorders, inclement weather, acts of God, delays in regulatory approvals 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. The Party claiming excusable delay shall use commercially reasonable efforts to immediately notify the other Party of the force majeure condition and to mitigate the effects of the force majeure condition giving rise to the delay so as to continue performing as required hereunder as expeditiously as reasonably possible.
24. The **Contractor** shall keep books and records in accordance with good accounting practice and 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**.
25. 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 and Procurement Management  
450 Clarkson Avenue, Box 63  
Brooklyn, New York 11203-2098  
Attention: Director of Contracts

To **Contractor**:

**[CONTRACTOR'S ADDRESS FOR NOTICE RECEIPT AND NOTICE  
RECIPIENT'S TITLE]**

or to such other address or addressee as may be subsequently designated by notice. All notices become effective only when received by the addressee.

26. a. **Contractor** shall be responsible for notifying the Director of Contracts and Procurement Management, in writing, of any change of address or telephone number, notwithstanding any notification to any other department of **SUNY-DMC**.

- b. **Contractor** shall be responsible for notifying the Director of Contracts and Procurement Management, in writing, of the appropriate address(es) to send correspondence, including renewal letters and financial documentation relating to this Agreement.
  - c. The Contracts and Procurement Management Department shall mail correspondence to the address(es) designated by **Contractor**.
  - d. The Contracts and Procurement Management Department shall not be liable for any ramifications resulting from **Contractor's** failure to comply with Items (a) and (b) herein above.
27. To the extent applicable, **Contractor** agrees that **Contractor** (and **Contractor's** employees and/or agents assigned to **SUNY-DMC**) shall, at all times, comply with the provisions of the Health Insurance Portability and Accountability Act ("HIPAA") of 1996 and its implementing regulations, other applicable privacy laws as well as applicable **SUNY-DMC** policies and procedures governing the confidentiality, privacy and security of patient protected health information, as set forth in the Business Associates Agreement ("BAA"), a copy of which is annexed hereto as *Exhibit D* and made a part hereof.
28. **SUNY-DMC** is required by law to provide information to all of its contractors and agents regarding the Federal False Claims Act, New York State Laws regarding civil or criminal penalties for false claims and payments, administrative remedies for false claims and statements, and whistleblower protections under these laws. *Exhibit E* (the "DRA Appendix") of this Agreement satisfies this notification requirement, and by execution of this Agreement, **Contractor** acknowledges that it has received and understands the information provided therein.
29. **Contractor** 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 **Contractor**, its employees, or any individual **Contractor** assigns to **SUNY-DMC** to furnish goods or services pursuant to the Agreement, or any individual or entity from which **Contractor** receives or purchases goods that it provides to **SUNY-DMC**, is excluded from participation in Medicare, Medicaid, or other federally funded health care programs. **Contractor** 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 **Contractor**, the employee, individual, or entity is not so excluded. If, at any time during the term of the Agreement, **Contractor**, the employee, individual, or entity **Contractor** is excluded from participation in Medicare, Medicaid, or other federally funded health care programs, **Contractor** 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 **Contractor** 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)).

30. **Contractor's Obligations with respect to Employees On-Site at SUNY-DMC.**

- a. **Legal Compliance.** Any personnel assigned by **Contractor** to provide services on-site at **SUNY-DMC** shall have and maintain, for the duration hereof, any and all applicable licenses, certifications or other authorizations required by applicable law for the performance of such services. Further, such personnel shall comply with all applicable **SUNY-DMC** policies and procedures governing access to and any entry upon its premises.
- b. **SUNY-DMC's Right to Staff Replacement.** If at any time during the course of the Term, the appearance, conduct, performance, or other behavior of any of **Contractor's** employees is reasonably deemed by **SUNY-DMC** to be unacceptable or otherwise not in the best interests thereof, **Contractor** shall immediately remove such employee from **SUNY-DMC's** premises.
- c. **Assignment Conditions/HR Competencies for On-Site Performance.**
  - i. All personnel supplied by **Contractor** shall be and remain its employees, and, except as specifically provided hereunder, **SUNY-DMC** shall have no responsibility whatsoever as an employer with respect to such personnel, i.e. withholding social security, unemployment compensation, or any other taxes mandated by law.
  - ii. Prior to assignment to **SUNY-DMC**, directly or indirectly, **Contractor** 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, **Contractor** 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 **Contractor** at **SUNY-DMC**; and (2) has demonstrated competence in performing the duties required of the position. The foregoing health requirements shall include, inter alia, **Contractor** causing all of its employees assigned 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 **Contractor** 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.
  - iii. **Contractor** 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 a written job description, a completed job application or resume detailing the individual's competencies, including copies of any license, registration, certification and/or permits; evidence that the employee has received an initial **SUNY-DMC** orientation and attended 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; and completed annual competency assessments, including age-specific competencies and assessments and current, up-to-date evaluation and appraisal tools.

