July 10, 2013

TO: Prospective Vendor

SUBJECT: Revenue Cycle Business Intelligence and Work Flow Technology Software and all ancillary services including installation, implementation, training, maintenance and support.

Dear Vendor:

As part of the New York State Executive Budget, the legislature passed Chapter 56, Part Q of the Laws of 2013 ("Part Q"), pursuant to which SUNY-DMC was granted procurement flexibility applicable to certain categories of procurements that are for the purpose of implementing its sustainability plan. The stated purpose of the procurement flexibility is to enable SUNY-DMC to enter into contracts in an expedited manner to facilitate implementation of the sustainability plan and resultant attainment of sustainability. The instant procurement is conducted under Part Q. Accordingly, interested vendors must commit to acting expeditiously (in complying with the requirements set forth below and otherwise in the posting). By 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 subscriptions, licenses and all attendant services for the following:
- Workflow Software
- Revenue Cycle Business Intelligence Software

Proposals must include all the items set forth in the enclosed checklist, and arranged in the order enumerated. Any objections to the template contract must be stated in your proposal. Please note, however, that the terms therein were crafted under direction from the applicable New York State regulatory bodies, and SUNY-DMC’s ability to negotiate said terms is very limited. Moreover, it is SUNY-DMC policy not to incorporate separate vendor terms and conditions- should incorporation of such terms be necessary, please ensure that all terms contradictory to the template contract are stricken from your submission.
**NOTE - Vendor’s compensation under the Contract will be limited to the rates herein proposed, which rates shall remain fixed for the term of the Contract(s) (VENDOR’S SHALL NOT PROPOSE ANY ESCALATION).**

**ADDITIONAL COST CONSIDERATIONS**

<table>
<thead>
<tr>
<th>Cost of Additional Training</th>
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</thead>
<tbody>
<tr>
<td>Cost of Additional Consulting Hours (hourly rate)</td>
</tr>
<tr>
<td>Additional Financial Expenditures to be incurred by SUNY-DMC</td>
</tr>
<tr>
<td>(This field will be completed by SUNY-DMC. However, in your cost proposal, please list the items your firm will not perform, but will expect SUNY-DMC to accomplish, prior to and during implementation of the solution)</td>
</tr>
</tbody>
</table>
The due date for proposals is Friday, July 26, 2013, and they must be submitted to the following address:

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

Sincerely,

[Signature]

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

ATTACHMENTS:

Section I       Part Q Procurement General Terms and Conditions
                Vendor Selection Criteria
                Specifications List (5 Pages)
                Cost Proposal Grid (4 Pages)

Section II      SUNY Downstate Form Contract (13 Pages)
                Exhibit A (3 Pages)
                Exhibit A-1 (3 Pages)
                BAA (15 Pages)
                DRA (4 Pages)

Section III     Mandatory Submission Checklist for Part Q Procurement
                139 (j) & (k) Acknowledgement Form (2 Pages)
                Policy and Procedure 139 (j) & (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 (7 Pages)
SECTION I
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 submitted 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 (“DRA Appendix”);  
      iii. SUNY-DMC’s standard Business Associates Agreement (if applicable);
      iv. The Posting; and
   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/documents include, without limitation: (1) Exhibits A and A-1; (2) Attachment A; (3) the DRA Appendix; and (4) Form Agreement Sections: 4, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 27, 28, 29, 35, 36 and 37.
   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:

1) Vendor cost for implementation and subscription/license fees.
2) SUNY-DMC cost for integrating CDM system into SUNY-DMC infrastructure; cost of administration.
3) Experience, as demonstrated by:
   a. Years of experience;
   b. Representation in NYC hospitals;
   c. Experience of client support leads/managers, to be staffed during implementation phase and for support services.
4) Strength of product, as demonstrated by:
   a. Industry distinction/awards/certifications
   b. Robustness of system functionality
   c. Robustness of reporting functionalities
   d. Strength of ROI analysis
   e. Extent of support services and reference databases
5) Included functionalities which exceed SUNY-DMC's desires.
BID #04-03 Revenue Cycle Business Intelligence and Work Flow Technology and all ancillary services including installation, implementation, training, maintenance and support

Statement of Need:

Revenue Cycle Business Intelligence and Work Flow Technology

- UHB's current mainframe system does not provide workflow controls, labor productivity management or dynamic financial and operational reports for reporting on billing, revenue and productivity as well as Financial and Revenue Cycle processes and data flows. This functionality is essential to UHB's revenue and business management objectives.
- Revenue Cycle Business Intelligence and Work Flow Technology are required to reach UHB's revenue targets while controlling labor costs. The implementation of this bolt-on technology will increase productivity of the revenue cycle staff by improving the distribution of accounts based on priorities established by various criteria, including payor requirements, financial risk, service type, and time sensitivity.
- UHB requires Revenue Cycle Business Intelligence and Work Flow Technology which allows non-technical professionals within our organization to conduct meaningful analysis from high-level summary down to the patient account or transaction level in a fast effective and self-sufficient manner.
- One Vendor will be selected.

Experience:

- Vendor must have more than 2 years experience with the Revenue Cycle Business Intelligence and Work Flow Technology.
- The Vendor must have experience working with and implementing this system(s) in multiple acute care hospitals of 350 beds or higher, preferably including one in New York state.
- Vendor's technical staff must include members who are HL7 Certified.
- Vendor is expected to assemble a dedicated Implementation Team with a Director level lead who has extensive, hospital-based Patient Accounting experience. The Assistant and Service leads should have at least 2 years' experience in this type of implementation.
Implementation:

- Vendor is expected to have completed implementation of Revenue Cycle Business Intelligence and Work Flow Technology within 90 days of contract execution. This includes the mapping of data and creation of all required systems interfaces.
- The vendor must agree to be on site as needed for setup, training, implementation and support during normal business hours which are Monday through Friday between the hours of 8 to 5 pm Eastern Standard Time. On site staff training for Work Flow Technology will include, at a minimum, 5 full days on site the first week of live operations, 3 days on-site the second week. On site staff training for Revenue Cycle Business Intelligence Technology will include, at a minimum, one half day on site at an agreed upon point in the overall implementation.
- The Vendor's project team lead must participate in all on-site training activities.

Reports:

- A Project Status Report should be issued and reviewed monthly with the UHB Billing Department management. Status Reports will be required from the end of the first month subsequent to the execution of the contract and continue on a monthly basis for the first six months. After the first six months, an on-site review of Status Reports will be required quarterly for the duration of the contract.
- All system reports must have drill down capability to the detail line level.
- All reports must have the capability to download into Adobe or an Excel or Crystal database.
- All user created reports can be saved and established in a user defined "dashboard" as desired.
- Mandatory Reports include:
  - Aged Gross and Net Trial Balance Reports
  - Net Days in A/R
  - Payor Specific Net Days in A/R
  - Administrative and Clinical Denial Reports
  - Staff Productivity Reports
  - A/R Liquidation Reports
  - Bill Hold and Suspense Reports
  - Cash Collection Reports
  - Untimely Activity (Billing/Appeal) Reports
  - Underpayment Reports
  - Bad Debt Reports
  - Profitability Reports
Work Flow:

- The Work Flow Tool must include multiple levels of access which allow front-line users to accomplish and monitor their own work while giving department managers the ability to review, direct and report on the activities of specific groups or the entire department.
- Assignment of work to department staff must be flexible enough to allow changes to the assignments of individual staff members or groups of staff members.
- All work completed from the first “Go Live” date must be retrievable and available for account audits, performance reviews, and productivity trend reports.
- Work Flow queuing and control must be available for all aspects of the Revenue Cycle including Admitting/Registration, Insurance Verification/Authorization, Case Management, Coding, Billing, and Collections.

