

<p>STATE AGENCY:</p> <p>Office of Children and Family Services 52 Washington Street Rensselaer, New York 12144</p>	<p>NYS COMPTROLLER'S</p> <p>ORIGINATING AGENCY CODE: 3400000</p>
<p>CONTRACTOR:</p>	<p>TYPE OF PROGRAM (S):</p>
<p>CHARITIES REGISTRATION NUMBER:</p> <p>If EXEMPT provide Reason:</p> <p>Contractor <input type="checkbox"/> has / <input type="checkbox"/> has not timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports.</p>	<p>CONTRACT PERIOD:</p> <p>From:</p> <p>To:</p>
<p>Federal Tax ID #:</p>	<p>FUNDING AMT FOR PERIOD:</p>
<p>OSC Vendor ID#:</p>	
<p>STATUS:</p> <p>Contractor <input type="checkbox"/> is / <input type="checkbox"/> is not a sectarian entity.</p> <p>Contractor <input type="checkbox"/> is / <input type="checkbox"/> is not a not-for-profit organization.</p>	<p>TERM:</p> <p>From:</p> <p>To:</p>

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

AGREEMENT

between

The New York State Office of Children and Family Services having its principal offices at 52 Washington Street, Rensselaer, New York 12144

(hereinafter "OCFS" or the "State"),

and

Contractor located at the address identified on the cover page of this agreement

(hereinafter "the Contractor").

WHEREAS, The OCFS initiated a Procurement (Invitation for Bid/Request for Proposal/single source/sole source) to contractually secure services; and

WHEREAS, the Contractor submitted a proposal; and

WHEREAS, the OCFS, selected the Contractor as a successful respondent to the Procurement to provide services and desires to engage the Contractor to fulfill OCFS's needs under the terms and conditions hereinafter set forth.

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

Article 1: Agreement Duration and Amendment

- A. This Agreement shall commence on the start date of the period as stated on the cover page of this agreement and will continue until the end date of the period as stated on the cover page of this agreement unless renewed according to the renewal provisions, if any, as stated in Appendix C.
- B. The State shall have the right to renegotiate the terms and conditions of this Agreement in the event applicable New York State (State) or Federal policy, rules, regulations and guidelines are altered from those existing at the time of this Agreement in order to be in continuous compliance therewith. This Agreement is subject to amendment only upon mutual consent of the parties, reduced to writing and approved by the Comptroller of the State of New York (or by the New York State Office of Children and Family Services for contracts fifty thousand dollars (\$50,000) or less).

Article 2: Executory Provision

- A. The State Finance Law of the State of New York, Section 112, requires that any contract made by a State Agency which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. For contracts that exceed fifty thousand dollars (\$50,000), the parties recognize that this Agreement is not wholly executory until and unless approved by the Comptroller of the State of New York. For contracts fifty thousand dollars (\$50,000) or less they are wholly executory when approved by the New York State Office of Children and Family Services.
- B. The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the Comptroller of the State of New York or by the New York State Office of Children and Family Services for contracts fifty thousand dollars (\$50,000) or less. Additionally, no cost will be incurred by the State for the Contractor's participation in any pre-contract award activity.
- C. This Agreement and the Exhibits and Appendices, attached hereto and incorporated by reference herein, constitute the entire Agreement between the parties with respect to the subject matter; all other prior agreements, representations, Statements, negotiations and undertakings are

superseded hereby. The terms, provisions, representations and warranties contained in this Agreement shall survive performance hereunder. It is understood that unless the context clearly indicates otherwise, all references herein to this Agreement shall be deemed to include the Exhibits and Appendices attached hereto and incorporated by reference herein.

Article 3: Standard Contract Provisions

- A. Standard New York State Contract Appendix A, attached hereto as Appendix A, is hereby fully incorporated into this Agreement.
- B. The parties agree that this Agreement shall be construed and interpreted in accordance with the Laws of the State of New York. The Contractor shall be required to bring any legal proceeding against the State arising from this Agreement in New York State courts.
- C. Should any provision of this Agreement be declared or found to be illegal, unenforceable, ineffective or void, then each party shall be relieved of any obligation arising from such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.
- D. No term or provision of this Agreement shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under this Agreement shall not constitute or consent to, a waiver of, or excuse for any other, different or subsequent breach.
- E. It shall be understood that the Contractor is an independent contractor, and the Contractor, its agents, officers and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of the State.

Article 4: Assurances

- A. The Contractor warrants that it has carefully reviewed the needs of the State for products and services, as described in the Procurement and its attachments and otherwise communicated in writing by the State to the Contractor, that it has familiarized itself with the specifications, and it warrants that it can provide such products and services as represented in its Proposal and the other documents incorporated into this Agreement.
- B. The Contractor agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.
- C. The Contractor warrants and affirms that the terms of this Agreement do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under this Agreement.

Article 5: Contractor Requirements

- A. The Contractor agrees to assume complete responsibility for the cost effective and timely accomplishment of all activities and duties required by this Agreement and to carry out those activities and duties in a competent and timely manner. The Contractor also agrees to perform in accordance with the specifications contained in the Procurement, as well as its proposal.
- B. The Contractor accepts sole and complete responsibility for the timely accomplishment of all activities required under this Agreement. Contractor shall also:
 - 1. Maintain an adequate administrative organizational structure sufficient to discharge its contractual responsibilities.
 - 2. Provide for normal day-to-day communications and maintain the level of liaison and cooperation with the State as necessary for proper performance of all contractual responsibilities.
 - 3. Replace any employee whose continued presence would be detrimental to the success of the State's efforts with an employee of equal or better qualifications. The State Contract Manager will exercise exclusive judgment in this matter and will be required to make such a request in writing only upon written request of the Contractor.
 - 4. Notify the State in writing of any changes in the persons designated to bind the Contractor.

5. Ensure that all contacts by Contractor personnel with other external organizations, to fulfill the objectives of this Agreement, are cleared and coordinated by the State. The State will fulfill this role promptly, so as not to impede the Contractor's timely performance hereunder.
 6. Assume responsibility for the accomplishment of all activities and duties required by this Agreement and carry out those activities and duties in a competent and timely manner.
 7. Notify the State within three business days, in writing, of each problem that threatens the success of the project, including a recommendation for resolution whenever possible.
 8. Agree that no aspect of Contractor performance under this Agreement will be contingent upon State personnel or the availability of State resources with the exception of 1) Those activities specifically identified in this Agreement as requiring State acquisition, approval, policy decisions, or policy approvals, 2) The normal cooperation which can be expected in a contractual relationship. Such actions by the State will not be unreasonably delayed, and except as stated specifically herein, the State shall not be liable for any damages for delays.
 9. Reasonably cooperate with any other contractors who may be engaged by the State to carry out responsibilities associated with this Agreement and immediately take into account changes mandated by Federal regulatory agencies and the State due to changes in policies, regulations, statutes or judicial interpretations, which the State and/or the Contractor may become aware of.
 10. Recognize and agree that any and all work performed outside the scope of this Agreement shall be deemed by the State to be gratuitous and not subject to charge by the Contractor.
 11. Implement changes within the scope of work of this Agreement, in accordance with a State approved schedule, including changes in policy, regulation, statute or judicial interpretation.
- C. The Contractor agrees that it and its personnel will at all times comply with all security regulations in effect at the State's premises, or any premises assigned, and externally for materials belonging to the State or to the Project.
- D. The Contractor, if a municipal corporation, represents that it is a self-insured entity. If a not-for-profit corporation or entity other than a self-insured municipal corporation, the Contractor agrees to obtain and maintain in effect a general policy of liability insurance in an appropriate amount. The Contractor agrees that it will require any and all Subcontractors with whom it subcontracts pursuant to this contract to obtain and maintain a general policy of liability insurance in an appropriate amount.
- E. The Contractor agrees to secure and keep in effect during the term of this agreement a policy of comprehensive liability insurance (if required) covering services to be performed pursuant to this agreement and to provide OCFS with a certificate of insurance indicating such coverage is in effect. Such certificate shall name OCFS as an additional insured and shall state that the policy will not be cancelled or changed without 10 days prior written notice to OCFS.
- F. The Contractor shall secure and keep in effect during the term of this agreement workers compensation and disability benefits coverage as required by law. The Contractor shall provide to OCFS certificates of such coverage, or proof that such coverage is not required, in such form as required by the Worker's Compensation Board.

Article 6: Nonassignability

- A. Full responsibility for the delivery of services provided by another firm acting as a subcontractor to the Contractor under this Agreement shall be assumed by the Contractor. Should the Contractor seek external financing, the State reserves the right to approve the assignment of the contract for financing purposes. The State shall consider the prime contractor to be sole contact with regard to all provisions of this Agreement.
- B. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation or other entity, other than the parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of this Agreement.
- C. Subcontracting or assignment of the Contractor's duties and responsibilities will not be allowed without prior written approval of the State as specified in Appendix A. The Contractor shall furnish to the State the following:

1. A description of the supplies or services to be provided under the proposed subcontract;
2. Identification of the proposed subcontractor, including protected class status; and
3. Any other reasonable information or documentation requested by the State.

