

April 1, 2014

TO: Prospective Vendor

SUBJECT: Q14-16 Coding Services – On Site and Remote Services

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 requirement set forth below and otherwise in the posting). By submitted 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 coding services for onsite and remote coding on an as needed basis for all record types**

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 state in your proposal. Please note, however, that the terms therein were crafted under direction from the applicable New York State 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 **Tuesday, April 15, 2014** and they must be submitted to the following address:

SUNY – Downstate Medical Center
Maureen Crystal, Contracts Dept; MSC 63
450 Clarkson Avenue
Brooklyn, NY 11203-2098
Fax: (718) 270-3342

Also send one complete proposal via email to: maureen.crystal@downstate.edu

Timetable

The RFP Timetable is listed in *Table 1* below. SUNY-DMC reserves the right, in its sole discretion, to modify any event, time, or date in the RFP Calendar. SUNY-DMC will notify all Offerors (that submitted intention to bid forms) via addendum of any changes to the RFP Timetable.

Table 1 – RFP Calendar

	Event	Day	Date	Time
1	Release of RFP	Monday	4/1/14	N/A
2	Offerors' Intent to Bid due		4/1/- 4/15/14	
3	Written questions due from Offerors	Monday	04/07/14	2:00PM EST
4	Official response to Offerors' questions due	Friday	04/11/14	
5	Closing date for receipt of Proposals	Tuesday	04/15/14	2:00PM EST
6	Offeror Interview/Demonstration		TBD	

*All dates are estimated.

Cover Letter

The Offeror must submit a cover letter on official business letterhead with the contents specified in *Table 2, Cover Letter Format*.

Table 2 Cover Letter Format

Cover Letter Format
The Offeror's Cover Letter shall contain the following information regarding the Offeror's official representative for its proposal: <ul style="list-style-type: none">• Name of Offeror's official representative;• Title;• Name of company;• Address;• Telephone number;• FAX number; and• E-mail address of the Offeror's representative.
The Offeror's Cover Letter shall contain the names of all Subcontractors involved in the Offeror's response (if applicable).
The Offeror's Cover Letter shall contain a statement certifying that the proposal shall remain valid for at least 150 days.
The cover letter shall include a statement that, if awarded the contract, the Contractor will comply with all the requirements set forth in this RFP, including the contract terms and conditions in the Contract Provisions section, the attached Standard Clauses for all New York State Contracts, State Finance Law §§139-j and 139-k.

Sincerely,

Maureen Crystal

Maureen Crystal, Director of Contracts; MSC 63
SUNY Downstate Medical Center
450 Clarkson Avenue
Brooklyn, NY 11203-2098
718-270-1976

ATTACHMENTS:

Section I	Part Q Procurement general Terms and Conditions (1 page) Vendor Selection Criteria Specifications List (4 Pages) Cost Proposal grid (3 Pages)
Section II	SUNY Downstate Form Contract (14 Pages) Exhibit A (3 Pages) Exhibit A-1 (3 Pages) BAA (6 Pages) DRA (4 Pages)
Section III	Mandatory Submission checklist for Part Q Procurement (1 Page) 139 (j) & (k) Acknowledgement Form (2 Pages) Policy and Procedure 139 9j0 & (k) Forms A,B, & C (4 Pages) Vendor Responsibility Questionnaire (10 Pages) Tax Certification ST-220-CA and ST-220-TD (6 Pages) Consultant Disclosure Legislation bulletin G-226 (6 Pages) Intent to Bid Form/No Bid Response Form (1 Page) MWBE—15-A, 9-Point Memo, Listing of MWBE Vendors

SECTION I

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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.

VENDOR SELECTION CRITERIA
CODING SERVICES ON SITE AND REMOTE
Request For Proposal (RFP) Q14-16

CRITERIA

- 1) Cost
- 2) Experience
- 3) Strength of services, as demonstrated by;
 - a. Industry distinction/awards/certifications
 - b. Availability of qualified staffing on an as needed basis
 - c. Consistency in maintaining staff who is familiar with our organization
 - d. Robustness of reporting functionalities regarding DRG analysis
 - e. Strength of support and technology services / options available for coding
 - f. Extent of support for ensuring accuracy, such as coding audit review /validation
- 4) Reports (must provide samples with proposals)
- 5) Included functionalities which exceed SUNY DMC desires/ request

DETAILED SPECIFICATIONS FOR CODING SERVICES ON SITE AND REMOTE

Request For Proposal (RFP) Q14-16

STATEMENT OF NEED:

SUNY –DMC seeks a qualified firm to provide certified and or experienced coders to provide DOMESTICS onsite or remote coding for all record types.