- iv. Prior to assignment of an individual to **SUNY-DMC**, **Contractor** shall determine, through use of an appropriate consumer reporting agency, whether such individual 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 **Contractor** 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, **Contractor** shall re-perform the checks described hereinabove at least once annually, and shall provide **SUNY-DMC** with a copy of the resulting reports.

- d. Pre-employment Training/Programs. **Contractor** shall ensure that all of its employees attend the required **SUNY-DMC** New Employee Orientation program, as well as all mandatory annual in-service training, including, but not limited to, Health Insurance Portability and Accountability Act and Fire Safety Training.

31. Neither this Agreement nor any of its provisions shall be assigned, delegated, transferred, conveyed, sub-let, or otherwise disposed of without the prior written consents of **SUNY-DMC**, the New York State Attorney General and the New York State Office of the State Comptroller, and any attempts to assign, delegate, transfer, convey, sub-let, or otherwise dispose of this Agreement without said written consents shall be null and void. For avoidance of doubt, all provisions hereof shall bind any permitted successors and/or assigns of either party.
32. The **SUNY-DMC** Project Manager for this Agreement shall be the Vice President of Revenue Cycle, 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.
33. This Agreement is not intended to benefit any third party, nor shall any person who is not now or in the future a party hereto be entitled to enforce any of the rights or obligations of a party under this Agreement.
34. Those provisions of this Agreement that, by their nature, are intended to survive termination or expiration hereof will remain in full force and effect, including, without limitation, the following Sections: 6, 7, 8, 9, 10, 11, 12, 13, 15, 18, 19, 20, 22, 24, 27, 30, 33, 34, 35, 36, and 38. Accordingly, termination of this Agreement will not adversely affect any right existing as of the effective date of termination. The rights and remedies provided under this Agreement

are cumulative and in addition to any other rights or remedies available at law and in equity, and any other contract instrument or paper. If any portion of this Agreement is found to be illegal in law, all other elements of the contract will remain in full force. As the parties hereto have jointly negotiated this agreement, in the event of ambiguity, this Agreement shall not be presumptively construed for or against either party.

35. 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) *Exhibits A and A-I*;
  - (b) *Exhibit D: BAA*;
  - (c) *Exhibit E: DRA Appendix*;
  - (d) The text of this Agreement (pages 1 through 13);
  - (e) *Exhibit B: the Posting*; and
  - (f) *Exhibit C: the Proposal*.
36. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York and the parties agree to bring any action to interpret, construe or enforce this Agreement in a New York court of competent jurisdiction.
37. Mandatory Responsibility Provisions in State Contracts.
- a. General Responsibility Language: The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Head of State Agency or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
  - b. Suspension of Work (for Non-Responsibility): The Head of State Agency or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Head of State Agency or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
  - c. Termination (for Non-Responsibility): Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Agency officials or staff, the Contract may be terminated by the Head of State Agency or his or her designee at the Contractor's expense where the Contractor is determined by the Head of State Agency or his or her designee to be non-responsible. In such event, the Head of State Agency or his or her designee may complete the contractual requirements in any manner he or she deem advisable and pursue legal or equitable remedies for breach.
38. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties and all previous communications between the parties whether written or oral, with

reference to the subject matter of this Agreement are hereby superseded, and 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.

IN WITNESS WHEREOF, the parties hereto have caused their signatures to be affixed as of the date first above written.

AGENCY CODE: 3320218

CONTRACT NUMBER: [XXXXXX]

Agency Certification

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

[CONTRACTOR'S FULL  
LEGAL NAME]

STATE UNIVERSITY OF NEW YORK  
DOWNSTATE MEDICAL CENTER

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

\_\_\_\_\_  
Alan Dzija  
Vice President and  
Chief Financial Officer



## 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 superceded 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: \_\_\_\_\_

**EXHIBIT E**  
**SUNY Downstate Medical Center: Compliance with Deficit Reduction Act of 2005**

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](http://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.