Article 7: Charges

- A. Payment to the Contractor shall be based on invoices submitted by the Contractor or on a Standard New York State Claim for Payment in a form acceptable to the State and the Comptroller of the State of New York. The State will make best efforts to process all invoices or claims for payment within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract.
- B. Payment shall be made at the rates, frequency and manner as set forth in Appendix C attached hereto.
- C. The State shall not be liable for the payment of any taxes under this Agreement however designated, levied or imposed. The State represents that the Contractor is not liable for the payment of any transfer taxes including, but not limited to, sales taxes upon goods or services purchased for or provided to the State.

Article 8: Performance Standards

Per specification requirements indicated in Appendix D

Article 9: Procurement lobbying Law

The Contractor will comply with all New York State and Office procedures relative to the permissible contacts and disclosure of contacts as required by State Finance Law Sections 139-j and 139-k and Office procedures and will affirmatively certify that all information provided pursuant to those provisions is complete, true and accurate. This certification is included in the Offerer's Certification and Affirmation of Understanding and Agreement pursuant to State Finance Law Sections 139-j and 139-k.

Article 10: Public Officer's Law

- A. The Contractor agrees not to engage in any conduct which the Contractor knows would violate or would assist an employee of the State in violating Sections 73 and 74 of the Public Officers' Law.
- B. The Contractor further recognizes that an administrative or judicial finding that a Contractor has violated any of the statutes specified in the Contractor/Subcontractor Background Questionnaire completed prior to the award of this contract may entitle the State to terminate the contract, at its discretion, within thirty days after the Contractor notifies the State of such finding or the State notifies the Contractor that it has become aware of such finding.
- C. Any termination of the contract by the State under this Article shall be deemed to be a termination of the contract for cause. The remedies set forth in this section shall be in addition to any other remedy available to the State under this contract or under any other provisions of law.

Article 11: Rights of the State

- A. LICENSE/OWNERSHIP/TITLE OF PRODUCTS FURNISHED - contractor warrants full ownership, clear title or perpetual license rights to any and all tangible or intangible products furnished, used or modified by the Contractor or third parties on behalf of the State, and Contractor shall be solely liable for the full cost of acquisition associated therewith. Contractor shall provide the State with appropriate documentation indicating the vesting of such rights in Contractor, and/or the right to transfer or transfer of such rights, as requested by the State. The cost of obtaining such rights for continued perpetual use of such product(s) by the State upon Project completion shall be deemed to have been included by Contractor in its proposal. Such products include, without limitation, all

hardware, commodities, custom programming or third party software, training modules, printed materials, source codes, or any other products or services furnished pursuant to this Agreement. The Contractor fully indemnifies the State for any loss, damages or actions arising from a breach of said warranty without limitation. The State and Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

- B. TITLE TO PROPRIETARY INFORMATION FURNISHED FOR TESTING PURPOSES- Any and all proprietary written documentation, information, object or source code and software provided to the State for use in conjunction with an evaluation, shall remain the property of Contractor. In such event, Contractor hereby grants the State and its Authorized Users a perpetual, non-transferable and non-exclusive license to use all such documentation, technical information, confidential business information and all software and related documentation, in whatever form recorded (all hereinafter designated "property"), which are furnished to the State for testing purposes only.
- C. OWNERSHIP/TITLE TO CUSTOM PRODUCTS/PROGRAMMING DELIVERABLES - All custom products, including custom programming or any other deliverables, including, without limitation: software source code, object code, user or training manuals, programming, reports, and any other materials, preliminary, final and otherwise, prepared, written or developed for the State in the performance of services under this Agreement (hereinafter "Custom Products") shall be furnished to and shall become the sole and exclusive property of the State and shall be treated as confidential with the reciprocal proprietary obligations in the foregoing paragraph B of Article 11 imposed upon the Contractor, its subcontractors and partners. The State retains ownership rights to modifications developed for the State pursuant to this Agreement, including modifications made or incorporating third party proprietary components, or components transferred under perpetual license to the State pursuant to paragraph A of Article 11. In all such events, Contractor shall be deemed to have granted or secured a perpetual license to the State for Contractor or third party product being furnished and modified, in accordance with the provisions of paragraph A of Article 11. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the custom products, including custom programming or any other deliverables, when completed and delivered to the State are protected against unauthorized copying, reproduction and marketing by or through Contractor.

Article 12: Document Incorporation and Order of Precedence

- A. This Agreement consists of:
1. The body of this Agreement (i.e., that portion preceding the signatures of the parties in execution);
 2. The Exhibits attached to this Agreement body
 3. The Appendices attached to or incorporated by reference in this Agreement body
 4. Procurement documents (if noted on cover page); and
 5. Contractor's proposal (if noted on cover page)
- B. In the event of any inconsistency in or conflict among the document elements of this Agreement identified in this Section, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:
1. First, Appendix A
 2. Second, body of this Agreement and the Exhibits
 3. Third, the Procurement documents (if noted on cover page) and
 4. Fourth, the Contractor's Proposal (if noted on cover page).
- C. This Agreement as defined in this Section constitutes the entire agreement between the parties with respect to the subject matter; all prior agreements, representations, Statements, negotiations

and undertakings are superseded hereby. The terms, provisions, representations and warranties contained in this Agreement shall survive performance hereunder.

Article 13: Interpretation and Disputes

- A. This Agreement shall be construed and interpreted in accordance with the Laws of the State of New York. Except as otherwise provided for in the Agreement, any dispute which is not disposed of by agreement shall be submitted in writing to and decided by the Commissioner of the Office of Children and Family Services (Commissioner) or his/her duly authorized representative(s) or designee(s).
- B. If the Contractor is unwilling to accept the decision of the Commissioner or his/her duly authorized representative(s) or a decision is not made in ninety (90) days, it may then pursue its normal legal remedies de nova, but it is specifically agreed that any and all reports made by the Commissioner or his/her duly authorized representative(s) or designee(s), upon the disagreement at issue shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the interpretation placed upon the Agreement by the STATE shall govern operation thereunder and the Contractor shall continue to perform under the Contract. The Contractor shall be required to bring all legal proceedings relating to this Agreement against the OCFS or the State of New York in the courts located in the State of New York.

Article 14: Indemnification of the State

- A. In performance of its duties pursuant to this Agreement, Contractor shall fully indemnify and save harmless the State from suits, actions, damages and costs relating to personal injury, damage to real or personal tangible or intangible property, or any other claim for direct damages arising as a result of acts or omissions of Contractor, its officers, employees, subcontractors, partners or agents.
- B. The State and OCFS may, in addition to other remedies available to them at law, retain such monies from amounts due Contractor, or may proceed against any performance and payment bond under this Agreement, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them; provided, however, that the Contractor shall not indemnify to the extent that any claim, loss or damage arising hereunder is caused by the solely negligent act or failure to act of the State.
- C. As a condition to the foregoing indemnity obligations under this Article, the State shall provide the Contractor with prompt notice of any claims for which indemnification may be sought hereunder, shall reasonably cooperate with Contractor in connection with any such claim and shall be responsible for its compliance with any laws and regulations associated with any deliverables supplied by Contractor hereunder.

Article 15: Force Majeure

Neither party shall be liable or deemed to be in default for any delay or failure in performance beyond its control under this Agreement resulting directly or indirectly from acts of God, civil or military authority not within the control of the State, acts of public enemy, wars, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes or flood, or acts of omission or commission of individuals not under the respective parties' control except as specifically stated elsewhere in this Agreement. The parties are required to use best efforts to eliminate or minimize the effect of such events during performance of this Agreement.

Article 16: Record Retention

- A. The Contractor agrees to preserve all Agreement-related records in accordance with the provisions of Paragraph 10 of Appendix A for the term of this Agreement. Records involving matters in litigation shall be kept for a period of not less than three (3) years following the termination of the litigation. Microfilm copies of any Agreement-related documents may be substituted for the originals with the prior written approval of the State, provided that the microfilming procedures are accepted by the State as reliable and are supported by an adequate retrieval system.
- B. The Contractor shall be responsible for assuring that the provisions of this Section shall apply to any subcontract related to performance under this Agreement.