IT Interfaces:

- The software must interface to the Siemens Eagle system and must have the capability to migrate to a future billing software without losing account history.
- All system functions and reports must be delivered via a Web-based ASP Model.
- The software data interface must occur at least once per day.
- Data security protocols must, at a minimum, meet the requirements set forth by HIPAA and HITECH acts.

Expectations:

UHB expects that implementation of the Revenue Cycle Business Intelligence and Work Flow Technology will result in:

- Improved access to trend and detailed account information,
- Increased access to payor specific trend and contract performance information,
- Increased billing compliance,
- Increased revenue,
- Increased cash flow,
- Decreased Bad Debt write offs.
- The system implementation in the Billing Department will be completed with 90 Days of the contract execution and will be subject to formal acceptance by UHB management.
- Contact payment will begin after the acceptance of the software.
Service Level Agreement (SLA):

- Vendor must be able to be on site within 24 hours for emergency support.
- Routine off-site support must respond to requests within 1 hour during business hours.
- Vendor must supply manned telephone support during business hours.
- Vendor must supply monitored e-mail request support 24 x 7.

Statistics:

SUNY Downstate Medical Center

- 376 Licensed Beds
- 28,888 Total Discharges
- $1.04 Billion Total Patient Revenues
- 1,800 Births
- 208,800 Outpatient Visits
SECTION II
Contract Number: T

Agency Code: 3320218

AGREEMENT (this “Agreement”) made this day of ____________, 2013 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 __________________________, a corporation organized and existing under the laws of the State of ____________, with its principal place of business located at __________________________ (“Contractor”).

WITNESSETH:

WHEREAS, SUNY-DMC requires a qualified firm to provide a license or subscription to its revenue cycle business intelligence and workflow technology solution; and all ancillary 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 manufactures and/or distributes the ________ system, which is normally used for the purposes described above, and appears duly qualified to provide the license/subscription 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 five (5) years (the “Term”), commencing August 1, 2013 and expiring July 31, 2018.

3. Contractor shall provide to SUNY-DMC all of the following:
   a. a license/subscription to its ____________ system, which shall perform all of
the following:

i. Generate reports.

1. **Contractor** shall issue a monthly project status report for the first six months. Following the first six months, **Contractor** shall issue such project status reports quarterly.
2. All reports must have drill down capability to the detail line level.
3. All reports must have the capability to download into Adobe, or an Excel or Crystal database.
4. All user created reports can be saved and established in a user defined “dashboard.”
5. Mandatory Reports include:
   a. Aged Gross and Net Trial Balance Reports;
   b. Net Days in A/R;
   c. Payer Specific Net Days in A/R;
   d. Administrative and Clinical Denial Reports;
   e. Staff Productivity Reports;
   f. A/R Liquidation Reports;
   g. Bill Hold and Suspense Reports;
   h. Cash Collection Reports;
   i. Untimely Activity (Billing/Appeal) Reports;
   j. Underpayment Reports;
   k. Bad Debt Reports;
   l. Profitability Reports.

ii. Provide a work flow application, which shall provide the below functionalities.

1. Multiple levels of access which allow front-line users to accomplish and monitor their own work while giving department managers the ability to review, direct, and report on the activities of specific groups or the entire department.
2. Assign work to department staff in a flexible manner, allowing changes to the assignments of individual staff members or groups of staff members.
3. All work completed from the first “Go-Live” date must be retrievable and available for account audits, performance reviews, and productivity trend reports.
4. Work flow queuing and control, available for all aspects of the revenue cycle, including Admitting/Registration, Insurance Verification/Authorization, Case Management, Coding, Billing, and Collections.

iii. Interface with SUNY-DMC’s systems. **Contractor’s** system must:

1. Interface with **SUNY-DMC’s** Siemens Eagle system, and have the ability to migrate to a future billing software without losing account history;
2. Be able to deliver its system functions and reports through a Web-based ASP model;
3. Interface software data at least once per day; and
4. Meet the data security protocols required by the HIPAA and HITECH Acts.

b. All necessary implementation services, which shall include the mapping of data
and creation of all required systems and interfaces. Contractor shall complete implementation of its system within ninety days of the project kickoff meeting.

c. All necessary training services.
d. Comprehensive support, of the standards set forth below.
   i. Contractor shall be on-site within 24 hours for emergency support, if on-site support is requested;
   ii. Contractor shall provide off-site support within one hour of request, during Business Hours, defined as Monday through Friday between the hours of 8:00 A.M. Eastern Time to 5:00 P.M., Eastern Time;
   iii. Contractor shall provide manned telephone support during Business Hours; and
   iv. Contractor shall provide monitored e-mail support 24 x 7 x 365.

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 Contractor's performance 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 quarterly amounts of ____________, as is set forth in the Fee Schedule, annexed hereto as Exhibit F and incorporated herein.

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 hereinafter, 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

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:

________________________________________

Federal Employer Identification Number: ____________________________

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/](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 insured and (ii) contain a thirty (30) day written notice of any cancellation, change, or termination of coverage. All certificates must be filed with the Director of Contracts prior to commencement hereof.

16. To the extent applicable, **Contractor** agrees to comply with the reporting requirements arising under New York State Finance Law Section 8 and Section 163, as amended by Chapter 10 of the Laws of 2006. Further information on such requirements (including copies of the forms **Contractor** must complete to satisfy such requirements - Planned Employment Form (Form A) and the Annual Employment Report (Form B)) is available via the following web address: [www.osc.state.ny.us/agencies/gbull/g-226.htm](http://www.osc.state.ny.us/agencies/gbull/g-226.htm).

17. As a result of the Iran Divestment Act of 2012 (the “Act”), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), §165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (“OGS”) is charged with developing a “list” (prohibited entities list) of “persons” who are engaged in investment activities in Iran” (both are defined terms under the law). Pursuant to SFL §165-a(3)(b), OGS is required to issue the initial list no later than 120 days after the Act’s effective date, at which time it will be posted on the OGS website, and to update the list every 180 days thereafter.

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

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

**SUNY-DMC** reserves the right to reject any renewal, extension or request for assignment to an entity that appears on the prohibited entities list, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.
18. **Contractor** and any of its agents, employees or sub-contractors engaged in the performance of the services contemplated under this Agreement shall at all times be deemed to be performing as an independent contractor, and not as an agent or employee of the State University or SUNY-DMC, and the acts and omissions of such agents, employees or sub-contractors shall be deemed to be those of Contractor. Contractor shall indemnify, defend and hold harmless the State University of New York, the State of New York and SUNY-DMC (the “Indemnified”) and their officers, trustees, employees and agents from and against all loss, damage and expense (including, without limitation, reasonable attorneys’, accountants’ and consultants’ fees and court costs) or other liability incurred by, imposed upon or threatened against the Indemnified in connection with any claim, suit, action, demand or judgment arising out of Contractor’s (and/or its officers’, employees’ and agents’): (i) negligence or intentional misconduct; and/or (ii) failure to comply with the provisions hereof. Reciprocally, subject to the availability of lawful appropriations (as required by Section 41 of State Finance Law) and consistent with Section 8 of the State Court of Claims Act, SUNY-DMC shall hold Contractor harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of SUNY-DMC or its officers and employees when acting within the course and scope of their employment.