## EXHIBIT E

(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

## **EXHIBIT E**

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

## EXHIBIT E

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.

### SECTION III

## MANDATORY SUBMISSION CHECKLIST FOR PART Q PROCUREMENT

---

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 Questionnaire
  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)
- 

### Vendor Proposal Components

9. ☐ Company Background
    - ☐ Years of Experience
    - ☐ Resumes of Project Leaders
    - ☐ Staffing Plan (if applicable)
  10. ☐ Technical Proposal
    - ☐ Response to each specification
    - ☐ Implementation Plan
    - ☐ Expectations from, and requirements of, SUNY-DMC
    - ☐ List of deliverables (if applicable)
    - ☐ All applicable timelines
  11. ☐ Three References
  12. ☐ Price Proposal Matrix
  13. ☐ MWBE Utilization Plan (if applicable)
-

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

**Procurement Q14-05:**  
**Skilled Nursing Facilities for Patients Pending PRUCOL Medicaid approval**

Pursuant to State Finance Law § §139-j and 139-k (the "Procurement Lobbying Law"), this solicitation includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer during the procurement process. An Offerer/Bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the SUNY Downstate Medical University, and, if applicable, Office of the State Comptroller ("Restricted Period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in the State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified below. SUNY Downstate Medical University employees are also required to obtain certain information when contacted during the restricted period and make a determination of responsibility of the Offerer/Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offeror/Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the following website:  
<http://www.ogs.state.ny.us/purchase/AboutPSG.asp>

All contacts and/or inquiries regarding this procurement, be they oral, written, or electronic commencing with the earliest written notice, advertisement, or solicitation and ending with the final contract award and approval by SUNY Downstate Medical University and, where applicable, Office of the State Comptroller, shall **only** be directed to the following person(s):

Howah Hung  
Contracts Attorney  
Howah.Hung@downstate.edu  
718-613-8748 (phone)  
718-270-3342 (fax)

or

Maureen Crystal  
Director of Contracts  
Maureen.Crystal@downstate.edu  
718-270-1976 (phone)  
718-270-3342 (fax)

(continued)

The vendor must affirm their understanding of and adherence to this policy by completing, signing and returning with the bid this acknowledgement form, which is hereby made a part of the resultant Agreement. This policy provides that if a member, officer, or employee of a governmental entity becomes aware that an officer has violated the permissible contact provisions of the State Finance Law 139j and 139k, said person shall immediately notify the Ethics Officer, Inspector General, or other official of the procuring governmental entity for investigation. **Any Offeror/Bidder that fails to comply with this provision will be disqualified from consideration.**

**Bidder's Affirmation of Understanding & Adherence**

I, \_\_\_\_\_(title), an authorized representative of  
\_\_\_\_\_, hereby acknowledge and affirm that \_\_\_\_\_  
\_\_\_\_\_ agrees to comply with the Procurement Lobbying Law.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**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:

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.

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

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.

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>I. LEGAL BUSINESS ENTITY INFORMATION</b>						
<u>Legal Business Entity Name*</u>		<u>EIN (Enter 9 digits, without hyphen)</u>				
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>  <table style="width: 100%; border: none;"> <tr> <td style="width: 70%; border: none;">Telephone</td> <td style="width: 10%; border: none; text-align: center;">ext.</td> <td style="width: 20%; border: none;">Fax</td> </tr> </table>		Telephone	ext.	Fax
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 PC)		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).

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>I. LEGAL BUSINESS ENTITY INFORMATION</b>		
1.4 If the <u>Legal Business Entity's Principal Place of Business</u> is not in New York State, does the <u>Legal Business Entity</u> maintain an office in New York State? (Select "N/A," if <u>Principal Place of Business</u> is in New York State.)		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
If "Yes," provide the address and telephone number for one office located in New York State.		
1.5 Is the <u>Legal Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise (MBE)</u> , <u>Women-Owned Business Enterprise (WBE)</u> , <u>New York State Small Business (SB)</u> or a federally certified <u>Disadvantaged Business Enterprise (DBE)</u> ? If "Yes," check all that apply: <ul style="list-style-type: none"> <li><input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise (MBE)</u></li> <li><input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise (WBE)</u></li> <li><input type="checkbox"/> <u>New York State Small Business (SB)</u></li> <li><input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise (DBE)</u></li> </ul>		<input type="checkbox"/> Yes <input type="checkbox"/> No
1.6 Identify <u>Officials and Principal Owners</u> , 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 (Enter 0% if not applicable)