Article 17: Access to And Audit of Agreement Records

- A. All records and information obtained by the State pursuant to the provisions of this Agreement, whether by audit or otherwise, shall be usable by the State solely for the purpose of performing this Agreement in any manner, in its sole discretion, as it deems appropriate and the Contractor shall have no right of confidentiality or proprietary interest in such records or information. Notwithstanding the preceding sentence and in addition to the provisions set forth in Appendix A, the State agrees, in those instances in which it has discretion, not to disclose outside those Government agencies involved in the performance of this Agreement and then only to the personnel who are involved in the performance, the following data:
 - 1. Any resume or other description of qualifications which includes the name of the individual;
 - 2. Any individual's actual salary;
 - 3. The Contractor's indirect rates including labor overhead, General and Administrative (G&A) and fee; and
 - 4. The methodology for calculating those indirect rates including the allocation base.
 - 5. The Contractor's corporate financial Statements.
- B. The Contractor shall promptly notify the State of any request by anyone for access to any records maintained pursuant to this Agreement. Access by Federal or State bank regulatory agents, or Contractor's regular outside auditors to Contractor's financial records, pursuant to regularly scheduled or routine audits or inspection of Contractor, shall not require notification to the State provided that rights of confidentiality or proprietary interests are preserved.
- C. The Contractor shall be responsible for assuring that the provisions in this Section shall apply to any subcontract related to performance under this Agreement.

Article 18: Confidentiality of Information

The Contractor, its officers, agents and employees and subcontractors, shall treat all information, with particular emphasis on information relating to recipients and providers, which is obtained by it through its performance under this Agreement, as confidential information to the extent required by the Laws of the State of New York and of the United States and any regulations promulgated there-under.

- A. Individually identifiable information relating to any eligible recipient or provider shall be held confidential and shall not be disclosed by the Contractor, its officers, agents and employees or subcontractors, without the prior written approval of the Commissioner or a designee.
- B. The use of information obtained by the Contractor in the performance of its duties under this Agreement shall be limited to purposes directly connected with such duties.
- C. The Contractor shall promptly advise the State of all requests made to Contractor for information described in paragraph A, above.
- D. The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or subcontractors contains a provision which strictly conforms to the provisions of this subsection.
- E. The Contractor agrees to safeguard the confidentiality of information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain

the confidentiality of all such information with regard to services provided under this Agreement in conformity with the provisions of applicable State and Federal laws and regulations. Any breach of confidentiality by the Contractor, its agents, or representatives, shall be cause for immediate termination of this agreement.

- F. Any Contractor who will provide goods and/or services to a residential facility, or program, operated by OCFS agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of OCFS to sign the Employee Confidentiality Certification, included in this Agreement as Attachment 1, and Employee Background Certification, included in this Agreement as Attachment 2, before any such employees and volunteers are permitted access to youth in the care or custody of OCFS and/or any client identifiable information concerning such youth. Additionally, OCFS will require a database check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) of each employee and volunteer of the contractor who has the potential for regular and substantial contact with youth in the care or custody of OCFS. Contractor agrees that any sub-contractor whose employees and volunteers will have the potential for regular and substantial contact with youth in the care or custody of OCFS or who will have access to client identifiable information concerning youth in the care or custody of OCFS will agree in the sub-contract to require all such employees and volunteers to sign the Employee Confidentiality Certification and Employee Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of OCFS and/or any client identifiable information concerning such youth.
- G. Contractor also agrees, as required by OCFS, to assist in any trial preparation, and to testify as an expert witness in litigation, including but not limited to, any action brought by the United States Department of Justice involving matters which are within the scope of work of this Agreement. Testimony at either trial or disposition is to be billed at the same hourly rate for consultant services provided for in this Agreement. This rate applies to office or courtroom waiting time, as well as actual time testifying. For contracts of a deliverable basis the daily rate will be a reasonable hourly rate derived from the deliverables.
- H. Contractor agrees to retain all non-public information obtained from OCFS as confidential and agrees not to release or discuss any of such information unless contractor has obtained the prior consent of OCFS, or is otherwise forced, compelled, or required to disclose this information by operation of law or applicable government authority. Contractor shall promptly notify OCFS of any disclosure made by contractor and/or any request of contractor to disclose, by operation of law, or applicable government authority, such confidential information. In addition, all information and knowledge concerning youth in OCFS custody, which Contractor may obtain from OCFS shall be kept strictly confidential. Contractor shall comply with all applicable statutory and regulatory confidential provisions, including but not limited to sections 372, 422, and 444 of the Social Services Law; section 501-c of the Executive Law; Article 27-F of the Public Health Law; 9 NYCRR 164.7 and 168.7 and 18 NYCRR 357.3, 423.7, 431.7 and 432.7.

Article 19: Affirmative Action

Per Appendix M/WBE

Article 20: Termination of the Agreement

- A. The Agreement shall be subject to the following termination provisions:
 - 1. Mutual Consent: All or any part of this Agreement may be terminated by mutual written agreement of the contracting parties.
 - 2. Cause: All or any part of this Agreement may be terminated immediately by the State, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Agreement and/or with any laws, rules, regulations, policies, or procedures that are application to the Agreement.

3. Non-Responsibility: The Contractor shall provide to the Office such information as is required by the Office in order that the Office may determine whether the Contractor is a responsible vendor for purposes of compliance with Section 163 of the State Finance Law and requirements of the Office of the State Comptroller established thereunder. If there is any change in any of the vendor responsibility information provided to the Office by the Contractor at any time during the term of this AGREEMENT, the Contractor shall be required to immediately notify the Office so that the Office may assess whether the Contractor continues to be a responsible vendor. Should the Contractor fail to notify the Office of any change in the vendor responsibility information or should the Office otherwise determine that the Contractor has ceased to be a responsible vendor for the purposes of this AGREEMENT, the Office may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor.
4. Convenience: This Agreement may be terminated if the State deems that termination would be in the best interest of the State provided that the State shall give written notice to the Contractor not less than thirty (30) days prior to the date upon which termination shall become effective.
5. Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Agreement, the Agreements may be terminated or reduced at OCFS' discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State for payment of such costs. Upon termination or reduction of the Agreement, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State. In any event, no liability shall be incurred by the State beyond monies available for the purposes the Agreement. The Contractor acknowledges that any funds due to the State because of disallowed expenditures after audit shall be the Contractor's responsibility.
6. Force Majeure: The State may terminate or suspend its performance under the Agreement immediately upon the occurrence of a "force majeure." For purposes of this Agreement, "force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.
7. State Finance Law §139-k: This Agreement may be terminated in the event it is found that the certification filed by the Contractor during the procurement process as required by New York State Finance Law §139-k was intentionally false or intentionally incomplete.
8. Bankruptcy: This Agreement may be deemed terminated immediately at the option of the State upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the State to the Contractor.

B. Notice of Termination:

This section supersedes the provisions set forth in Appendix A-1.3 (Notices) for the purpose of the notice of termination only.

1. Service of Notice: Written notice of termination shall be sent by:
 - a. Personal messenger service; or
 - b. Certified mail, return receipt requested
2. Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice or (ii) the date the notice is received by the Contractor and shall be established as follows:
 - a. If the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

- b. If the notice is delivered by certified mail, by the date received by the contractor as evidenced by delivery confirmation from the United States Postal Service.

Please note: In the event the notice cannot be delivered by the United States Postal Service (delivery is denied, individual not available, address not updated with OCFS, etc.) termination will take effect upon the date of the written notice of termination.

C. Effect of Notice and Termination of State's Payment Obligations:

1. Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.
2. The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Agreement. In no event shall the State be liable for expenses and obligations arising from the requirements of the Agreement after its termination date.

D. Effect of Termination Based on the Misuse or Conversion of State or Federal Property

Where the contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the contract for the purposes set forth herein, the State may, at its option, require:

1. The repayment to the State of any monies previously paid to the Contractor; or
2. The return of any real property or equipment purchased under the terms of the Contract; or
3. An appropriate combination of clauses (1) and (2) above.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

E. Suspension: It is understood that the State reserves the right to suspend or reduce Contractor services during the term of the Agreement or during a task order period. Such action(s) by the State shall not be considered a breach of this Agreement or otherwise give rise to damages on the part of the Contractor, provided, however, that Contractor is given written notification of such action.

Article 21: Patent/Copyright Indemnification

Contractor will indemnify, defend and hold the State harmless from and against all Damages, expenses, including reasonable attorney's fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the products furnished, or of any copyright, trademark, trade secret or other third party proprietary right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit; (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of the Contractor.

If the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part(s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance.

The foregoing provisions shall not apply to any infringement occasioned by modification by the State of any tangible or intangible products without Contractor's approval or the use of any equipment with any adjunct device added by the State without the consent of the Contractor.

In the event that an action at law or in inequity is commenced against the State arising out of a claim that the State's use of a product under this Agreement infringes any patent, copyright or proprietary right and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in this Agreement, Contractor shall immediately notify the State and the Office of the Attorney General in writing and shall specify to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions

of this Agreement. Contractor shall in such event protect the interests of the State and secure a continuance to permit the State to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses the State may have.

Article 22: Lobbying Certification

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Contractor or grantee (such as the State) must be required to certify that no Federal funds will be used to lobby or influence a Federal officer or a Member of Congress. The certification the State has been required to sign for HHS provides that the language of this certification (shall) be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Contractor understands and agrees to the Federal requirements for certification and disclosure.