19. Notwithstanding anything herein to the contrary, Contractor shall remain liable, without monetary limitation, for direct damages for personal injury, death or damage to real property, tangible personal property or intellectual property attributable to the negligence or other tort of Contractor or Contractor’s officers, employees or agents.

20. **Termination by SUNY-DMC.**

(a) In the event of a breach by Contractor of any provision of this Agreement, SUNY-DMC shall give the Contractor fifteen (15) days to cure. If the breach is not remedied within the fifteen (15) day cure period, SUNY-DMC may, in addition to other rights and/or remedies that it may otherwise have, terminate this Agreement by giving the Contractor fifteen (15) days written notice.

(b) SUNY-DMC may terminate this Agreement immediately, without penalty, if: (i) in SUNY-DMC’s reasonable determination, Contractor’s acts or omissions: (a) pose a danger to SUNY-DMC’s employees, patients and/or visitors; (b) might result in the loss of any license reasonably necessary for the operation of Customer’s business, including accreditations (required pursuant to contractual arrangements); (ii) Contractor’s insurance lapses; (iii) Contractor: (a) makes an assignment in contravention to the terms of this Agreement and/or applicable law; (b) is or becomes the subject of a bankruptcy or similar proceeding; or otherwise (c) becomes insolvent; (iv) lawful appropriations are not made (pursuant to Section 41 of State Finance Law); (v) the certifications filed by Contractor in accordance with: (a) State Finance Law sections 139-j and 139-k are found to be intentionally false or intentionally incomplete; or (b) Tax Law Section 5-a, if applicable, are found to be false or incomplete.

(c) SUNY-DMC reserves the sole right to terminate this Agreement, in whole or in part, for any reason, without penalty, by giving the Contractor thirty (30) days written notification.

(d) SUNY-DMC reserves the right at any time during the performance of this Agreement to omit any portion of the work as SUNY-DMC may deem, in its sole discretion, necessary without constituting grounds for any claim by Contractor for allowances for damages.

(e) In the event SUNY-DMC terminates this Agreement, for any reason, Contractor shall
refund to SUNY-DMC: (i) if applicable, any compensation paid on account of any period during which Contractor was in breach of its obligations hereunder; and (ii) that portion of compensation already paid that is attributable to the balance of the term of this Agreement.

(f) The foregoing termination rights shall be in addition to and not in lieu of any other or additional rights and remedies that SUNY-DMC may have hereunder, at law or in equity.

21. If at any time hereunder Contractor alleges breach by SUNY-DMC of any of the provisions hereunder, Contractor shall not, in any event, withhold performance under this or any other agreement it may have with SUNY-DMC. Contractor shall, instead, provide SUNY-DMC with notice, pursuant to provision governing notices hereunder which notice shall specifically detail the alleged breach and the remedial measure sought, and allow SUNY-DMC ninety (90) days to cure any such breach (“Curative Period”). In the event SUNY-DMC has commenced, but not completed, remedial actions during the Curative Period, SUNY-DMC shall confer with Contractor in good faith and the parties shall negotiate a reasonable extension to the Curative Period.

22. Upon natural expiration, or earlier termination, of this Agreement, Contractor shall (at no additional cost to SUNY-DMC): (a) perform such activities as are reasonably necessary to ensure an orderly wind-down of its activities hereunder (which shall include, at a minimum, returning to SUNY-DMC or, at SUNY-DMC’s request, to a third party (including a successor provider of the services hereunder) any materials, documents or other items held, or otherwise possessed, by Contractor for or on behalf of SUNY-DMC (or otherwise in Contractor’s possession); and (b) reasonably assist SUNY-DMC to facilitate transition of the services hereunder to either a successor provider or SUNY-DMC.

23. The parties agree that, if by reason of strike or other labor disputes, civil disorders, inclement weather, acts of God, delays in regulatory approvals or other cause beyond the control of the parties, either party is unable to entirely perform its obligations hereunder, such non-performance shall not be considered a breach of this Agreement. The Party claiming excusable delay shall use commercially reasonable efforts to immediately notify the other Party of the force majeure condition and to mitigate the effects of the force majeure condition giving rise to the delay so as to continue performing as required hereunder as expeditiously as reasonably possible.

24. The Contractor shall keep books and records in accordance with good accounting practice and shall permit SUNY-DMC to examine and audit the books of the Contractor at the Contractor’s place of business, upon reasonable notice by SUNY-DMC.

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

To SUNY-DMC:

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

______________________________
______________________________
Attn: __________________________

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.epis.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. Intentionally Omitted.

   d. Intentionally omitted.

31. Neither this Agreement nor any of its provisions shall be assigned, delegated, transferred, conveyed, sub-let, or otherwise disposed of without the prior written consents of SUNY-DMC, the New York State Attorney General and the New York State Office of the State Comptroller, and any attempts to assign, delegate, transfer, convey, sub-let, or otherwise dispose of this Agreement without said written consents shall be null and void. For avoidance of doubt, all provisions hereof shall bind any permitted successors and/or assigns of either party.

32. The **SUNY-DMC** Project Manager for this Agreement shall be the Assistant Vice President of Revenue Cycle, or any other such individual as may be subsequently designated by SUNY-DMC. The Project Manager shall review any work plan prepared by the **Contractor**, approve activities hereunder and review and approve the **Contractor’s** invoices submitted hereunder.

33. This Agreement is not intended to benefit any third party, nor shall any person who is not now or in the future a party hereto be entitled to enforce any of the rights or obligations of a party under this Agreement.
34. Those provisions of this Agreement that, by their nature, are intended to survive termination or expiration hereof will remain in full force and effect, including, without limitation, the following Sections: 6, 7, 8, 9, 10, 11, 12, 13, 15, 18, 19, 20, 22, 24, 27, 30, 33, 34, 35, 36, and 38. Accordingly, termination of this Agreement will not adversely affect any right existing as of the effective date of termination. The rights and remedies provided under this Agreement are cumulative and in addition to any other rights or remedies available at law and in equity, and any other contract instrument or paper. If any portion of this Agreement is found to be illegal in law, all other elements of the contract will remain in full force. As the parties hereto have jointly negotiated this agreement, in the event of ambiguity, this Agreement shall not be presumptively construed for or against either party.

35. This Agreement includes by reference all exhibits hereto. In the event that there is a conflict between any of the terms and conditions set forth in the documents that constitute this Agreement, the following order of precedence shall apply:

(a) *Exhibits A and A-I*
(b) *Exhibit D: BAA*
(c) *Exhibit E: DRA Appendix*
(d) The text of this Agreement (pages 1 through 12);
(e) *Exhibit B: the Posting*; and
(f) *Exhibit F: Fee Schedule*
(g) *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."

STATE UNIVERSITY OF NEW YORK
DOWNSTATE MEDICAL CENTER

Print Name: Alan Dzija
Print Title: Vice President and Chief Financial Officer
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, subleasing or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and the contractors to do business with SUNY.