Chart volumes will change based on DMC staffing needs during training and ICD-10 implementation, work will increase from 30% to 60 % of discharges based on DMC staffing needs. This is the equivalent of 2 to 8 FTE to cover all record types.

SUNY DMC expects that use of the Coding Staff Resources

- Reduce the number of uncoded records during ICD-10 staff training
- Reduce the number of uncoded records during ICD-10 implementation in fall 2014
- Reduce the number of uncoded records while dual coding until the end of 2014
- Increase coding compliance and accuracy with trending information
- Increased revenue with coding optimization based on reports provided
- Reduced intervention from Manager's by identifying potential opportunities

REQUIREMENTS:

Successful Proposers shall :

- Have more than 5 year's experience with the HIM Department and staffing for coding coverage
- Have experience working with and implementing onsite and remote coding programs
- Provide technical staff and must include members who are HL7 Certified
- Assemble a dedicated Implementation Team with a Director level lead who has extensive, hospital-based HIM experience.
- Provide necessary proof of their work with other NYC based organizations with similar services
- Demonstrate positive outcomes with other NYC clients, in all aspects of technology, staffing knowledge, staffing availability and performance
- Proof of successful completion of approved ICD-10 training modules
- Proof of direct dual coding with ICD-9 and ICD-10 demonstrated by all coders
- Maintain accuracy at 95% by all coders
- Provide highly trained, specialized coding professional staffing to assist on an "As Needed" basis in conjunction with our existing staff to manage the expected coding

needs with the implementation of ICD-10 for Fall 2014 and decrease coding backlogs

- Provide highly trained coding staff to perform coding of designated patient records
- Perform services adhering to SUNY-DMC's policies and procedures
- Provide coding services adhering to official AHA Coding Guidelines and Coding Clinics AMA CPT Assistant and also adhering to AHIMA's standards of ethical coding and CMS's conditions of Participation
- Provide a Service Level Agreement (SLA) with the following minimum requirements:
 1. Vendor must be able to be onsite within 24 hours for emergency support
 2. Routine off-site support must respond to requests within 1 hour during business hours
 3. Vendor must notify DMC of coding staffs availability with in 1 hour of expected no-show
 4. Vendor must remove any coder who in SUNY-DMC's sole discretion, is not performing up to established standards
 5. Vendor must be able to demonstrate the performance level of all of their coders with established measurement of accuracy
 6. Vendor must be able to demonstrate the skill of their validation process, DMC will not release any coded data until validation has been proven and completed
 7. DMC expects vendor to perform 100% validation until coder accuracy has been demonstrated over a minimum period of two weeks.
 8. After 100% validation has proven the skills of the coder, validation review will reduce to 50% and involve records that involve all mortalities and low SOI, and any focus deemed necessary by DMC
 9. Vendor must also be able to provide a minimum Turn Around Time (TAT) of 24 hours for all validated cases. Therefore, coded data must be available to send to billing within 48 hours after coding and validation completion
- Meet SUNY-DMC's expectation to set rates according to productivity standards as follows:
 - Inpatient 18 to 20 per 7 hours = 2.5 charts per hour
 - ED 80 to 90 per 7 hours = 12 charts per hour
 - ASU 40 to 45 per 7 hours = 6.5 charts per hour
- Provide SUNY-DMC with reports on coder productivity, accuracy, revenue enhancement potential, and National Correct Coding Initiatives (NCCI)
- Provide Validation software that is a proven industry standard system and approved by SUNY-DMC
- Provide DOMESTIC onsite and remote coding ONLY
- Provide dedicated project management to answer any questions
- Provide detailed internal quality controls to ensure accuracy and compliance
- Provide a Secure network for HIPAA compliant data transfer
- Provide implementation as follows:

1. Vendor is expected to have staffing available for training at the start of the contract
 2. Vendor is expected to maintain DMC trained staff on the assignment as long as needed, no untrained staff will be used to substitute
 3. Vendor must be able to coordinate with DMC IT to set up initial interfaces
 4. DMC expects that all coding and patient data to reside on DMC servers and remain confidential, no PHI will be allowed outside of DMC firewall
 5. The vendor's project team lead must participate in all onsite and webinar training activities
 6. Vendor must provide specifications and multiple options to receive data from multiple external sources, ex vpn, secure messenger
- Provide Reports
 - Vendor must be able to provide reports for productivity, accuracy and overall performance on each coder
 - Vendor must be able to provide reports on overall DRG trends and coding analysis
 - Vendor must be able to provide accuracy reports based on National Correct Coding Initiatives
 - Vendor must be able to provide reports on possible coding compliance trends
 - Vendor must be able to provide potential revenue enhancement initiatives
 - All system reports must have drill down capability to the detail line level
 - All reports must have the capability to export reports to excel or crystal database
 - Vendor must ensure that coders do not share password to ensure the integrity of each assignment and be able to address the individual coder on all issues
 - All user created reports can be saved and established in a user defined "dashboard" as desired
 - Mandatory Reports include;
 - Coder, Manager productivity
 - Coder accuracy and training needs
 - Drill down reports to identify outlier records
 - Missing document reports "HOLD" reports
 - Compliance error reports, daily
 - Coding Optimization reports in HL7
 - Case Mix Analysis report, for all payers
 - Escalation report to track movement of coded cases
 - Analysis report for coded MS-DRGs, APRs, APC and HCPCS codes
 - No CC or MCC report for each coder, Risk of Mortality (ROM) and Severity of Illness (SOI) for each record
 - Provide IT INTERFACES