Article 23: Conflict of Interest

If during the term of this Agreement and any extension thereof the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest, the Contractor shall notify the State in writing immediately. Should the Contractor engage any current or former New York State employee as its own employee or as an independent contractor because of such employee's knowledge of New York State finances, operations or knowledge of the State's programs, or any current or former State employee who in the course of his State employment had frequent contact with Management level Contractor employees, the Contractor shall notify the State, in writing, immediately; should the State thereafter determine that such employment is inconsistent with State or Federal Law, the State shall so advise the Contractor, in writing, specifying its basis for so determining, and may require that the contractual or employment relationship be terminated.

Article 24: Other Agency Use

The Contractor must extend the terms and conditions to any State agency in New York State. It must also extend the terms and conditions to (1) County Agencies in New York State providing human services such as income maintenance, job training, employment and social services or health related services as well as (2) Local Social Services Districts in New York State including New York City, which is considered a single LSSD, consisting of the Human Resources Administration, The Administration for Children's Services, and the Department of Homeless Services.

Article 25: Warranty for Deliverables/ Workmanship

Contractor guarantees that any required deliverables, tangible or intangible, regardless of form, shall be unconditionally guaranteed for the full contract term. This warranty will be voided by the misuse, accident, operation in other than the specified operating environment, unauthorized modification of the source code or failure caused by a product for which the Contractor is not responsible.

Article 26: Vendor Responsibility

By signing this contract, the contractor certifies that within the past three years the contractor has engaged in no actions that would establish a basis for a finding by OCFS that the contractor is a non-responsible vendor or, if the contractor has engaged in any such action or actions, that all such actions have been disclosed to OCFS prior to entering into this contract. The actions that would

potentially establish a basis for a finding by OCFS that the contractor is a non-responsible vendor include:

- The contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
- The contractor has had a claim, lien, fine, or penalty imposed or secured against the contractor by a governmental agency.
- The contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the contractor.
- The contractor has been issued a citation, notice, or violation order by a governmental agency finding the contractor to be in violation of any local, state or federal laws.
- The contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the contractor to be in violation of any local, state or federal laws is pending before a governmental agency.
- The contractor has not paid all due and owed local, state and federal taxes to the proper authorities.
- The contractor has engaged in any other actions of a similarly serious nature.

Where the contractor has disclosed any of the above to OCFS, OCFS may require as a condition precedent to entering into the contract that the contractor agree to such additional conditions as will be necessary to satisfy OCFS that the vendor is and will remain a responsible vendor. By signing this contract, the contractor agrees to comply with any such additional conditions that have been made a part of this contract.

By signing this contract, the contractor also agrees that during the term of the contract, the contractor will promptly notify OCFS if the contractor engages in any actions that would establish a basis for a finding by OCFS that the contractor is a non-responsible vendor, as described above.

Article 27: State Tax Law Section 5-a

By signing this contract, the contractor agrees to comply with the State Tax Law section 5-a.

Article 28: Consultant Disclosure

Pursuant to Chapter 10, New York State Office of Children and Family Services (OCFS) must require all contractors, including sub-contractors, to submit an annual report. As a result of these changes in law, State contractors are 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. Be reminded that this includes information on any persons working under a subcontract with the State contractor. The Office of the State Comptroller (OSC) has a prescribed format for reporting.

The legislation also expands the definition of contracts for consulting services to include any contract entered into by a State Agency including: analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services. Additional information can be found in the Guide to Financial Operation issued by OSC This guide can be accessed at: <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

The Legislation requires that contractors complete OSC **Form B - State Consultant Services- Contractor's Annual Employment Report** for consultant services on a State Fiscal year basis. Contractors are required to report for the period starting April 1 or the contract start date, whichever is later, to March 31 of the following year, and annually thereafter for the duration of the contract.

This Consultant Employment Report provides a format for reporting the actual number of employees providing services on the contract or through subcontracts, and is due to OCFS, OSC and the NYS Department of Civil Service, at the addresses identified below, by May 15 following the end of the State fiscal year and annually thereafter. A separate **Form B** must be submitted for each contract. Please submit a copy of this form to each of the following:

Mr. Kevin Sweet
NYS Office of Children and Family Services
Bureau of Contract Management
52 Washington Street South Building, Room 202
Rensselaer, New York 12144

and:

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

and:

NYS Department of Civil Service
Empire State Plaza
Building 1, 19th Floor
Albany, New York 12239

Article 29: Contractor Responsibility to OCFS

Contractor understands that the professional responsibility of the Contractor, under this Agreement, is solely to OCFS. Contractor warrants that Contractor presently has no direct, or indirect interest, and will not acquire any direct or indirect interest, that would conflict with Contractor's performance of Contractor's obligations under this Agreement. Contractor shall not knowingly employ, use as a volunteer, or subcontract, with a person or entity having an interest that would conflict with the Contractor's performance of Contractor's obligations under this agreement. If Contractor discovers that it has an employee, volunteer, or subcontractor, who has a direct, or indirect interest, that would conflict with the performance of Contractor's obligations under this Agreement, Contractor shall promptly advise OCFS, and put in place appropriate security measures, so that the employee, volunteer or subcontractor, will not be involved in fulfilling Contractor's obligations under this Agreement. Contractor shall promptly advise OCFS, and put in place appropriate security measures, so that the employee, volunteer or subcontractor, will not be involved in fulfilling Contractor's obligations under this Agreement, will not have access to any data provided by OCFS, and will not otherwise have any knowledge of, function, or job duties, with respect to any part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR	STATE AGENCY
Contractor:	Office of Children and Family Services
By:	By:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
	<u>State Agency Certification</u> "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."

NOTARIZATION FOR CONTRACTOR:

FOR-PROFIT CORPORATION:

STATE OF NEW YORK)
) SS.:
 County of _____)

On the _____ day of, _____ 20 _____ before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____ that he/she is the _____ of the _____

the corporation described herein which executed the foregoing instrument, and that he/she signed his/her name thereto by order of the board of directors of said for-profit corporation.

_____ (Notary)

My Commission expires: _____

ATTORNEY GENERAL'S SIGNATURE

Approved:
 Thomas P. DiNapoli
 State Comptroller

Title: _____

By: _____

Date: _____

Date: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has 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 New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwb certification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State 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 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall 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) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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.

25. 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 § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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

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

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

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

Appendix A-1

Standard Clauses for all

New York State Office of Children and Family Services Contracts

(Revised 08-2018)

1. EXECUTIVE ORDER NUMBER 38

Executive Order Number 38 sets Limits on State-Funded Administrative Costs & Executive Compensation. Contracts, payment requests and reporting must comply with this Executive Order. The Order can be found at the following website address:

<http://executiveorder38.ny.gov/>

LEGAL NOTICE: Based upon the April 8, 2014 decision in Agencies for Children's Therapy Services, Inc. v. New York State Department of Health, et al. ("ACTS"), covered providers conducting business in Nassau County need not file Executive Order 38 disclosures. For purposes of this notice, "conducting business" means having a place of business within Nassau County, providing program services or administrative services involving the use or receipt of State funds or State-authorized payments within Nassau County, or otherwise conducting business within Nassau County in relation to which executive compensation is paid. Please note that the ACTS decision is under appeal. Those affected by the ACTS' decision should periodically check the EO 38 website for updates regarding any changes to this notice.

2. PERSONNEL

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel, which shall be as shown in the APPENDICES. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable Federal and State laws and regulations.
- b. It is the policy of the Office to encourage the employment of qualified applicants for, or recipients of public assistance by both public organizations and private enterprises that are under contractual AGREEMENT to the Office for the provision of goods and services. Contractors will be expected to make best efforts in this area.
- c. The Contractor agrees to identify, in writing, the person(s) who will be responsible for directing the work to be done under this AGREEMENT. No change or substitution of such responsible person(s) will be made without prior approval in writing from the Office, to the degree that such change is within the reasonable control of the Contractor.

3. NOTICES

The following shall apply to all notices except for the notice of contract termination. For notifications regarding contract termination see Article 20.A of the main contract.

- a. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - By certified or registered United States mail, return receipt requested;
 - By facsimile transmission;
 - By personal delivery;

- By expedited delivery service; or
- By e-mail.

Notices to the Office shall be addressed to the Program Manager assigned to this contract at the Address, Telephone Number, Facsimile Number or E-Mail Address provided to the Contractor during contract development, or to such different Program Manager as the Office may from time-to-time designate.

Notices to the Contractor shall be addressed to the designee identified by the Contractor, to the address as shown on the Contract Cover Page, or to such different designee as the Contractor may from time-to-time designate.