3. COMPTROLLER’S APPROVAL.

(a) In accordance with Section 112 of the State Finance Law, Section 555 of the New York State Education Law, and 9 NYCRR 216, Comptroller’s approval is not required for any of the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) construction; (iv) construction-related services; and (v) 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) 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 $50,000; (ii) 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 $75,000; and (iii) contracts for goods made with joint or group purchasing arrangements.

4. WORKERS’ COMPENSATION BENEFITS.

In accordance with Section 142 of the State Finance Law, the contract and the contract and its subcontractors and suppliers are subject to the requirements of the Workers’ Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (known as the Human Rights Law) and all other State and Federal and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment on the basis of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 200-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work for the manufacture 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 any employee hired for the performance of work under this contract.

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 Contractor’s subcontractors may be required or permitted to work more than the number of hours or days stated in the contract, except as otherwise provided for in this Act and as set forth in prevailing wage and supplements 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 26, 2006, if this is a public work contract covered by Article 8 of the Labor Law, the contractor understands and agrees that the filing of grievances 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 or other sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 129-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 bid each party that stands and as to its own organization, under penalty of perjury, that it is not the only bidder or if bidding was not acted at random or under fixed competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to SUNY a non-collusive bidding certification on Contractor’s behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION.

In accordance with Section 220-o of the Labor Law and Section 1324 of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither it nor its subcontractors shall, by reason of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status, discriminate in hiring against any New York State citizen who is qualified and available to perform the work, or (b) discriminate against any employee hired for the performance of work under this contract.

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 shall 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 respect to the same contract, or 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. Without limitation, the State may set-off any moneys due from the Contractor for the purposes of this audit, the finalization of such audit by the State, or the representatives of 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 the State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives are entitled to request. In this Article, the Contractor undertakes the obligation to maintain the Records for subsequent access to the Records during normal business hours at an office of the Comptroller within the State of New York or, at no other office is available, at a mutually agreeable place within the State, for the term specified above for the purposes of examination, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 67 of the Public Officers Law (the “Statute”) provided that:....
are afforded equal employment opportunities without discrimination. The Contractor is required to maintain employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation at SUNY's request, must maintain each employment agency, labor union or, or authorized representative of workers with which it has a collective bargaining 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 hereunder.

(3) Contractor shall state, in all solicitations or advertisements to employees, that, in the performance of this 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 for the construction of Ro-Work for the use of the Contractor. Section 312 does not apply to: (1) work, goods or services unrelated to this contract; (2) work with a contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which affect the purpose of this section. SUNY shall determine whether the imposition of the requirements of the provisions herein 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 hereinafter.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereto) and the terms of the Exhibit A, the terms of the 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 arising from 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 receipt of process, with or without an attorney of record. Upon receipt of service of process by the United States Postal Service as registered or certified mail, any address on the State's records shall be charged with the State in writing, and every copy 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, and it shall 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 New York 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, any portion of this contract involving the use of woods, whether supply or installation, is to be performed by a sub-subcontractor, the 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 607 of the Laws of 1989), the Contractor certifies 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 of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. In the event that New York State seeks to maximize opportunities for the participation of New York State businesses, 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 of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-603-2414
email: mwbcodevelopment@nysed.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
212-603-2414
email: mwbcodevelopment@nysed.gov
http://www.nysed.gov/MWB/EmployerSearch.html

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 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 completed the

   (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on or through posting any such positions with the State-wide Division of the New York State Department of Labor, or in lieu of such notification in such manner as is consistent with existing collective bargaining contracts or other 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 1984 and 2000 amendments (Chapter 694 and Chapter 393, 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 12240, for a current list of jurisdictions subject to this provision.

22. Compliance with New York State

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

23. Purchases of Apparel and Sports Equipment

   In accordance with State Finance Law Section 186(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 for purposes of this New York State Finance Law Section 186 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 written notice terminated 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.
EXHIBIT A-1
January 14, 2013

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 technical, financial and other professional services, supplies, equipment, materials or an 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 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; and (c) 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 for such project.

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

OWNED BUSINESS ENTERPRISE herein referred to as “WBE”, shall mean a business enterprise, including a sole proprietorship, partnership or corporation that: (a) at least thirty percent (30%) 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; and (c) an enterprise in which such ownership interest has and exercises the authority to control independently the day-to-day business decisions of the enterprise.

MINORITY OWNED BUSINESS ENTERPRISE herein referred to as “MBE”, shall mean a business enterprise, including a sole proprietorship, partnership or corporation that: (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; and (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.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien, who is and can demonstrate ownership 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, Dominica, Cuban, Puerto Rican, or other persons of Spanish Indian or other origins; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business entity certified 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 and Women Business Development (DMWBD) for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

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

(a) Contractor shall provide such information at a later date or provides a reasonable justification in writing for its failure to provide the same.

(b) 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 University, 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 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.
in such a manner that the requirements of the provisions shall 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 opportunity in the absence of 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.

(g) To ensure compliance with the requirements of this paragraph, the University shall inquire of the 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 method, 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 requirements 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.

(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 DMWB shall provide a contracting agency with a model plan of an affirmative action program.

(j) Upon request, DMWB shall provide the University with information on specific recruitment sources for minority group members and women, 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 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.

3. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscious 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 has 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, announcing its willingness to provide 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's news sources.

(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.

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 DMWB:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified MWBEs, 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 goals 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 MWBE 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 (DEED) to assist Subcontractors in efforts to satisfy bonding requirements.

(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 DMWB, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

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

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION. For all State Contracts in excess of $25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or any 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 Woman-Owned Business Enterprises.

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 is not 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.

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 wilfully 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:

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 sixth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women 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.
SUNY DOWNSTATE MEDICAL CENTER
HIPAA BUSINESS ASSOCIATE AGREEMENT

CONTRACT NO(S): __________

THIS 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 and having its principal offices located at State University Plaza, Albany, New York 12246, acting for and on behalf of SUNY DOWNSTATE MEDICAL CENTER (also known as SUNY Health Science Center at Brooklyn), located at 450 Clarkson Ave., Brooklyn, New York 11203 ("Covered Entity") and ________________ ("Business Associate"). Covered Entity and Business Associate, collectively, may hereinafter be referred to as the “Parties,” as in the parties to this Agreement.

WHEREAS, Covered Entity and Business Associate are parties to one or more agreements and/or may in the future become parties to additional agreements (collectively, the "Underlying Agreements"), pursuant to which Business Associate provides certain services to Covered Entity and, in connection with such services, creates, receives, uses or discloses for or on behalf of Covered Entity certain individually identifiable Protected Health Information relating to patients of Covered Entity ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act Title XIII of Division A of the American Recovery and Reinvestment Act, 2009 (HITECH Act) and regulations promulgated there under, as such law and regulations may be amended from time to time (collectively, "HIPAA"); and

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WHEREAS, Covered Entity and Business Associate wish to comply in all respects with the requirements of HIPAA, including requirements applicable to the relationship between a covered entity and its business associates;

NOW, THEREFORE, the parties agree that each of the Underlying Agreements shall hereby be amended as follows:

1. Definitions.

(a) "Breach"—shall have same meaning given to such term as defined in 45 CFR § 164.402.