- All system functions must be able to receive data from multiple sources, possibly 3M, Allscripts, Siemens Eagle , Alpha Systems and T-Systems (Emergency Department System)
- All System functions and reports must be delivered via a web-based ASP Model
- The software data interface must occur timely via HL7 interface, or at minimum daily
- Data security protocols must, at a minimum, meet the requirements set forth by HIPAA and HITECH acts

STATISTICS:

SUNY DOWNSTATE MEDICAL CENTER

- 376 Licensed Beds
- 28,888 total discharges
- 1,800 Births
- 208,800 Outpatient visits at multiple sites
- 60,000 ER visits



Cost Proposal Form

Procurement# Q14-16 Title: Coding Services Onsite and Remote

Vendor must complete and include this sheet with its response to this procurement. Attach additional sheets as necessary.

Company Name: _____	Point of Contact: _____
Street Address: _____	eMail Address: _____
City/State/Zip: _____	Telephone Number: _____
	Fax Number: _____

Instructions: Vendor shall indicate below its proposed *rates* for services in the manner described in this procurement and in accordance with the terms of its Proposal.

Please complete the Proposers Cost Proposal Grid and attach to this Proposer Certification Form, and sign below.

CERTIFICATION: By submission of this proposal, the proposer and any person signing on its behalf (in case of joint proposals, each party thereto) hereby certifies under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer, proposer or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer, proposer or to any competitor;
3. No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.
4. The attached State University of New York standard contract clauses contained in Exhibit "A" and Exhibit "A-1" are made a part of this RFP and by submitting this proposal the proposer accepts the terms contained therein.

By:

_____	_____	_____	_____
(Proposer's Officer Signature)	(Officer's Printed Name)	(Officer's Title)	(Date)

COST PROPOSAL

Procurement# **Q14-16** Title: **Coding Services Onsite and Remote**

SUNY-DMC reserves the right to award multiple contracts or no contract at all.

The proposer must complete the Price Proposal page and associated documents attached hereto in accordance with the instructions therein. The proposer must provide detailed price information by category, in accordance with the Price Proposal pages, which prices shall be inclusive of any and all expenses. Proposer acknowledges that SUNY-DMC will rely on its Price Proposal as proposer's proposed pricing for the provision of the Services in accordance with the terms of this IFB. **Contractors' compensation under the Contract will be limited to, and governed by, the Price Proposals submitted hereunder.**

Price Proposal Grid: Using the grid in the Price Proposal, the proposer must propose hourly billing rates. If the proposer does not wish to bid on any particular category(s), it should place an "N/A" in the "hourly bill rate" or "per chart rate" but should not leave any rates blank.

Inquiries relating to Price Proposal: The proposer's Price Proposal (the rates provided by proposer in Exhibit "C" herein) must factor in any and all costs associated with the services to be provided. In the event of any confusion or uncertainty with regard to the specific Price Proposal information required by SUNY-DMC, a vendor should not submit a bid hereunder until such uncertainty/confusion has been resolved, as such uncertainty/confusion may result in disqualification of that vendor's bid if its bid is determined to be non-responsive. In the event of any confusion or uncertainty, a prospective proposer should submit a written inquiry during the question and answer period prescribed requesting clarification.

Guarantee: By submitting a response to this RFP, the proposer warrants, represents and guarantees that the pricing offered is the same as, or lower than, the pricing that it offered by that proposer to any governmental or commercial account for similar services within the six (6) months prior to the date of its bid.