- b. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- c. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

4. OFFICE SERVICES

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the APPENDICES.
- b. For Federally funded contracts, title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies provided under this AGREEMENT shall be determined between the Contractor and the Office, pursuant to Federal regulations 45 CFR 92 unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of the Office. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to the Office, unless the Office has given direction for, or approval of, an alternative means of disposition in writing.
- c. Upon written direction by the Office, the Contractor shall maintain an inventory of those properties that are subject to the provisions of sub-paragraph b of this section.

5. GENERAL TERMS AND CONDITIONS

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the APPENDICES. Any modifications to the tasks or workplan contained in Appendix D must be mutually agreed to by both parties in writing before the additional or modified tasks or workplan shall commence.

- b. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones, the Contractor agrees to submit to the Office within three days of occurrence or perception of such problem, a written description thereof together with a recommended solution thereto.
- c. OCFS requires immediate notification of any unusual incident involving this contract. An unusual incident includes, but is not limited to: death or serious injury; arrest or possible criminal activity; destruction of property; significant damage to the physical plant of the Contractor; events, incidents or occurrences that have been or are likely to be covered by the media; or other matters of a similarly serious nature involving the contractor or contractor's staff, volunteers, or officers. Additionally, these conditions apply to any subcontract or program participant funded through this contract. Written notification to the OCFS program manager assigned to this contract must be made by the Contractor within 24 hours of knowledge of the unusual incident. If the unusual incident involves an arrest, the written notification must be provided within 12 hours of the contractor's knowledge of the arrest.
- d. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize Federal financial participation to the Office under the Federal Social Security Act.
- e. If funds from this contract will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply:
 - No litigation shall be brought against the State of New York, the New York State Office of Children and Family Services, or against any county or other local government or local social services district with funds provided under this contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from either the State of New York, the New York State Office of Children and Family Services or any county or other local government or local social services district, based upon any agreement between such agency in litigation with another party and such party, during the pendency of the litigation.
 - Opinions prepared by consultant law firms construing the statutes or Constitution of the State of New York do not constitute the view of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Division of the Appeals and Opinions Bureau, Department of Law, The Capitol, Albany, New York 12224.
 - The contractor shall provide to the New York State Office of Children and Family Services in a format provided by the Office such additional information concerning the provision of legal services as the Office shall require.
- f. The Office will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated there under. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.

- g. Except where the Office otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, for the performance of the obligations contained herein until it has received the prior written approval of the Office, which shall have the right to review and approve each and every subcontract prior to giving written approval to the Contractor to enter into the subcontract. All AGREEMENTS between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, (2) that nothing contained in the subcontract shall impair the rights of the Office under this AGREEMENT, (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and the Office, and (4) incorporating all provisions regarding the rights of the Office as set forth in Section 9 of this Appendix A-1 and in Appendix A-3, where applicable. The Contractor specifically agrees that the Contractor shall be fully responsible to the Office for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.
- h. The contractor warrants that it, its staff and any and all Subcontractors which must be approved by the Office, have all the necessary licenses, approvals and certifications currently required by the laws of any applicable local, state or federal government to perform the services pursuant to this AGREEMENT and/or subcontract entered into under this AGREEMENT. The Contractor further agrees such required licenses, approvals and certificates will be kept in full force and effect during the term of this Agreement, or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames and/or to require its staff and Subcontractors to obtain the requisite licenses, approvals or certificates. In the event the Contractor, its staff, and/or Subcontractors are notified of a denial or revocation of any license, approval or certification to perform the services under the AGREEMENT, Contractor will immediately notify Office.
- i. Prior to executing a subcontract agreement the Contractor agrees to provide to the Office the information the Office needs to determine whether a proposed Subcontractor is a responsible vendor if requested.
- j. If the Contractor intends to use materials, equipment or personnel paid for under this contract in a revenue generating activity, the Contractor shall report such intentions to the Office forthwith and shall be subject to the direction of the Office as to the disposition of such revenue.
- k. Any interest accrued on funds paid to the Contractor by the Office shall be deemed to be the property of the Office and shall either be credited to the Office at the closeout of this AGREEMENT or expended on additional services provided for under this AGREEMENT.
- l. The Contractor ensures that the grounds, structures, buildings and furnishings at the program site(s) used under this AGREEMENT are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.
- m. By signing this contract, the contractor certifies that within the past three years the contractor has engaged in no actions that would establish a basis for a finding by OCFS that the contractor is a non-responsible vendor or, if the contractor has engaged in any such action or actions, that all such actions have been disclosed to OCFS prior to entering

into this contract. The actions that would potentially establish a basis for a finding by OCFS that the contractor is a non-responsible vendor include:

- The contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
- The contractor has had a claim, lien, fine, or penalty imposed or secured against the contractor by a governmental agency.
- The contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the contractor.
- The contractor has been issued a citation, notice, or violation order by a governmental agency finding the contractor to be in violation of any local, state or federal laws.
- The contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the contractor to be in violation of any local, state or federal laws is pending before a governmental agency.
- The contractor has not paid all due and owed local, state and federal taxes to the proper authorities.
- The contractor has engaged in any other actions of a similarly serious nature.

Where the contractor has disclosed any of the above to OCFS, OCFS may require as a condition precedent to entering into the contract that the contractor agree to such additional conditions as will be necessary to satisfy OCFS that the vendor is and will remain a responsible vendor. By signing this contract, the contractor agrees to comply with any such additional conditions that have been made a part of this contract.

By signing this contract, the contractor also agrees that during the term of the contract, the contractor will promptly notify OCFS if the contractor engages in any actions that would establish a basis for a finding by OCFS that the contractor is a non-responsible vendor, as described above.

- n. If additional funds become available for the same purpose as described in the original procurement, OCFS reserves the right to modify the AGREEMENT to provide additional funding to the Contractor for provision of additional mutually agreed upon services and/or to extend the provision of services under the AGREEMENT. This additional funding can be provided within an existing period, or in conjunction with a change in the original term. Any changes in the amount or changes in period and amount are subject to the approval of the Office of the State Comptroller.
- o. Contractor may not submit claims in an amount in excess of funds lawfully available for payment of amounts due to the Contractor under the Master Contract for any one year of the contract without the written permission of OCFS.

OCFS reserves the right to deny claims submitted by the Contractor in an amount in excess of funds lawfully available for payment of amounts due to the Contractor under the Master Contract for any one year of the contract.

Contractor acknowledges and agrees that allowable claims submitted by the Contractor under the Master Contract are subject to the continued availability of funding, and

Contractor acknowledges and agrees that it may not be reimbursed by OCFS or the State of New York for claims if funds for payment of amounts due to the Contractor under the Master Contract have become unavailable. In that instance, Contractor acknowledges and agrees that the Contractor will have no cause of action against OCFS or the State of New York based on the failure to pay such claims.

For purposes of this section the term “funds lawfully available for payment” includes but is not limited to grants, annual appropriations and allocations available pursuant to State or federal law.

- p. Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by OCFS and the results of such testing must be satisfactory to OCFS before web content will be considered a qualified deliverable under the contract or procurement.
- q. Contractors must maintain Workers Compensation Insurance in accordance with the Workers Compensation Law. If a contractor believes they are exempt from the Workers Compensation insurance requirement then they must apply for an exemption. Contractors can apply for the exemption online through the New York State Workers Compensation Board website at:
http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp
- r. All organizations that receive Federal financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.
- s. Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance.

6. REPORTS AND DELIVERABLES

The Contractor shall prepare and submit all reports, documents, and projects required by this AGREEMENT to the Office's Contract Manager for review and approval. These reports shall be in such substance, form, and frequency as required by the Office and as necessary to meet State and Federal requirements.

7. CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

- a. The Contractor agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this AGREEMENT in conformity with the provisions of applicable State and Federal laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. Any contractor who will provide goods and/or services to a residential facility or program operated by OCFS agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of OCFS to sign the Confidentiality Non-Disclosure Agreement and Contractor Employee and Volunteer Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of OCFS and/or any financial and/or client identifiable information concerning such youth. Additionally, OCFS will require a database check of the Staff Exclusion List (SEL) maintained by the Justice Center for People with Special Needs (Justice Center) and of the Statewide Central Register of Child Abuse and Maltreatment (SCR) of each employee and volunteer of the contractor who has the potential for regular and substantial contact with children in the care or custody of OCFS. Any other contractor whose employees and volunteers will have access to financial and/or client identifiable information concerning youth in the care or custody of OCFS agrees to require all such employees and volunteers to sign the Confidentiality Non-Disclosure Agreement before any such employees and volunteers are permitted access to any financial and/or client identifiable information concerning such youth.