(b) "Business Associate" shall have the same meaning given to such term as defined in 45 CFR § 160.103.

(c) "Covered Entity" shall have the same meaning given to such term as defined in 45 CFR § 160.103.

(d) "Designated Record Set" shall have the same meaning given to such term as defined in 45 CFR § 164.501.

(e) "Disclosure" shall have the same meaning given to such terms as defined in 45 CFR §160.103.

(f) "Electronic Protected Health Information" or "e-PHI" shall have the same meaning given to such term as defined in 45 CFR §160.103 limited to the information transmitted or maintained by the Business Associate in electronic form format or media.

(g) "Individual" shall have the same meaning given to such term as defined in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

(h) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E respectively.
(i) "Protected Health Information" or "PHI" shall have the same meaning given to such term as defined in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(j) "Required By Law" shall have the same meaning given such term as defined in 45 CFR§ 164.103 and The Health Information Technology for Economic and Clinical Health Act (HITECH) Division A: Title XIII, Subtitle D.

(k) "Security" or "Security Measures" encompass all of the administrative, physical, and technical safeguards in an information system specified in subpart C of 45, CFR § 164.

(l) "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information as specified in subparts A and C in 45 C.F.R. Parts 160 and 164, respectively.

(m) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

2. **Obligations and Activities of Business Associate.**

(a) Business Associate may not use or disclose protected health information other than as permitted or required by the Underlying Agreement or as required by law:

(b) Business Associate agrees to use appropriate safeguards, including without limitation, administrative, physical and technical safeguards, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to reasonably and appropriately employ the same standards as required by law to, protect the confidentiality, integrity and availability of any electronic Protected Health Information (e-PHI) that it may receive, maintain or transmit on behalf of the Covered Entity.
(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement or any security incident of which it becomes aware, involving Protected Health Information of the Covered Entity.

(e) Business Associate must in accordance with 45 CFR §164.502(e)(l)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors, agents or affiliates of the Business Associate 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. Subject to the United States and New York State export control and foreign outsourcing laws, rules and regulations, the Business Associate will require any of its subcontractors and agents either based in the United States or a foreign country, to provide a reasonable assurance, evidenced in writing, that the subcontractor or agent will comply with the same privacy and security obligations as the Business Associate with respect to such PHI either set forth in this Agreement or in applicable law, rules and regulations.

(f) Business Associate agrees to provide access, at the written request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity in order to meet the requirements under 45 CFR §164.524.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the written request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
(h) Business Associate agrees to make available internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section (2)(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(k) 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.

(l) If Business Associate, in performance of the contracted services, 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 16 C.F.R. § 681.2(b)(3), the Business Associate shall 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.

(m) Business Associate understands and agrees that it will not access or use any Protected Health Information of any patient except for those patients whose accounts have been assigned to Business Associate, and it will further limit access to that Protected Health Information that is necessary to the activities undertaken by Business Associate on behalf of Covered Entity.

(n) Business Associate will, pursuant to the HITECH Act and its implementing regulations, comply with all additional applicable requirements of the Privacy Rule, including those contained in 45 CFR §§ 164.502(e) and 164.504(e)(i) and (ii), at such time as the requirements are applicable to Business Associate. Business Associate will not directly or indirectly receive remuneration in exchange for any Protected Health Information, subject to the exceptions contained in the HITECH Act, without a valid authorization from the applicable individual. Business Associate will not engage in any communication which might be deemed to be "Marketing" under the HITECH Act. In addition, Business Associate will, pursuant to the HITECH Act and its implementing regulations, comply with all applicable requirements of the Security Rule, contained in 45 CFR §§ 164.308, 164.310, 164.312, and 164.316, at such time as the requirements are applicable to Business Associate.

3. **Permitted Uses and Disclosures by Business Associate.**

In case Business Associate obtains or creates Protected Health Information, Business Associate may use or disclose Protected Health Information, or any information derived from that Protected Health Information, only as explicitly permitted in the underlying agreement, and only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR § 164.504(e). It means that:
(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person 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 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, 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.

4. Responsibilities of the Parties with Respect to Protected Health Information

(a) Responsibilities of Covered Entity. With regard to the use and/or disclosure of Protected Health Information by the Business Associate, Covered Entity hereby agrees:

   (1) 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.

(2) to inform the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose Protected Health Information, to the extent that such limitation may affect Business Associate’s use or disclosure of Protected Health Information.

(3) to notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of Protected Health Information 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 Protected Health Information by the Business Associate under this Agreement. Except if the Business Associate will use or disclose Protected Health Information for (and the Underlying Agreement includes provisions for) data aggregation or management and administration and legal responsibilities of the Business Associate, Covered Entity will not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy and Security Rule if done by the Covered Entity.


(a) Security Measures: 45 CFR §164.308, 164.310, 164.312 and 164.316, dealing with the administrative, physical and technical safeguards as well as policies, procedures and documentation requirements that apply to Covered Entity shall in the same manner apply to Business Associate as Required By Law. Any additional security requirements contained in Division A Title XIII Health Information Technology of the American Recovery and Reinvestment Act that apply to Covered Entity shall also apply to Business Associate as of February 17, 2010. Business Associates that require access to Covered Entity electronic

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patient systems and electronic infrastructure systems (either on site or remote) will supply the necessary information of employees to uniquely identify such employees, as employees with a need to access systems and will supply to Covered Entity Information Security Officer a valid state or federal issued photo ID for such employees to receive a unique user name and password to access the system(s).

(b) Application of Civil and Criminal Penalties- If Business Associate violates any security provision as Required By Law specified in subparagraph (a) above, sections 1176 and 1177 of the Social Security Act 42 U.S.C. §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.

6. **Information Breach Notification Requirements.**

(a) Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary of the Department of Health and Human Services and the Individual in case of a security breach of unsecured Protected Health Information (as defined in 45 CFR §164.402).

(b) Where Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured Protected Health Information, Business Associate without unreasonable delay and in no case later than thirty (30) days following the discovery of a breach of such information, shall notify Covered Entity of such breach. Such notice shall include the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during the breach.

(c) Covered Entity and Business Associate recognizes that the Unsecured Protected Health Information 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 § 899-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 event of the breach of Unsecured Protected Health Information containing an Individual's private information, Business Associate shall in addition to notifying Covered Entity as in subparagraph (a) comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law, § 208). 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.

7. Term and Termination.

(a) Term. The Term of this Agreement shall be effective as of the Effective Date (as defined below), and shall terminate at termination of underlying agreement or on the date Covered Entity terminates this agreement for cause as authorized on paragraph (b) of this section, whichever is sooner.

(b) Termination for Cause. The parties acknowledge that in the event the Covered Entity learns of a pattern or activity or practice of the Business Associate that constitutes violation of a material term of this Agreement, then the parties promptly shall take reasonable steps to cure the violation. If such steps are, in the judgment of the Covered Entity, unsuccessful, ineffective or not feasible, then the Covered Entity may terminate, in its sole discretion, any or all of the Underlying Agreements upon written notice to the Business Associate, if
feasible, and if not feasible, shall report the violation to the Secretary of the Department of Health and Human Services.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement or the Underlying Agreement(s) for any reason, Business Associate shall return or destroy all Protected Health Information pursuant to 45 CFR § 164.504(e)(2)(i) received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification, in writing, of the conditions that make return or destruction infeasible. Said notification shall include: (i) a statement that the Business Associate has determined that it is not feasible to return or destroy the Protected Health Information in its possession, and (ii) the specific reasons for such determination. The Covered Entity may disagree with the Business Associate's determination. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information. If it is infeasible for the Business Associate to obtain, from a subcontractor or agent, any Protected Health Information in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to the Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations, and restrictions contained in
this Agreement to the subcontractors and/or agents' use and/or disclosure of any Protected Health Information 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 Protected Health Information infeasible.