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

Procurement# **Q14-16** Title: **Coding Services Onsite and Remote**

Price Proposal Grid

	Patient Type	Remote Coding Per Chart Rate	ICD-9 Onsite Hourly Rate	ICD-10 Onsite Hourly Rate
1	Inpatient			
2	Ambulatory Surgery			
3	Emergency Department			
4	Psychiatry/Rehab			
5	Implementation and subscription/license fee (if applicable)			

SECTION II

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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 **[INSERT CONTRACTOR’S FULL LEGAL NAME, TYPE OF ENTITY (AND, IF CORPORATION, INCLUDE THE STATE OF FORMATION), AND PLACE OF BUSINESS]**, a corporation organized and existing under the laws of the State of **[INSERT STATE OF INCORPORATION]**, with its principal place of business located at **[INSERT PRIMARY CORPORATE ADDRESS]** (“**Contractor**”).

W I T N E S S E T H:

WHEREAS, SUNY-DMC requires a qualified firm to provide certain **[Insert brief (high level) description of covered services (e.g. consulting, collections)]** 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 **[State the initial term of the Agreement]**, (the “Term”), commencing **Insert the beginning date** and expiring **[Insert the end date of the initial term]**.

3. **Contractor** shall provide to **SUNY-DMC** the **[Insert 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 **[SPECIFY BILLING PERIOD (e.g monthly, quarterly or annual)]** amount of **[DEFINE MUTUALLY AGREED UPON PAYMENT TERMS]**
FOR USAGE: Include rate and, if applicable, specify not to exceed limit. NOTE: *Not to exceed will only apply to Part Q procurements under \$1 million*

INCLUDE IN ALL CONTRACTS:

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:

[INSERT 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.

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.
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**:

[INSERT CONTRACTOR'S ADDRESS FOR NOTICE RECIEPT 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), General Services Administrative List of Excluded Individuals/Entities (www.epls.gov), and New York State Medicaid Disqualified Provider List (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 consent of **SUNY-DMC** and, where applicable, that of 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 **[INSERT PROJECT MANAGER'S TITLE]**, 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-1*;
 - (b) *Exhibit D*: BAA;
 - (c) *Exhibit E*: DRA Appendix;
 - (d) The text of this Agreement (pages 1 through [Insert number of last page (before signature page)]);
 - (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 of 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: [TXXXXXX]

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.”

**[INSERT 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

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

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

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

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

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

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

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

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

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

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

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to SUNY a non-collusive bidding certification on Contractor's behalf.

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

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

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are

exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

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

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

in which to respond.

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

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414

email: mwbecertification@esd.ny.gov
<https://ny.newnyccontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

these efforts to be provided upon request to SUNY;

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

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

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

21. RECIPROCITY AND SANCTIONS

PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer

programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

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

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

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

in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

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

<http://www.oqs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

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

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

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

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

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

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

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

1. DEFINITIONS. The following terms shall be defined in accordance with [Section 310 of the Executive Law](#):

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project. ([Subdivision 13 of § 310](#)). N.Y. EXEC. LAW § 310 (McKinney 2011).

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor. ([Subdivision 14 of § 310](#)). N.Y. EXEC. LAW § 310 (McKinney 2011).

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

twenty of this section. ([Subdivision 15 of § 310](#)). N.Y. EXEC. LAW § 310 (McKinney 2011).

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal. ([Subdivision 15 of § 310](#)). N.Y. EXEC. LAW § 310 (McKinney 2011).

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section. ([Subdivision 7 of § 310](#)). N.Y. EXEC. LAW § 310 (McKinney 2010).

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Domini- can, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands. ([Subdivision 8 of § 310](#)). N.Y. EXEC. LAW. § 310 (McKinney 2011).

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women- owned business enterprise pursuant to [section 314 of the Executive Law](#). A business enterprise which has been approved by the New York Division of Minority &

Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations. ([Subdivision 1 of § 310](#)). N.Y. EXEC. LAW § 310 (McKinney 2011).

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions of [Article 15-A of the Executive Law](#) which are made a part hereof (the word "Contractor" herein refers to any party other than the University):

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. ([Subdivision 1\(a\) of § 312](#)). N.Y. EXEC. LAW § 312 (McKinney 1988).

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University. ([Subdivision 1\(b\) of § 312](#)). N.Y. EXEC. LAW. § 312 (McKinney 1988).

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein. ([Subdivision 1 of § 312](#)). N.Y. EXEC. LAW. § 312 (McKinney 1988).

(d) Except for construction contracts, prior to an award of a State Contract, the Contractor shall submit to the contracting agency a staffing plan of the anticipated work

force to be utilized on the State Contract or, where required, information on the Contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the contracting agency. The form of the staffing plan shall be supplied by the contracting agency. If Contractor fails to provide a staffing plan, or in the alternative, a description of its entire work force, the University may reject Contractor's bid, unless Contractor either commits to provide such information at a later date or provides a reasonable justification in writing for its failure to provide the same. [\(Subdivision 5 of § 312\)](#). N.Y. EXEC. LAW § 312 (1988).