8. PUBLICATIONS AND COPYRIGHTS

Unless this AGREEMENT specifically provides otherwise, any and all copyrightable material or work products created or produced by the contractor under this AGREEMENT shall be considered 'work for hire' or 'work produced for the Office' by the Contractor and shall be owned exclusively by OCFS and the State of New York. OCFS and the State of New York will, and expressly reserve the right to, hold the copyright to any and all copyrightable material or work products created or produced by the Contractor under this AGREEMENT. The Contractor will neither claim nor assert any interest, proprietary or otherwise, in any copyrightable materials or work product created or produced by the contractor under this AGREEMENT. The Contractor acknowledges that it has no interest, proprietary or otherwise, in any copyrightable materials or work product created or produced by the contractor under this AGREEMENT.

The Contractor hereby warrants that any copyrightable material or work products created or produced by the Contractor under this AGREEMENT shall be original except for such portions as may be part of copyrighted works that are included with the permission of the owner of the copyright. If such material is included, the Contractor warrants that the Contractor has obtained from the holder of the copyright all permissions necessary for the Office and the State of New York to hold the copyright to the copyrightable material or work products created or produced by the contractor under this AGREEMENT.

The Contractor hereby warrants that any copyrightable material or work products created or produced by the Contractor under this AGREEMENT contain no libelous or unlawful

statements or materials and that it will not infringe on any copyright, trademark, patent, statutory or other proprietary rights of others.

The Contractor hereby agrees that it will not use, publish, permit to be published or distribute for use any copyrightable material or work products created or produced by the contractor under this AGREEMENT without the prior written permission of the Office.

The Contractor will retain the copyright to any proprietary material used in connection with this AGREEMENT that was created independently by the Contractor without the financial support of the Office or the State of New York. The Office and the State of New York expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted and copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT to which OCFS and the State of New York do not hold the copyright. All publications by the Contractor covered by this AGREEMENT that include material resulting from this AGREEMENT or that arise from activity supported by this AGREEMENT where the copyright is held by the Contractor shall expressly acknowledge the Office's right to such license. All publications by the Contractor covered by this AGREEMENT that include material under the copyright of the Office shall expressly acknowledge the Office's copyright.

All of the copyright and license rights so reserved to the Office and the State of New York under this AGREEMENT are equally reserved to the United States Department of Health and Human Services and subject to all applicable federal legal and regulatory provisions on copyrights if the CONTRACT is federally funded.

The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this CONTRACT, it will provide to OCFS at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or analysis. The Contractor agrees and acknowledges the right of OCFS, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

9. PATENTS AND INVENTIONS

The Contractor agrees that any and all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to the Office. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

10. CONTRACTOR COMPLIANCE

The Office shall have the right to audit or review the Contractor's performance and operations as related to this AGREEMENT and/or to retain the services of qualified independent auditors or investigators to perform such audit and review on the Office's behalf. If the review indicates that the Contractor has violated or is in non-compliance with any of the terms of the AGREEMENT, or has abused or misused the funds paid to the Contractor, the Contractor agrees to pay to the Office any costs associated with the review.

If the review indicates that the Contractor has violated or is in non-compliance with any of the terms of the AGREEMENT, or has abused or misused funds paid to the Contractor, or if the Contractor has violated or is in non-compliance with any term of any other AGREEMENT, or has abused or misused funds paid to the Contractor under any other AGREEMENT with the Office, the rights of the Office shall include, but not be limited to:

- Recovery of any funds expended in violation of the AGREEMENT;
- Suspension of Payments
- Termination of the AGREEMENT; and/or
- Employment of another entity to fulfill the requirements of the AGREEMENT.

The Contractor shall be liable for all reasonable costs incurred on account thereof, including payment of any cost differential for employing such entity. The Contractor will assist the Office in transferring the operation of the contracted services to any other entity selected by the Office in a manner that will enable the Office or clients to continue to receive services in an on-going basis, including, but not limited to, notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this AGREEMENT.

Nothing herein shall preclude the Office from taking actions otherwise available to it under law including but not limited to the State's "Set-Off Rights" and "Records" provisions contained in Appendix A (Standard Clauses for all New York State Contracts).

The Contractor agrees to cooperate fully with any audit or investigation the Office or any agent of the Office may conduct and to provide access during normal business hours to any and all information necessary to perform its audit or investigation. The Contractor shall also allow the NYS Attorney General, State Comptroller, the Office, and any representatives specifically directed by the State Comptroller or the Office to take possession of all books, records and documents relating to this AGREEMENT without prior notice to the Contractor. The Office will return all such books, records and documents to the Contractor upon completing the official purposes for which they were taken.

The Contractor agrees that all AGREEMENTS between the Contractor and a subcontractor or consultants for the performance of any obligations under the AGREEMENT will be by written contract (subcontract) which will contain provisions including, but not limited to, the above specified rights of the Office.

11. FISCAL SANCTION

In accordance with the OCFS Fiscal Sanction policy, contractors may be placed on fiscal sanction when the Office identifies any of the following issues:

- The contractor has received an Advance, overpayment or other funds under this or another agreement that has not been refunded to OCFS within the established timeframe;
- An OCFS, Office of the State Comptroller, or other audit identifies significant fiscal irregularities and/or that funds are due to OCFS;
- The Contractor has not provided satisfactory services as required under the terms of this or another OCFS agreement;
- The contractor has not provided fiscal or program reports as required under the terms of this or another OCFS agreement;

- A local, State or federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the contractor;
- The contractor is not in compliance with State or federal statutes or regulations, or applicable OCFS guidelines, policies and/or procedures; or
- Unsafe physical conditions exist at a program site operated by the contractor and funded under an agreement with OCFS.

Once the contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or contract renewals will not be processed until the issues have been satisfactorily resolved. The contractor will be notified in advance of any proposed Fiscal Sanction and will be provided a timeframe within which the issues must be resolved in order to avoid a Fiscal Sanction. Issues that are not resolved within the timeframe established by OCFS may be referred to the Attorney General (AG) for collection or legal action. If a contract is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the timeframes established by the AG. The contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest is paid.

12. ADDITIONAL ASSURANCES

- a. The Office and Contractor agree that Contractor is an independent contractor, and not an employee of the Office. The Contractor agrees to indemnify the State of New York for any loss the State of New York may suffer when such losses result from claims of any person or organization (excepting only the Office) injured by the negligent acts or omission of Contractor, its officers and/or employees or subcontractors. Furthermore, The Contractor agrees to indemnify, defend, and save harmless the State of New York, and its officers, agents, and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of the contract, and from all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of the contract, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under the contract or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this contract.
- b. The Contractor agrees that Modifications and/or Budget Revisions that do not affect any change in the amount of consideration to be paid, or change the term, will be in accordance with Appendix C.
- c. Expectation of Insured: The Contractor, if a municipal corporation, represents that it is a self-insured entity. If a not-for-profit corporation or entity other than a self-insured municipal corporation, the Contractor agrees to obtain and maintain in effect a general policy of liability insurance in an appropriate amount. The Contractor agrees that it will require any and all Subcontractors with whom it subcontracts pursuant to this contract to obtain and maintain a general policy of liability insurance in an appropriate amount.
- d. Notwithstanding the provisions of Article 14 of this contract, to the extent the contractor provides health care and treatment or professional consultation to residents of facilities operated by OCFS, in conformance with Executive Law §522 the provisions of paragraphs A, B and C of Article 14 (Article 14 A., B. and C.) shall not apply. In such cases, the

provisions of Public Officers Law §17, to the extent provided by Executive Law §522, shall apply instead.

13. RENEWAL NOTICE TO NOT-FOR-PROFIT CONTRACTORS

With respect to contracts that include a renewal option, if the Office does not provide notice to Contractor of its intent to not renew this contract by the date by which such notice is required by §179-t (1) of the State Finance Law, this contract shall be deemed continued until the date that the Office provides the notice required by §179-t (1), and the expenses incurred during such extension shall be reimbursable under the terms of this contract.

14. MINORITY AND WOMEN-OWNED BUSINESS (M/WBE)

Pursuant to New York State Executive Law Article 15-A, OCFS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority and Women-Owned Business Enterprises (M/WBE) and Equal Employment Opportunities (EEO) for minority group members and women in the performance of OCFS contracts. Accordingly, information regarding OCFS' target goals for M/WBE participation in contracting activities as well as guidelines for Prime Contractor responsibilities pursuant to this law are outlined in the Appendix MWBE entitled "Participation by Minority and Women-Owned Business Enterprises: Requirements and Procedures". Included in this document are links to the forms and instructions required as a part of this program.