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

(e) **Effective Date.** The effective date of this Agreement (the "Effective Date") shall be the date of the last signature below.

8. **Insurance and Indemnification.**

Indemnification. The Business Associate agrees to indemnify, defend and hold harmless Covered Entity and Covered Entity's employees, directors, officers, subcontractors, agents or 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 arising from any negligent or wrongful acts or omissions of Business Associate, 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.

9. **Miscellaneous.**

(a) **Regulatory References.** A reference in this Agreement to a section in the Privacy and Security Rules means the section as in effect or as amended, and for which compliance is required.

(b) **Agreement.** The Parties agree to take such action as is necessary to amend the Underlying Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the

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Health Insurance Portability and Accountability Act, Public Law §104-191; provided, however, that no Agreement shall be deemed valid unless signed by both parties and approved by the New York State Attorney General and the Office of the State Comptroller, when necessary.

(c) Amendments / Waiver. This agreement may not be modified, not 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 a waiver of any right or remedy as to subsequent events. The Parties agree to take such actions 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.

(d) Survival. The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement and/or the Underlying Agreements, as shall the rights of access and inspection of Covered Entity.

(e) 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.

(f) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules.
10. **Governing Law; Conflict.**

This Agreement shall be enforced and construed in accordance with the laws of the State of New York. Jurisdiction of any litigation with respect to this Agreement shall be in New York, with venue in a court of competent jurisdiction located in Kings County. In the event of a conflict between the terms of this Agreement and the terms of any of the Underlying Agreements, the terms of this Agreement shall control.
SUNY Downstate Medical Center: Compliance with Deficit Reduction Act of 2005

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

The following is a summary of the Federal & New York False Claims Acts, the Program Fraud Civil Remedies Act and other relevant State laws as posted on the Office of Medicaid Inspector General’s Provider Compliance website: http://www.omig.state.ny.us/data/images/stories/relevant_fca_statutes_122209.pdf

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), or (G);
(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property, or
(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) note; Public Law 104-410, plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.—If the court finds that—
(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
(B) such person fully cooperated with any Government investigation of such violations; and
(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.
EXHIBIT

grantor-grantee, or
licensor-licensee, or
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

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
entitles 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 13
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
offenses” apply to areas of interaction
with the government and so, are

Revised 07.2011
applicable to health care fraud and will be listed in this section.

A. CIVIL AND ADMINISTRATIVE LAWS

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

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

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

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

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

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Service program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The state or local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to ten thousand dollars per violation. If repeat violations occur within five years, a penalty of up to thirty thousand dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

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

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

B. CRIMINAL LAWS

1) Social Services Law, Section 145 - Penalties

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

2) Social Services Law, Section 366-b – Penalties for Fraudulent Practices

a. Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a class A misdemeanor.

b. Any person who, with intent to defraud, presents for payment a false or fraudulent claim for furnishing services, knowingly submits false information to obtain greater Medicaid compensation, or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a class A misdemeanor.

3) Penal Law Article 156 - Larceny

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This statute has been applied to Medicaid fraud cases.

   a. Fourth degree grand larceny involves property valued over $1,000. It is a class E felony.
   b. Third degree grand larceny involves property valued over $3,000. It is a class D felony.
   c. Second degree grand larceny involves property valued over $50,000. It is a class C felony.
   d. First degree grand larceny involves property valued over $1 million. It is a class B felony.

4) Penal Law Article 175 – False Written Statements

Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

   a. §175.05 – Falsifying business records involves entering false information, omitting material information or altering an enterprise’s business records with the intent to defraud. It is a class A misdemeanor.
   b. §175.10 – Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.
   c. §175.30 – Offering a false instrument for filing in the second degree involves presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.
   d. §175.35 – Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

5) Penal Law Article 176 – Insurance Fraud

This law applies to claims for insurance payments, including
EXHIBIT

A. 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 five thousand dollars. This is a class C felony.

B. 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 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

A health care 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 care provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of $10,000 on the employer.
SECTION III
MANDATORY SUBMISSION CHECKLIST FOR PART Q PROCUREMENT

Procurement # and Name: ________________________________________________________________

Vendor Name: __________________________ Vendor Contact: _____________________________

Contact E-Mail: __________________________ Contact Phone Number: ____________________

Administrative Forms (in required documentation order)
1. ☐ NYSFL §§139(j) & (k) Acknowledgement Form (Please complete and return immediately upon receipt of the procurement package, and include a copy with your proposal submission).

2. ☐ NYSFL §§139(j) & (k) Forms A, B, and C

3. ☐ Vendor Responsibility Questionnaire

4. ☐ ST220-CA Form

5. ☐ Copy of the completed ST220-TD Form (Please send the original to the NYS Tax Department)

6. ☐ Consultant Reporting Disclosure Form A & Form B

7. ☐ C-105.2 Form (to be completed by your current NYS Workers' Compensation Insurance provider)

8. ☐ DB-120.1 Form (to be completed by your NYS Disability Benefits Insurance provider)

Vendor Proposal Components
9. ☐ Company Background
   ☐ Years of Experience
   ☐ Resumes of Project Leaders
   ☐ Staffing Plan

10. ☐ Technical Proposal
    ☐ Response to each specification
    ☐ Implementation Plan
    ☐ Expectations from, and requirements of, SUNY-DMC
    ☐ List of deliverables
    ☐ All applicable timelines

11. ☐ Five References

12. ☐ Price Proposal Matrix

13. ☐ MWBE Utilization Plan (if applicable)
BID #Q14-03 Revenue Cycle Business Intelligence and Work Flow Technology Software and all ancillary services including installation, implementation, training, maintenance and support.

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

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

Howah Hung
Contracts Attorney
Howah.Hung@downstate.edu
718-613-8748 (phone)
718-270-3342 (fax)
or
Maureen Crystal
Director of Contracts
maureen.crystal@downstate.edu
718-270-1976 (phone)
718-270-3342 (fax)
The vendor must affirm their understanding of and adherence to this policy by completing, signing and returning with the bid this Exhibit F which is hereby made a part of this agreement. This policy provides that if a member, officer or employee of a governmental entity becomes aware that an officer has violated the permissible contact provisions of the State Finance Law 139j and 139k, said person shall immediately notify the Ethics Officer, Inspector General, or other official of the procuring governmental entity for investigation. Any Vendor failure to comply with this provision will be disqualify from consideration.

Bidder’s Affirmation of Understanding & Adherence

I ___________________________ (Name & Title at corporation), hereby affirm that ____________________________ understands and agrees to comply with SUNY Downstate Medical University’s procedure relating to permissible contacts during a governmental procurement, and certify that all information provided by ____________________________ Corporation to SUNY Downstate Medical University is complete, true and accurate.