(e) After an award of a State Contract, the Contractor shall submit to the University a workforce utilization report, in a form and manner required by the agency, of the work force actually utilized on the State Contract, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the University. [\(Subdivision 5 of § 312\)](#). N.Y. EXEC. LAW § 312 (McKinney 1988).

(f) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract. [\(Subdivision 2 of § 312\)](#). N.Y. EXEC. LAW § 312 (McKinney 1988).

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

(h) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed. [\(Subdivision 5\(a\) § 313\)](#). N.Y. EXEC. LAW 313 (McKinney 2010).

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

agency with a model plan of an affirmative action program.

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

2. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement. [\(Subdivision 3 of § 315\)](#). N.Y. EXEC. LAW § 315 (McKinney 2010).

3. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

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

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

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

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to

employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

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

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

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. [\(Subdivision 7\(a\) of § 313\)](#). N.Y. EXEC. LAW § 313 (McKinney 2010).

4. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD. [\(Subdivision 3 of § 313\)](#). N.Y. EXEC. LAW § 313 (McKinney 2010):

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

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

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

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

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

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

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

(h) Whether the terms of this section have been incorporated into each Subcontract

which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

5. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

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

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation. ([Subdivision 5 of § 313](#)). N.Y. EXEC. LAW § 313 (McKinney 2010).

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

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the

foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of _____ percent (____%) for Certified Minority-Owned Business Enterprises and _____ percent (____%) for Certified Women-Owned Business Enterprises. ([Subdivision 3 of § 313](#)). N.Y. EXEC. LAW § 313 (McKinney 2010).

6. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of [Article 15-A of the Executive Law](#). If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD. ([Subdivision 5\(a\) of § 313](#)). N.Y. EXEC. LAW § 313 (McKinney 2010).

7. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor

refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between: ([Section 316 \(a\) of the Executive Law](#)). N.Y. EXEC. LAW § 316 (McKinney 2010).

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

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

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to [Subdivision 8 of Section 313 of the Executive Law](#) in which event the liquidated damages shall be payable if Director renders a decision in favor of the University. N.Y. EXEC. LAW § 313 (McKinney 2010).

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
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Facsimile Number: _____

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

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

1. PERMITTED USES AND DISCLOSURES OF PHI

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

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

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

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

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

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

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

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

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

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

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

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

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

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

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

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

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

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

3. RESPONSIBILITIES OF COVERED ENTITY.

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

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

4. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

5. TERMS AND TERMINATION

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

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

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

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

6. CONFIDENTIALITY

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

7. INSURANCE AND INDEMNIFICATION

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

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

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

8. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. DEFINITIONS.

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

9.2 Specific definitions include:

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

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

THE STATE UNIVERSITY OF NEW YORK on behalf of
COVERED ENTITY

By: _____

Print Name: _____

Print Title: _____

Date: _____

Contract Number/Purchase Order Number: _____

BUSINESS ASSOCIATE

By: _____

Print Name: _____

Print Title: _____

Date: _____

EXHIBIT
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.

DMC has established a 24/7 Compliance Line as a mechanism for reporting activities, confidentially and anonymously, that may involve ethical violations or criminal conduct:

DMC COMPLIANCE LINE:
877-349-SUNY (telephone report)
OR
"COMPLIANCE LINE" link on the bottom of DMC's web- page:
www.downstate.edu (web report)

DMC has a no tolerance policy for employees, agents, or vendors who are involved in any unlawful activity. To that end, we expect that you share our goals of eradicating fraud and abuse and, therefore, will comply with your obligations under the DRA.

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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/imagestories/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.

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- (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

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applicable to health care fraud and will be listed in this section.

A. CIVIL AND ADMINISTRATIVE LAWS

1) New York False Claims Act (State Finance Law §§187-194)

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the federal FCA such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars per claim plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a person who violates this act is liable for costs, including attorneys' fees, of a civil action brought to recover any such penalty.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by the NYS Attorney General or a local government. If the suit eventually concludes with payments back to the government, the person who started the case can recover twenty-five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty-five percent if the government did participate in the suit.

2) Social Services Law, Section 145-b – False Statements

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Service program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The state or local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to ten thousand dollars per violation. If repeat violations occur within five

years, a penalty of up to thirty thousand dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

3) Social Services Law, Section 145-c – Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the needs of the individual or that of his family shall not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), and five years for any subsequent occasion of any such offense.