15. SERVICE-DISABLED VETERAN-OWNED BUSINESS (SDVOB)

[The Service-Disabled Veteran-Owned Business Act](#), signed into law by Governor Andrew M. Cuomo on May 12, 2014, allows eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business (SDVOB) in order to increase the participation of such businesses in New York State's contracting opportunities. The SDVOB Act, which is codified under Article 17-B of the Executive Law, acknowledges that SDVOBs strongly contribute to the economies of the State and the nation. Therefore, and consistent with its Master Goal Plan, OCFS strongly encourages vendors who contract with OCFS to consider the utilization of certified SDVOBs, that are responsible and responsive, for at least six percent (6%) of discretionary non-personnel service spending in the fulfillment of the requirements of their contracts with OCFS. Such partnering may include utilizing certified SDVOBs as subcontractors, suppliers, protégés, or in other supporting roles to the maximum extent practical, and consistent with the legal requirements of the State Finance Law and the Executive Law. Certified SDVOBs may be readily identified through the directory of certified businesses at: <https://ogs.ny.gov/Veterans/>

For additional information relating to the use of certified SDVOBs in contract performance, and participation by SDVOBs with respect to State Contracts through Set Asides, please refer to the following:

- [Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance](#)
- [Participation by Service-Disabled Veterans with Respect to State Contracts Through Set Asides](#)
- <https://ogs.ny.gov/Veterans/>

Please note that bidders/proposers must continue to utilize M/WBEs, as discussed above in paragraph 14, consistent with current State law.

16. EXECUTIVE ORDER NUMBER 177

Executive Order Number 177, signed on February 3, 2018, by Governor Andrew M. Cuomo directs New York State agencies and authorities not to enter into any contracts with entities that have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected basis. The Contractor must provide the EO 177 Certification statement found at the following website address: [New York State Office of Children and Family Services \(OCFS\)](#) prior to any contract award or renewal of any contract by OCFS.

Appendix A3

Rev. 4/21/17

Federal Assurances and Certifications

Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Office of Family and Children Services.

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to (a) Title VI of the Civil Rights Act of 1964 (PL 88-352) and Executive Order Number 11246 as amended by E.O. 11375 relating to Equal Employment Opportunity, which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety

Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

13. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

14. This contract is funded in whole or part with federal funds under the CDFA No(s) shown on the first page of Appendix C or Appendix X for renewals. OCFS is a pass-through entity of these federal funds. As a recipient of these federal funds, the Contractor may be determined, as shown on the first page of Appendix C or Appendix X for renewals, to be a sub-recipient of federal funds or assistance. Sub-recipients of federal funds or assistance have the responsibility of reporting to OCFS in addition to the sub-recipient's responsibility to file reports with the federal clearinghouse designated by Office of Management and Budget (OMB). If this contract will require the Contractor to expend \$750,000 or more of federal funds from this contract, or in total with other contracts or grants of federal funds or assistance in the Contractor's fiscal year, regardless of the source of the funding, the Contractor is required to comply with the terms and provisions of the 2 CFR Part 200 (Subparts A – F) - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* or, if applicable, 45 CFR Part 75 or other applicable federal regulation. The Contractor will notify OCFS if it reasonably expects to expend the sum of \$750,000 of federally derived funds, in its fiscal year, as soon as it has notice of awards, grants or contracts totaling \$750,000 in federal funds but in no event later than the close of the calendar year. The Contractor will have an audit performed pursuant to the requirements of 2 CFR Part 200 (Subparts A – F) - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* or, if applicable 45 CFR Part 75 or other applicable federal regulation, and provide OCFS with the required reports within 30 days of the Contractor's receipt of the independent audit report or within 9 months after the close of the Contractor's fiscal year, whichever event is sooner.

15. Certifies that Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the

responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The contractor/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions of children's services and all subgrantees shall certify accordingly.

16A. 1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below. 2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. 3. For grantees other than individuals, Alternate I applies. For grantees who are individuals, Alternate II applies. 4. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements. 5. Workplace identifications must include the actual address of buildings (or parts of buildings) or sites where work under the grant takes place. Categorical descriptions may be used (e.g. all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). 6. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph four). 7. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules: Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes: Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance: Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees: (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant: and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g. volunteers, even if used to meet a matching requirement: consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

16B. Alternate I (Grantees Other Than Individuals). 1. The grantee certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (b) Establishing an ongoing drug-free awareness program to inform employees about: (1) The dangers of drug abuse in the workplace: (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs: and (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above; (d) Notifying the employee in the statement required by paragraph (a) above, that, as a condition of employment under the grant, the employee will (1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for violation of a criminal drug status occurring in the workplace no later than five calendar days after such conviction; (e) Notify the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall

include the identification number(s) of each affected grant; (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f). For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices: Division of Grants Policy and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C., 20201.

16C. Alternate II (Grantees Who Are Individuals). 1. The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; 2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

17. Certifies that Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. The requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93). The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.) (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

18A1. Agrees that, a) By signing and submitting this proposal, the prospective primary applicant is providing the certification set out below. b) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. c) The

certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. d) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. e) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Office of Children and Family Services for assistance in obtaining a copy of those regulations. f) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. g) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. h) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. i) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. j) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

18A2. (1) Certifies to the best of its knowledge and belief, that the applicant and its principals: a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency; b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 19A. 2. (1) b) of this certification; and d) Have not within a three-year period preceding this application/proposal had on or more public transactions (Federal, State, or local) terminated for cause or default. (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

18B.1 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions Instructions for Certification. a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below. b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension

and/or debarment. c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances. d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. i) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

18B.2 a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

**APPENDIX C
PAYMENT AND REPORTING TERMS AND CONDITIONS**

Performance Based Budget / Line Item Budget

Revised June 2017

- This Contract is funded with non-Federal funds only
- This contract is funded in whole or in part with Federal funds (see Appendix A3, Paragraph 14, for federal audit information)
- OCFS has determined that the Contractor IS NOT a Subrecipient
- OCFS has determined that the Contractor IS a Subrecipient
- The Federal funds for this contract are from Catalog of Federal Domestic Assistance (CFDA Number(s):

1. EXECUTIVE ORDER NUMBER 38

Executive Order Number 38 sets Limits on State-Funded Administrative Costs & Executive Compensation. Contracts, payment requests and reporting must comply with this Executive Order. The Order can be found at the following website address: <https://www.governor.ny.gov/executiveorder/38>

2. PAYMENT TERMS AND CONDITIONS

For Performance Based budget:

In consideration of the services to be performed by the Contractor pursuant to this AGREEMENT, the Office of Children and Family Services (OCFS) agrees to pay and the Contractor agrees to accept a sum not to exceed the amount specified on the face page of this AGREEMENT for the initial AGREEMENT period and for subsequent periods, the amount specified in Appendix X for that period. All payments shall be in accordance with the payment plan contained in Appendix C-1 for the applicable period which is attached hereto for the period of time indicated therein. Payment under this AGREEMENT is conditional upon the continued availability of funds. Should funds become unavailable the Contractor shall be relieved of any obligation to continue this project beyond the period for which funds were available. Payments and future funding are contingent on the availability of funding for the activities to be conducted in accordance with this AGREEMENT.

For Line Item budget:

In consideration of the services to be performed by the Contractor pursuant to this AGREEMENT, the Office of Children and Family Services (OCFS) agrees to pay and the Contractor agrees to accept a sum not to exceed the amount specified on the face page of this AGREEMENT for the initial AGREEMENT period and, for subsequent periods, the amount specified in Appendix X for that period. All payments shall be in accordance with the budget contained in Appendix B for the applicable period. Payment under this AGREEMENT is conditional upon the continued availability of funds. Should funds become unavailable, the Contractor shall be relieved of any obligation to continue this project beyond the period for which funds were available. Payments and future funding are contingent on the availability of funding for the activities to be conducted in accordance with this AGREEMENT.

For all budget types:

Funds cannot be expended until the contract is approved by the Office of the State Comptroller (OSC). Expenditures cannot precede the contract start date. If the Contractor makes expenditures subsequent to the contract start date, but prior to OSC approval of the contract, they do so at their own risk. In the event that OSC does not approve the contract, OCFS shall have no obligation to pay the Contractor for any such expenditures made subsequent to the proposed contract start date.

See Appendix C-1 (if attached) for any additional program-specific Payment Terms and Conditions applicable to this AGREEMENT. To the extent that there is a conflict between any Payment Terms and

Conditions set forth in this Appendix and in Appendix C-1, the Payment Terms and Conditions in Appendix C-1 will supersede the Payment Terms and Conditions in Appendix C.

Contractor shall provide complete and accurate billing invoices to OCFS in order to receive payment. Billing invoices submitted to OCFS must contain all information and supporting documentation required by this AGREEMENT, OCFS and OSC.

3. CLAIMS FOR SERVICES

- a. The Contractor shall submit claims for payment under this AGREEMENT within fifteen (15) days after the end of each claiming period or as otherwise specified in Appendix C-1 (if attached).
- b. The Contractor shall submit a New York State Claim for Payment or on-line claim submitted through CMS within fifteen (15) days after the end of each claiming period as identified in Appendix C-1 (if attached) or as otherwise communicated. The Contractor shall also submit the appropriate supporting documentation for the services provided. The final claim shall be submitted within thirty (30) days after the expiration of each annual contract period or the early termination of this AGREEMENT or as otherwise specified in Appendix C-1 (if attached).
- c. **For Performance Based budget:** OCFS agrees to pay the Contractor for services provided in behalf of fulfilling this AGREEMENT, according to the schedule contained in Appendix C-1 and upon the submission of a properly executed State of New York Claim for Payment, or on-line claim submitted through CMS, in a form acceptable to OCFS and to OSC and the submission of the required program reports. OCFS agrees to submit each approved claim to OSC for payment, unless it shall have notified the Contractor of its disapproval of payment, in writing, together with a justification therefor.