Signature

Title

Date
FORM A

Summary: Policy and Procedure of the State University of New York
Relating to State Finance Law §§139-j and 139-k

State Finance Law §§139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by
Ch. 596 L. 2005, effective January 1, 2006, regulate lobbying on government
procurement, including procurements by State University to obtain commodities and
services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a
person acting on behalf of the vendor, including its lobbyist, to communications with the
officers and employees of the procuring agency designated in each solicitation to receive
such communications. Further, the law prohibits a communication (a “Contact”) which a
reasonable person would infer as an attempt to unduly influence the award, denial or
amendment of a contract. These restrictions apply to each contract in excess of $15,000
during the “restricted period” (the time commencing with the earliest written notice of the
proposed procurement and ending with the later of approval of the final contract by the
agency, or, if applicable, the State Comptroller). The agency must record all Contacts,
and, generally, must deny an award of contract to a vendor involved in a knowing and
willful Contact. Each agency must develop guidelines and procedures regarding Contacts
and procedures for the reporting and investigation of Contacts. The agency’s procurement
record must demonstrate compliance with these new requirements.

Accordingly, neither a potential vendor nor a person acting on behalf of the
vendor should contact any individual at State University other than the person designated
in this solicitation as State University’s Designated Contact, nor attempt to unduly
influence award of the contract. State University will make a record of all Contacts, and
such records of Contact will become part of the procurement record for this solicitation.
A determination that a vendor or a person acting on behalf of the vendor has made
intentionally a Contact or provided inaccurate or incomplete information as to its past
compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the
award of contract under this solicitation. Additional sanctions may apply.

A complete copy of the State University of New York Procurement Lobbying
Policy and Procedure is available for review at www.suny.info/policies.
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.edu/policies.

Procurement Description/ID No.:

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

Name of Offeror:

Address:

Person Submitting Form:

Signature: ________________________________

Name: ________________________________

Title: ________________________________
FORM C

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

Procurement Description/ID No.:

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

No ___
Yes ___

If yes, provide the following details:
Governmental Entity which made the finding:
Date of finding:
Basis of finding:

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

No ___
Yes ___

If yes, identify the following:
Governmental Entity which terminated the contract:
Date of contract termination or withholding:
Identify the related procurement contract:

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

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

Name of Offeror:

Address:

Signature of Person Submitting Form:

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

Background:

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

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

[any 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/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

<table>
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<tr>
<th>Legal Business Entity Name*</th>
<th>EIN (Enter 9 digits, without hyphen)</th>
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<th>Address of the Principal Place of Business (street, city, state, zip code)</th>
<th>New York State Vendor Identification Number</th>
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**Additional Legal Business Entity Identities:** If applicable, list any other DBA, Trade Name, Former Name, Other Identity, or EIN used in the last five (5) years and the status (active or inactive).

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<th>Type</th>
<th>Name</th>
<th>EIN</th>
<th>Status</th>
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1.0 **Legal Business Entity Type** – Check appropriate box and provide additional information:

- [ ] Corporation (including PC)  
  [ ] Date of Incorporation

- [ ] Limited Liability Company (LLC or PLLC)  
  [ ] Date of Organization

- [ ] Partnership (including LLP, LP or General)  
  [ ] Date of Registration or Establishment

- [ ] Sole Proprietor  
  [ ] How many years in business?

- [ ] Other  
  [ ] Date Established

If Other, explain:

1.1 **Was the Legal Business Entity formed or incorporated in New York State?**  
[ ] Yes  [ ] No

If ‘No,’ indicate jurisdiction where Legal Business Entity was formed or incorporated and attach a Certificate of Good Standing from the applicable jurisdiction or provide an explanation if a Certificate of Good Standing is not available.

- [ ] United States  
  [ ] State ______

- [ ] Other  
  [ ] Country ______

Explain, if not available:

1.2 **Is the Legal Business Entity publicly traded?**  
[ ] Yes  [ ] No

If “Yes,” provide CIK Code or Ticker Symbol

1.3 **Does the Legal Business Entity have a DUNS Number?**  
[ ] Yes  [ ] No

If “Yes,” Enter DUNS Number

*All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” which can be found at [www.osc.state.ny.us/vendrep/documents/definitions.pdf](http://www.osc.state.ny.us/vendrep/documents/definitions.pdf).*
I. LEGAL BUSINESS ENTITY INFORMATION

1.4 If the Legal Business Entity’s Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State? (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)?
   □ Yes □ No
   If “Yes,” check all that apply:
   □ New York State certified Minority-Owned Business Enterprise (MBE)
   □ New York State certified Women-Owned Business Enterprise (WBE)
   □ New York State Small Business (SB)
   □ Federally certified Disadvantaged Business Enterprise (DBE)

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

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Percentage Ownership (Enter 0% if not applicable)</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>
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.

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
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</table>
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:*  

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

For each “Yes” or “Other” explain:

### IV. INTEGRITY – CONTRACT BIDDING

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

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

For each “Yes,” explain:
## V. INTEGRITY – CONTRACT AWARD

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

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.0 Been suspended, cancelled or terminated for cause on any government contract including, but not limited to, a non-responsibility finding?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract?</td>
<td></td>
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<tr>
<td>5.2 Entered into a formal monitoring agreement as a condition of a contract award from a government entity?</td>
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</tbody>
</table>

For each “Yes,” explain:

## VI. CERTIFICATIONS/LICENSES

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

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.0 Had a revocation, suspension or disbarment of any business or professional permit and/or license?</td>
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<td></td>
</tr>
<tr>
<td>6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of Minority-Owned Business Enterprise, Women-Owned Business Enterprise or federal certification of Disadvantaged Business Enterprise status for other than a change of ownership?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For each “Yes,” explain:

## VII. LEGAL PROCEEDINGS

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

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

For each “Yes,” explain:
VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

8.0 Within the past five (5) years, has the Reporting Entity received any formal unsatisfactory performance assessment(s) from any government entity on any contract? □ Yes □ No

If "Yes," provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.1 Within the past five (5) years, has the Reporting Entity had any liquidated damages assessed over $25,000? □ Yes □ No

If "Yes," provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.2 Within the past five (5) years, have any liens or judgments (not including UCC filings) over $25,000 been filed against the Reporting Entity which remain undischarged? □ Yes □ No

If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.3 In the last seven (7) years, has the Reporting Entity initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending? □ Yes □ No

If "Yes," provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.

8.4 During the past three (3) years, has the Reporting Entity failed to file or pay any tax returns required by federal, state or local tax laws? □ Yes □ No

If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the Reporting Entity failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.