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**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

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**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 Sanctioned relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 Suspended, debarred, or disqualified from any government contracting process?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an investigation, whether open or closed, by any government entity 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 judgment 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 suspended or debarred from any government contracting process or been disqualified on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, debarment 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 non-responsibility finding by a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 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?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a government entity in lieu of responding to an information request or subsequent to a formal request to appear before the government entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each "Yes," explain:	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**V. INTEGRITY – CONTRACT AWARD***Within the past five (5) years, has the reporting entity:*

- |   |  |
|---|--|
| 5.0 Been <u>suspended</u> , cancelled or terminated for cause 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 <u>willful</u> 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:<br>a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or<br>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:



**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY</b>	
<b>8.0</b> Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any government entity on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> 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.	
<b>8.1</b> Within the past five (5) years, has the <u>Reporting Entity</u> had any <u>liquidated damages</u> assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> 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.	
<b>8.2</b> Within the past five (5) years, have any <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$25,000 been filed against the <u>Reporting Entity</u> which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's 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.	
<b>8.3</b> In the last seven (7) years, has the <u>Reporting Entity</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
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.	
<b>8.4</b> During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by federal, state or local tax laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the <u>Reporting Entity</u> failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
<b>8.5</b> During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the years the <u>Reporting Entity</u> 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.	
<b>8.6</b> During the past three (3) years, has the <u>Reporting Entity</u> had any government audit(s) completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
a) If "Yes," did any audit of the <u>Reporting Entity</u> identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any <u>material disallowance</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> 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.	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**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.)*

9.0 Does the Reporting Entity have any Associated Entities?

☐ Yes ☐ No

Note: All questions in this section must be answered if the Reporting Entity is either:

- An Organizational Unit; or
- The entire Legal Business Entity which controls, or is controlled by, any other entity(ies).

If "No," SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.

9.1 Within the past five (5) years, has any Associated Entity Official or Principal Owner been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:

a) Any business-related activity; or

b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?

☐ Yes ☐ 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).

9.2 Does any Associated Entity have any currently undischarged federal, New York State, New York City or New York local government liens or judgments (not including UCC filings) over \$50,000?

☐ Yes ☐ 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.

9.3 Within the past five (5) years, has any Associated Entity:

a) Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process?

☐ Yes ☐ No

b) Been denied a contract award or had a bid rejected based upon a non-responsibility finding by any federal, New York State, New York City, or New York local government entity?

☐ Yes ☐ No

c) Been suspended, cancelled or terminated for cause (including for non-responsibility) on any federal, New York State, New York City or New York local government contract?

☐ Yes ☐ No

d) Been the subject of an investigation, whether open or closed, by any federal, New York State, New York City, or New York local government entity for a civil or criminal violation with a penalty in excess of \$500,000?

☐ Yes ☐ No

e) Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime?

☐ Yes ☐ No

f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local government entity?

☐ Yes ☐ No

g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?

☐ Yes ☐ 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.

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>X. FREEDOM OF INFORMATION LAW (FOIL)</b>	
<p>10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).</p> <p>Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If "Yes," indicate the question number(s) and explain the basis for the claim.</p>	

<b>XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE</b>		
Name	Telephone <div style="text-align: right; margin-top: 5px;">ext.</div>	Fax
Title	Email	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**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 Department of Taxation and Finance

# Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-CA

(6/06)

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 Contract number or description	
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 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. This publication is available on our Web site, by fax, or by mail. (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.

If you have questions, please call our information center at 1 800 698-2931.

**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:

- The procuring entity is a covered agency within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a contractor within the meaning of the statute (see Publication 223, Q&A 6); and
- 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 \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } SS.:

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 6-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 Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?



Internet access: [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from  
8:00 A.M. to 5:00 P.M. (eastern time),  
Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110



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, please call 1 800 972-1233.

**Contractor Certification**(Pursuant to Section 5-a of the Tax Law, as amended,  
effective April 26, 2006)**ST-220-TD**

(6/06)

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 name	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.