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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

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Medicaid or other health insurance, and contains six crimes

- a. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a class A misdemeanor.
- b. Insurance fraud in the 4th degree is filing a false insurance claim for over \$1,000. It is a class E felony.
- c. Insurance fraud in the 3rd degree is filing a false insurance claim for over \$3,000. It is a class D felony.
- d. Insurance fraud in the 2nd degree is filing a false insurance claim for over \$50,000. It is a class C felony.
- e. Insurance fraud in the 1st 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 5th 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 4th 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 3rd 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 2nd 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 1st 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

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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)
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Vendor Proposal Components

9. ☐ Company Background
 - ☐ Years of Experience
 - ☐ Resumes of Project Leaders☐ Staffing Plan
 10. ☐ Technical Proposal
 - ☐ Response to each specification
 - ☐ Project Plan
 - ☐ Expectations from, and requirements of, SUNY-DMC☐ List of deliverables
☐ All applicable timelines
 11. ☐ Three References
 12. ☐ Price Proposal Matrix
 13. ☐ MWBE Utilization Plan (if applicable)
 14. ☐ Cover Letter
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ACKNOWLEDGMENT FORM
PROCUREMENT LOBBYING LAW (SFL §139 J and §139 K)

Subject: Procurement Number and Title: _____

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

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

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

Further information about these requirements can be found on the following website:
<http://www.ogs.state.ny.us/purchase/AboutPSG.asp>

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

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

Designated Contact(s):

(1) Designated Contact

Name:

Title:

Department:

E-mail:

Phone:

Fax:

(2) Designated Contact

Name:

Title:

Department:

E-mail:

Phone:

Fax:

Acknowledgment Page to Follow on Page 2 of 2

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

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

Offeror's Affirmation of Understanding and Adherence

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

Signature

Date

Subject: Procurement Number and Title: _____

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.

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.

Procurement Description/ID No.: _____

Offeror **AFFIRMS** that it has reviewed and understands the Policy and Procedure of the State University of New York, relating to State Finance Law §§139-j and 139-k, and agrees to comply with State University's procedure relating to Contacts with respect to this procurement.

Name of Offeror: _____

Address: _____

Person Submitting Form:

Signature: _____

Name: _____

Title: _____

FORM C

Disclosure and Certification with respect to State Finance Law §§139-j and 139-k

Procurement Description/ID No.: _____

1. Has a Governmental Entity, as defined in State Finance Law §139-j(1)(a), made a determination of non-responsibility with respect to the Offeror within the previous four years where such finding was due to a violation of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of no responsibility?

No ☐

Yes ☐ If yes, provide the following details:

Governmental Entity which made the finding: _____

Date of finding: _____

Basis of finding: _____

2. Has a Governmental Entity terminated or withheld a procurement contract with the Offer because of violations of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility?

No ☐

Yes ☐ If yes, identify the following:

Governmental Entity which terminated the contract: _____

Date of contract termination or withholding: _____

Identify the related procurement contract: _____

SUNY Downstate Medical Center reserves the right to terminate this contract in the event it is found that the certification filed by the Offeror in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the Governmental Entity may exercise its termination right by providing written notification to the Offeror in accordance with the written notification terms of this contract.

Offeror **CERTIFIES** that all information provided by Offeror with respect to its compliance with State Finance Law §§139-j and 139-k is complete, true and accurate.

Name of Offeror: _____

Address: _____ City, State, Zip: _____

Signature of Person Submitting Form: _____

Name: _____

Title: _____

Date: _____

Model Form for Governmental Entity Report of Contact under State Finance Law §139-k(4)

Background:

New York State Finance Law §139-k(4) obligates every Governmental Entity during the Restricted Period of a Procurement Contract to make a written record of any Contacts made. The term “Contact” is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the Governmental Procurement. In addition to obtaining the required identifying information, the Governmental Entity must inquire and record whether the person or organization that made the Contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or Contact the Governmental Entity.

It should be noted that State Finance Law §139-k(6) provides:

[a]ny communications received by a governmental entity from members of the state legislature, or legislative staffs, when acting in their official capacity, shall not be considered to be a “contact” within the meaning of this section and shall not be recorded by a governmental entity pursuant to this section.

Instructions:

This model form is for use by the Governmental Entity and may be used for each Procurement Contract governed by State Finance Law §139-k. All recorded Contacts shall be included in the procurement record for the Procurement Contract. This model form was designed to collect information about initial and subsequent Contacts on the specified procurement contract during the Restricted Period. However, a separate form must be completed for **each** person or organization that Contacts the Governmental Entity about each Procurement Contract. Additional information and guidance on the “restricted period” and permissible Contacts can be found in the guidelines issued by the Advisory Council on Procurement Lobbying, which can be found on the OGS website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

It is recommended that Governmental Entities advise Offerers and those designated, employed or retained by Offerers of the intention to record the Contact. It is also recommended that information be provided regarding to Offerers and others about the statutory Restricted Period, Designated Contacts and the Permitted Contacts.