8.5 During the past three (3) years, has the Reporting Entity failed to file or pay any New York State unemployment insurance returns? □ Yes □ No

If "Yes," provide the years the Reporting Entity failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.6 During the past three (3) years, has the Reporting Entity had any government audit(s) completed? □ Yes □ No

a) If "Yes," did any audit of the Reporting Entity identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any material disallowance? □ Yes □ No

If "Yes" to 8.6 a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.
**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.)*

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.0 Does the Reporting Entity have any Associated Entities?</td>
<td></td>
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<tr>
<td>Note: All questions in this section must be answered if the Reporting Entity is either:</td>
<td></td>
<td></td>
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<tr>
<td>- An Organizational Unit, or</td>
<td></td>
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<tr>
<td>- The entire Legal Business Entity which controls, or is controlled by, any other entity(ies).</td>
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<tr>
<td>If “No,” SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.</td>
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<tr>
<td>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:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Any business-related activity; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?</td>
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<tr>
<td>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).</td>
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<tr>
<td>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?</td>
<td></td>
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</tr>
<tr>
<td>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.</td>
<td></td>
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</tr>
<tr>
<td>9.3 Within the past five (5) years, has any Associated Entity:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process?</td>
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<tr>
<td>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?</td>
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</tr>
<tr>
<td>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?</td>
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</tr>
<tr>
<td>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?</td>
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<tr>
<td>e) Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime?</td>
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<tr>
<td>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?</td>
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<tr>
<td>g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?</td>
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</tbody>
</table>

For each “Yes,” provide an explanation of the issue(s), identify the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.
X. FREEDOM OF INFORMATION LAW (FOIL)

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

   ☐ Yes ☐ No

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

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE

<table>
<thead>
<tr>
<th>Name</th>
<th>Telephone</th>
<th>Fax</th>
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<tbody>
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<td>ext.</td>
<td></td>
</tr>
<tr>
<td>Title</td>
<td>Email</td>
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</tbody>
</table>

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NEW YORK STATE
VENDOR RESPONSIBILITY QUESTIONNAIRE
FOR-PROFIT BUSINESS ENTITY

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State contracting entities in making responsibility determinations regarding an award of a contract or approval of a subcontract; (2) recognizes that the Office of the State Comptroller (OSC) will rely on information disclosed in the questionnaire in making responsibility determinations and in approving a contract or subcontract; (3) acknowledges that the New York State contracting entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (4) acknowledges that intentional submission of false or misleading information may constitute a misdemeanor or felony under New York State Penal Law, may be punishable by a fine and/or imprisonment under Federal Law, and may result in a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

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

Signature of Owner/Officer

Printed Name of Signatory

Title

Reporting Entity Name

Address

City, State, Zip

Sworn to before me this ___________ day of __________, 20 __________;

______________________________________________
Notary Public
New York State Department of Taxation and Finance

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

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

<table>
<thead>
<tr>
<th>Contractor name</th>
<th>For covered agency use only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor's principal place of business</td>
<td>City</td>
</tr>
<tr>
<td>Contractor's mailing address (if different than above)</td>
<td></td>
</tr>
<tr>
<td>Contractor's federal employer identification number (EIN)</td>
<td>Contractor's sales tax ID number (if different from contractor's EIN)</td>
</tr>
<tr>
<td>Contractor's telephone number</td>
<td>Covered agency name</td>
</tr>
<tr>
<td>Covered agency address</td>
<td>Covered agency telephone number</td>
</tr>
</tbody>
</table>

I, ___________________________, hereby affirm, under penalty of perjury, that I am ___________________________, of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

☐ 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 ___________________________ 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)

Instructions

General information
Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, Contractor Certification to Covered Agency, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See Need help? for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

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

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

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

i. The procuring entity is a covered agency within the meaning of the statute (see Publication 223, Q&A 5);

ii. The contractor is a contractor within the meaning of the statute (see Publication 223, Q&A 6); and

iii. The contract is a contract within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000 and (b) is a contract for commodities or services, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).
Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF

COUNTY OF

SS.

On the ___ day of ___________________ in the year ___ , 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 _______________________________________, 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 _______________________________________, 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, 267, 306, 429, 476, 505, 697, 1096, 1142, and 1415 of that Law, and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

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

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

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

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5239. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

Internet access: www.nysdtax.gov
(for information, forms, and publications)

Fax-on-demand forms: 1 800 748-3876

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

To order forms and publications: 1 800 462-8100

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

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

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.
# Contractor Certification

**New York State Department of Taxation and Finance**

**Contractor Certification**

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

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

<table>
<thead>
<tr>
<th>Contractor name</th>
<th>Contractor's principal place of business</th>
<th>City</th>
<th>State</th>
<th>ZIP code</th>
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<tbody>
<tr>
<td>Contractor's mailing address (if different than above)</td>
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<tr>
<th>Contractor's federal employer identification number (EIN)</th>
<th>Contractor's sales tax ID number (if different from contractor's EIN)</th>
<th>Contractor's telephone number</th>
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<tr>
<th>Covered agency name</th>
<th>Contract number or description</th>
<th>Estimated contract value over the full term of contract (but not including renewals)</th>
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<tr>
<th>Covered agency address</th>
<th>Covered agency telephone number</th>
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## General Information

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

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (as amended, effective April 26, 2006), available at www.nystax.gov. Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

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

Mail completed form to:

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

## Privacy Notification

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

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

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

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

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

## Need Help?

- **Internet access:** www.nystax.gov  
  (for information, forms, and publications)
- **Fax-on-demand forms:** 1 800 748-3876
- **Telephone assistance** is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.  
  To order forms and publications: 1 800 462-8100
  Sales Tax Information Center: 1 800 698-2900
  From areas outside the U.S. and outside Canada: (518) 485-6800
- **Hearing and speech impaired:** (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
- **Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.
I, ___________________________, hereby affirm, under penalty of perjury, that I am ___________________________,

(name)

of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Make only one entry in each section below.

Section 1 — Contractor registration status

☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.

☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 — Affiliate registration status

☐ The contractor does not have any affiliates.

☐ To the best of the contractor’s knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor’s knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 — Subcontractor registration status

☐ The contractor does not have any subcontractors.

☐ To the best of the contractor’s knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor’s knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ___ day of ______________________, 20__

_________________________________________
(sign before a notary public)

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

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

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<td>Name</td>
<td>Address</td>
<td>Federal ID Number</td>
<td>Sales Tax ID Number</td>
<td>Registration in progress</td>
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Column A – Enter C in column A if the contractor; A if an affiliate of the contractor; or S if a subcontractor.

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

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

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

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

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

STATE OF  

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 ___________ 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 163 by requiring:

1. That the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by State agencies for consulting services during the previous fiscal year, certain additional information on employees providing services under such contracts;

2. That contractors annually report certain employment information to the contracting agency, the Department of Civil Service (DCS) and OSC, and

3. That OSC include such employment information in the Procurement Stewardship Act Report it compiles annually.

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

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

Annual Report Requirements:

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

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

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

Incorporation of the reporting requirement for Form B to be submitted annually will be a requirement for OSC approval of new contracts for consulting services including those contracts resulting from mini-bids received by OSC for approval on or after July 17, 2006, except in extraordinary circumstances as determined in the sole discretion of OSC.
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.
- **Employment Category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. 
  (Note: Access the O*NET database, which is available through the US Department of Labor’s Employment and Training Administration, on-line at [online.onetcenter.org](http://online.onetcenter.org) to find a list of occupations.)

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

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

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

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

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

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

State Consultant Services - Contractor's Planned Employment
From Contract Start Date Through The End Of The Contract Term

<table>
<thead>
<tr>
<th>Employment Category</th>
<th>Number of Employees</th>
<th>Number of hours to be worked</th>
<th>Amount Payable Under the Contract</th>
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Total this page

Grand Total

Name of person who prepared this report:
Title:
Preparer's Signature:
Date Prepared: / /
(Use additional pages, if necessary)