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), available at [www.nystax.gov](http://www.nystax.gov). Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

**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 Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

**Need help?**

Internet access: [www.nystax.gov](http://www.nystax.gov)  
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M.  
(eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

Sales Tax Information Center: 1 800 698-2909

From areas outside the U.S. and outside Canada: (518) 485-6800

Hearing and speech impaired (telecommunications  
device for the deaf (TDD) callers only): 1 800 634-2110



**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, please call 1 800 972-1233.

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.

Make only one entry in each section below.

### 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 person (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such person exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship 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 person is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If person 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 person has a different DBA (doing business as) name, enter that name as well.

Column C — Address - Enter the street address of person'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 person or person's business, as applicable. If the person 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 person 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. \_\_\_\_\_



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

**PROCUREMENT AND  
DISBURSEMENT GUIDELINES**

<b>BULLETIN:</b>	G-226
<b>SUBJECT:</b>	Consultant Disclosure Legislation
<b>DATE:</b>	December 5, 2006 (updated)

**Purpose:** The purpose of this bulletin is to explain new reporting requirements related to Chapter 10 of the Laws of 2006 and to provide forms to be used to submit the necessary information in a uniform format.

Chapter 10 of the Laws of 2006 amends State Finance Law §§ 8 and 163<sup>1</sup> by requiring:

1. That the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by State agencies for consulting services during the previous fiscal year, certain additional information on employees providing services under such contracts;
2. That contractors annually report certain employment information to the contracting agency, the Department of Civil Service (DCS) and OSC; and
3. That OSC include such employment information in the Procurement Stewardship Act Report it compiles annually.<sup>2</sup>

The new legislation takes effect on June 19, 2006.

**State Contractors  
Employment  
Information:**

As a result of these changes in law, State contractors will be required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor.

**Contracts for  
Consulting  
Services:**

Chapter 10 of the Laws of 2006 expands the definition of contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

**PROCUREMENT AND  
DISBURSEMENT GUIDELINES**

<b>BULLETIN:</b>	<b>G-226</b>
<b>SUBJECT:</b>	<b>Consultant Disclosure Legislation</b>
<b>DATE:</b>	<b>December 5, 2006 (updated)</b>

programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

**Initial Report  
Requirements:**

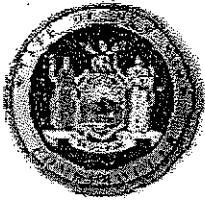
State Finance Law § 8 (subd 17) requires that OSC report to the Legislature on contracts for consulting services that were issued by State agencies during the previous fiscal year. The new legislation requires that OSC include in the Consulting Services Report the employment information described above.

To enable compliance with the law, State agencies must include in the Procurement Record submitted to OSC for new consultant contracts, the State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term (Form A attached to this bulletin). The completed form must include information for all employees providing service under the contract whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information prospectively from the start date of the contract through the end of the contract term.

State agencies may incorporate the Form A into new solicitations for consulting services in order to provide notice to potential contractors that the contractor selected may be required to complete the form.

It is important to note that regardless of a contract's payment methodology (for example, deliverable based payment or lump sum payments), an agency must structure the procurement/contract to be able to ascertain and report the required data.

State agencies should begin to submit Form A as part of the Procurement Record for new consulting services contracts as soon as possible. In order to allow sufficient time for State agencies to implement the new requirements, submission of a completed Form A will be required for OSC approval of new contracts for consulting services received by OSC



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

**PROCUREMENT AND  
DISBURSEMENT GUIDELINES**

<b>BULLETIN:</b>	<b>G-226</b>
<b>SUBJECT:</b>	<b>Consultant Disclosure Legislation</b>
<b>DATE:</b>	<b>December 5, 2006 (updated)</b>

for approval on or after July 17, 2006, except in extraordinary circumstances as determined in the sole discretion of OSC.

**Annual Report  
Requirements:**

Chapter 10 of the Laws of 2006 mandates that State agencies must now require State contractors to report annually on the employment information described above, including work performed by subcontractors. The legislation mandates that the annual employment reports are to be submitted by the contractor to the contracting agency, to OSC and to the Department of Civil Service. OSC must include the employment information in the Procurement Stewardship Act Report. State Finance Law § 163 (subd 14) requires that OSC annually report to the State Procurement Council, the Governor and the Legislature on active procurement contracts above \$15,000.