While the model form includes a section where the nature of the Contact may be recorded, such information is not statutorily required to be reported. Where such information is recorded, the Governmental Entity may in its discretion conform its collection with its other procurement practices.

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 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/questionnaire/definitions.pdf. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected 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**

I. LEGAL BUSINESS ENTITY INFORMATION

<u>Legal Business Entity Name</u> *		<u>EIN</u>	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone <div style="text-align: center;">ext.</div>	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>		Date of Organization	
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u>)		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>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.</p> <p><input type="checkbox"/> United States State _____</p> <p><input type="checkbox"/> Other Country _____</p>			
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/questionnaire/definitions.pdf.

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

I. LEGAL BUSINESS ENTITY INFORMATION

- 1.4 If the Legal Business Entity's Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State?
(Select "N/A," if Principal Place of Business is in New York State.)
- ☐ Yes ☐ No
☐ N/A

If "Yes," provide the address and telephone number for one office located in New York State.

- 1.5 Is the Legal Business Entity a New York State certified Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), New York State Small Business (SB) or a federally certified Disadvantaged Business Enterprise (DBE)?
- If "Yes," check all that apply:
- ☐ New York State certified Minority-Owned Business Enterprise (MBE)
☐ New York State certified Women-Owned Business Enterprise (WBE)
☐ New York State Small Business (SB)
☐ Federally certified Disadvantaged Business Enterprise (DBE)
- ☐ Yes ☐ No

- 1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

Name	Title	Percentage Ownership (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.

III. LEADERSHIP INTEGRITY

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:

3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other

For each “Yes” or “Other” explain:

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the reporting entity:

4.0 Been <u>suspended or debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

**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 <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

VI. CERTIFICATIONS/LICENSES*Within the past five (5) years, has the reporting entity:*

6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

VII. LEGAL PROCEEDINGS*Within the past five (5) years, has the reporting entity:*

7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious</u> or <u>willful</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 Other than previously disclosed: a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

8.0 Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.1 Within the past five (5) years, has the <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.	
8.2 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.	
8.3 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.	
8.4 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by <u>federal</u> , 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.	
8.5 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.	
8.6 During the past three (3) years, has the <u>Reporting Entity</u> had any <u>government audit(s) completed</u> ?	<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 <u>government entity</u> 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:

☐ Yes ☐ No

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

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**

X. FREEDOM OF INFORMATION LAW (FOIL)

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).
Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.

☐ Yes ☐ No

If "Yes," indicate the question number(s) and explain the basis for the claim.

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE

Name	Telephone ext.	Fax
Title	Email	

**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 government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20____;

_____ Notary Public

**Contractor Certification to Covered Agency**

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

ST-220-CA

(12/11)

For information, consult Publication 223, Questions and Answers Concerning Tax Law Section 5-a (see Need Help? on back).

Contractor name				For covered agency use only Contract number or description	
Contractor's principal place of business		City	State		
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. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- 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 _____ }
: _____ SS.:
COUNTY OF _____ }

On the ____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _____ he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

☐ (If an individual): _____ he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _____ he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _____ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): _____ he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _____ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): _____ he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _____ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

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

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name

Contractor's principal place of business

City

State

ZIP code

Contractor's mailing address (if different than above)

Contractor's federal employer identification number (EIN)

Contractor's sales tax ID number (if different from contractor's EIN)

Contractor's telephone number
()

Covered agency or state agency

Contract number or description

Estimated contract value over
the full term of contract
(but not including renewals) \$

Covered agency address

Covered agency telephone number

General information

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227****Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features

**Telephone assistance****Sales Tax** Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

Section 1 — Contractor registration status

- ☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- ☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 — Affiliate registration status

- ☐ The contractor does not have any affiliates.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 — Subcontractor registration status

- ☐ The contractor does not have any subcontractors.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ____ day of _____, 20 ____

(sign before a notary public)

(title)

Schedule A — Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

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

[illegible]

Column A – Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.

Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C – Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.

Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E – Sales tax ID number - Enter only if different from federal EIN in column D.

Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
 : SS.:
COUNTY OF }

On the ____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
_ he resides at _____,
Town of _____,
County of _____,
State of _____; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

- ☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): _he is the _____
of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ (If a partnership): _he is a _____
of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- ☐ (If a limited liability company): _he is a duly authorized member of _____
LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No. _____



**STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER**

**PROCUREMENT AND
DISBURSEMENT GUIDELINES**

BULLETIN:	G-226
SUBJECT:	Consultant Disclosure Legislation
DATE:	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 163¹ 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 employment² information in the Procurement Stewardship Act Report it compiles annually.