State Consultant Services Contractor's Annual Employment Report (Form B attached to this bulletin) is to be used to report the information. Please note that, in contrast to the information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, Form B will be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31).

To enable compliance with the law, State agencies need to incorporate the annual reporting requirement and the Form B template into new solicitations for consulting services to provide notice to potential contractors that the contractor selected will be required to submit the form annually.

Incorporation of the reporting requirement for Form B to be submitted annually will be a requirement for OSC approval of new contracts for consulting services including those contracts resulting from mini-bids received by OSC for approval on or after July 17, 2006, except in extraordinary circumstances as determined in the sole discretion of OSC.



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

**PROCUREMENT AND  
DISBURSEMENT GUIDELINES**

<b>BULLETIN:</b>	<b>G-226</b>
<b>SUBJECT:</b>	<b>Consultant Disclosure Legislation</b>
<b>DATE:</b>	<b>December 5, 2006 (updated)</b>

As above, this date was established to allow time for State agencies to implement the new requirements; however, State agencies are encouraged to incorporate the new Form B reporting requirement as soon as possible.

For **existing** contracts for consulting services (i.e., in place before June 19, 2006), the contracting agency must also require contractors to submit Form B annually, commencing with the close of fiscal year 2006-2007.

The first State Consultant Services Contractor's Annual Employment Report will be due May 15, 2007, and will include information for the period ending March 31, 2007. Thereafter, the State Consultant Services Contractor's Annual Employment Reports will be due no later than May 15<sup>th</sup> of each succeeding year.

**Summary:**

RFP's and other solicitations for consulting services should include notice of the new reporting requirements. The Procurement Record for new contracts for consulting services received by OSC for approval on or after July 17, 2006 must include, upon submission of the contract for approval, a completed Form A. New contracts for consulting services, including those contracts resulting from mini-bids must include a requirement that Form B be submitted annually by the contractor to the contracting agency, the Department of Civil Service and OSC. In addition, with respect to contracts for consulting services in place prior to June 19, 2006, the contracting agency must require its contractors to submit a completed Form B annually, commencing with the close of fiscal year 2006-2007.

**Completing the  
Forms:**

Form A and Form B should be completed for contracts for consulting services in accordance with the following:

- **Scope of Contract (Form B only):** a general classification of the single category that best fits the predominate nature of the services provided under the contract.



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

## PROCUREMENT AND DISBURSEMENT GUIDELINES

<b>BULLETIN:</b>	G-226
<b>SUBJECT:</b>	Consultant Disclosure Legislation
<b>DATE:</b>	December 5, 2006 (updated)

- **Employment Category:** the specific occupation(s), as listed in the O\*NET occupational classification system, which best describe the employees providing services under the contract.

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

- **Number of Employees:** the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.

- **Number of hours (to be) worked:** for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the Report Period by the employees in the employment category.

- **Amount Payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

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

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

By fax: (518) 474-8030 or (518) 473-8808



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

PROCUREMENT AND  
DISBURSEMENT GUIDELINES

<b>BULLETIN:</b>	G-226
<b>SUBJECT:</b>	Consultant Disclosure Legislation
<b>DATE:</b>	December 5, 2006 (updated)

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

By mail: NYS Department of Civil Service  
Alfred E. Smith Office Building  
Albany, NY 12239  
Attn: Counsel's Office

**Questions:** If you have any questions regarding this bulletin, please contact:

NYS Office of the State Comptroller  
Bureau of Contracts  
(518) 474-4622

<sup>1</sup> Chapter 10 of the Laws of 2006 also amends State Finance Law § 22 and Civil Service Law § 97.

<sup>2</sup> In addition, the new legislation requires the Department of Civil Service to publish an annual report summarizing the number of contract employees performing consulting services and the types of services provided by such contract employees. The new legislation also mandates that the Governor include in the Executive Budget certain information based on the State Contractor's Annual Employment Reports.

<sup>3</sup> Because the Comptroller's contract approval threshold has been raised to \$50,000 while the PSA Report threshold remains at \$15,000, the PSA Report will contain information on contracts not requiring OSC approval. Consequently, State Agencies must use the "T" contract mechanism for all consulting services contracts between \$15,000 and \$50,000.