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



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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



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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 \$15,000.³

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

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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 15th 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.



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- **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 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, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

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



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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

¹
² Chapter 10 of the Laws of 2006 also amends State Finance Law § 22 and Civil Service Law § 97.

²
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.

³
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.



Bid/ Proposal Vendor Initial Response Form

All vendors receiving this procurement solicitation are expected to return this document as soon as they have determined whether or not they will participate in this procurement.

Procurement Number _____ and Title: _____

☐ **This Vendor intends to SUBMIT a Bid/Proposal: Complete this section.**
By completing this section, your company will be expected to submit a bid, which shall be considered if satisfactorily completed in compliance with all instructions therein. Please identify the expected primary company representatives (reps) that will be preparing the proposal:

Vendor Rep Name(s)	Phone	eMail Address
_____	_____	_____
_____	_____	_____
_____	_____	_____

☐ **This Vendor intends to NOT SUBMIT a Bid/Proposal: Complete this section.**
Reason for Not Bidding (Check all that apply):

<input type="checkbox"/> Size of this contract is not within the interest of this vendor.	<input type="checkbox"/> Contract work not within the specialty of the contractor.
<input type="checkbox"/> Insufficient amount of time to prepare a proposal.	<input type="checkbox"/> Too busy to entertain additional business at this time.
<input type="checkbox"/>	<input type="checkbox"/> Other (explain in the comment section below):

Comments? (use additional sheets if necessary):

ALL VENDORS- Complete this section:

Vendor Business Name: _____	Federal Tax ID No. _____
Address: _____	Phone: _____
City, State, Zip: _____	Fax: _____
Insert the date Vendor received this Bid/ Proposal solicitation: _____	Check only if business is a qualified: <input type="checkbox"/> MBE or <input type="checkbox"/> WBE. If yes, Is vendor interested as a potential sub-contractor in this procurement? <input type="checkbox"/> YES <input type="checkbox"/> NO.

Vendor Rep Signature _____	Vendor Rep Printed Name _____	Title _____	Date _____
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Submit completed copy to **SUNY-DMC** via mail: **Contracts Dept. MSC 63; 450 Clarkson Ave.; Brooklyn, NY 11203-2098**, or via fax to **(718) 270-3342**, or via eMail to: _____

MEMORANDUM

To: Maureen Crystal
Director of Contracts from Downstate Medical

FROM: Pamela Swanigan
University-wide MWBE Program Director

SUBJECT: 9-Point Goal Development Memo

DATE: 7/23/13

Please complete the following and submit to our office for review and consultation to ensure that you are documenting Good Faith Efforts during the pre-solicitation period.

1. Type of Contract: Medical Records Coding Services
2. Contract Amount - \$600,000
3. Contract Term – Start Date: 8/15/13 End Date: 8/14/18
4. Procurement Method: Q Procurement
5. General Discussion:
Downstate Medical is seeking a vendor to provide certified coders to work onsite coding UHB medical Records. Abstracting and assigning inpatient DRG, surgical APC and ER levels utilizing 3M HIS software.
6. MWBE Program Compliance Efforts:
The University-wide MWBE Office sent out an email blast to about 20 vendors. We got replies from several vendors but only one of them was able to provide the medical record coding service.
Brian Ansari from ESDC introduced a company called “Sullivan- Hernandez Agency” who might have the capability of providing this service. Our office has included the company’s information.
7. MWBE Program Participation:
Please see attached email conversations and the company’s information. Please ensure that the certified MWBE’s name is provided to lowest apparent bidder to assist them in meeting their goal.
8. Barriers to Participation: None. There is a MWBE available for this service.

For University-wide MWBE Program Office Use Only
<p>9. Contract Goals Determination: Services/Consultants Goals: MBE 13%, WBE6% and MWBE 19%. The rationale for inclusion is that there is a MWBE available for medical record coding service.</p>

PROCUREMENT # _____ TITLE: _____

REFERENCE FORM*

*At least three (3) references are required. Please use a separate Reference Form for each reference you provide.

Bidder Firm Name: _____

CUSTOMER FOR WHICH SERVICES WERE PERFORMED:

CUSTOMER ADDRESS:

NUMBER OF BEDS:

CONTRACT TERM DATES:

SCOPE OF SERVICES PERFORMED FOR CUSTOMER (Please attach additional sheets if necessary):

NUMBER OF CONSULTANTS ASSIGNED TO PROJECT:

ESTIMATED VALUE OF CONTRACT:

Customer Reference:

CONTACT NAME AND TITLE:

CONTACT INFORMATION (TELEPHONE NUMBER, eMAIL ADDRESS):