For Line Item budget: OCFS agrees to pay the Contractor for expenses incurred in behalf of fulfilling this AGREEMENT, according to the budget contained in Appendix B and upon the submission of a properly executed State of New York Claim for Payment, or on-line claim submitted through CMS, in a form acceptable to OCFS and to OSC and the submission of required Program reports. OCFS agrees to submit each approved claim to OSC for payment, unless it shall have notified the Contractor of its disapproval of payment, in writing, together with a justification therefor.

- d. Claims other than those for payment of advances are payable on the 45th day after the end of the claiming period (monthly or quarterly as defined in this agreement) if deemed acceptable by OCFS and OSC, and if the Contractor's claim or on-line claim submitted through CMS is received within 15 days after the end of said period. If the Contractor's claim or on-line claim submitted through CMS is received later than 15 days after the end of said period, then the claim or on-line claim submitted through CMS will be payable 30 days after receipt if deemed acceptable by OCFS and OSC.
- e. For purposes of interest determinations pursuant to Article XI-B of the State Finance Law, claims or on-line claims submitted through CMS other than those for the payment of advances are payable 30 days after the end of the claiming period (monthly or quarterly as defined in this agreement) if deemed acceptable by OCFS and OSC. If the Contractor's claim or on-line claim submitted through CMS is not received within 30 calendar days of the contract becoming fully executed, no additional interest shall accrue after such thirtieth day.
- f. OCFS reserves the right to withhold up to ten percent of the total amount of the contract as security for the faithful completion of services under this AGREEMENT. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under this AGREEMENT. The amount withheld will be paid to the Contractor upon the receipt of all required reports, including the final programmatic and fiscal reports, all products of the project as provided in the AGREEMENT as detailed in Appendix D, a final claim or on-line claim submitted through CMS, the accounting for any advance payment(s) made pursuant to this AGREEMENT, and upon certification by the Contractor that it has completed its obligations and duties under this AGREEMENT.

- g. OCFS will not be liable for payments on any contract, grant or agreement made pursuant to an appropriation if insufficient monies are available.
- h. The Contractor shall require any and all subcontractors to submit all claims for services rendered and required supporting documentation and reports necessary to complete the claim in sufficient time for said information to be received by the Contractor no later than ten (10) days following the final day of the claiming period. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information and/or are not received by the Contractor by said due date. Subcontractors shall be paid on a timely basis after submitting the required reports and claims for reimbursement of services.
- i. Subcontracts should not be signed by Contractor prior to OCFS approving the subcontract and OSC approving the contract. Subcontracts cannot have start dates prior to the contract start date. If Contractor obtains signature on a subcontract subsequent to the start date, but prior to OSC approval of the contract, they do so at their own risk.
- j. Payment for travel costs and related expenses incurred by the Contractor's staff, employees and consultants shall be reimbursed at no greater than the prevailing New York State rates established for travel costs and related expenses for State employees as set by OSC and listed at the following internet website <http://www.osc.state.ny.us/agencies/travel/travel.htm>
- k. OCFS may specifically request the return of any equipment purchased pursuant to this AGREEMENT. At the discretion of OCFS, the Contractor may retain custody of such equipment, provided it continues to be used for the services AGREEMENT. No equipment purchased with OCFS funds may be transferred or disposed of without written permission from OCFS. Equipment items purchased and claimed must be listed in the approved contract budget. Any changes in the equipment listed in the budget must have prior approval by OCFS in writing before implementing the change.
- l. If the Contractor receives funds under this AGREEMENT to construct, renovate or improve the property it occupies, then the improved property will be used for the children, family and youth services outlined in this AGREEMENT for the period set forth in this AGREEMENT
- m. All obligations must be incurred prior to the end date of the contract. The Contractor has up to 90 days after the contract end date to make expenditures as long as the obligation was made prior to the contract end date.
- n. Should the contractor order goods and/or services prior to Office of the State Comptroller's approval of the contract, the contractor does so at their own risk and OCFS will not reimburse the contractor for the cost of such goods and/or services if such goods and/or services were received or paid for prior to the commencement of the contract period.

4. BUDGET REVISIONS (Line Item budgets only)

Any revision to the line item budget will require approval of the Office of the State Comptroller.

5. CHANGE NOTICES

The contractor and the State recognize that during the course of the contract, circumstances may arise where a modification to the contract is required. All such modifications are subject to the following:

- a. **The Contractor recognizes and agrees that any and all work performed outside the scope of this agreement shall be deemed by the State to be gratuitous and not subject to charge by the Contractor.**
- b. **All in scope modifications to the work identified in Appendix D or deliverables identified in Appendix C-1 that are deemed to be within the scope of the contract may be negotiated between OCFS and the Contractor.**

- c. **All in scope modifications to the work identified in Appendix D or deliverables identified in Appendix C-1 that cause an increase in the contract value will require the approval of the NYS Attorney General and State Comptroller**

6. AUDIT AND RECORDS RETENTION

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this AGREEMENT (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. OSC, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this AGREEMENT, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation. If the Records are in any way relevant to audit findings, litigation or claims and the audit findings, litigation, or claims are not resolved within a period of six (6) years after the end or termination of this AGREEMENT, the Contractor will retain such records until notified in writing by OCFS to dispose of them.

7. REFUNDS

In the event that the contractor must make a refund to OCFS for contract related activities (repayment of an advance, an audit disallowance, or for any other reason), payment must be made in the form of a check or money order payable to "New York State Office of Children and Family Services". The contractor must include with the payment a brief explanation of why the refund is being made and reference the contract number. Refund payments together with such explanation must be submitted to:

NYS Office of Children and Family Services
Attention: Contract Cash Receipts
Bureau of Contract Management
Capital View Office Park
52 Washington Street
South Building, Room 202
Rensselaer, NY 12144

8. PROGRAM REPORTING REQUIREMENTS

- a. The Contractor shall submit a Program Report on the schedule stated in Appendix C-1 or as otherwise directed and in the format specified by OCFS.
- b. In addition to the periodic reports stated above, the Contractor shall, as applicable, prior to receipt of final payment under this AGREEMENT, submit a final program report satisfactory to OCFS no later than thirty (30) days following the termination of this contract or the completion of expenditures, whichever is sooner or as otherwise specified in Appendix C-1.
- c. All other periodic reports as identified in Appendix C-1 shall be submitted in accordance with the schedule provided unless otherwise designated in writing by the Program Officer. All periodic reports must be submitted no later than fifteen (15) days after the end of the reporting period or as otherwise specified in Appendix C-1.

9. DESIGNATED PAYMENT OFFICE

Designated Payment Office information is contained in Appendix C-1.

Appendix D

Workplan

(To be developed after award)

Appendix HIPAA

HIPAA Business Associate Agreement

For CONTRACTOR that creates, receives, maintains, or transmits individually identifiable health information on behalf of a New York State Office of Children and Family Services HIPAA-Covered Program.

1. Definitions:

- (a) The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules as those terms in the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and implementing regulations, including those at 45 CFR Parts 160 and 164: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (b) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the contractor.
- (c) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean OCFS.

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(d) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware and such report shall include, to the extent possible:
 - i. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - ii. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - iii. Any steps individuals should take to protect themselves from potential harm resulting from the breach;

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- iv. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
 - v. Contact procedures for OCFS to ask questions or learn additional information.
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available protected health information in a designated record set to the OCFS, and in the time and manner designated by OCFS as necessary to satisfy covered entity's obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528;
- (h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements

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of Subpart E that apply to the covered entity in the performance of such obligation(s); and

- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate

- (a) Business associate may only use or disclose protected health information “as necessary to perform the services set forth in this Agreement.”
- (b) Business associate is not authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c) without the express written consent of OCFS.
- (c) Business associate may use or disclose protected health information as required by law.
- (d) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity’s minimum necessary policies and procedures.
- (e) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity

4. Term and Termination

- (a) Term. This agreement shall be effective for the term as specified in this agreement, or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

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(b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement.

(c) Obligations of Business Associate upon Termination.

- i. Except as provided in paragraph (c) (2) below, upon termination of this agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from OCFS, or created or received by Business Associate on behalf of OCFS. 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.
- ii. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to OCFS notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and OCFS that return or destruction of Protected Health Information is infeasible, Business Associate shall:
 1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
 2. Return to covered entity [or, if agreed to by covered entity, destroy] the remaining protected health information that the business associate still maintains in any form;

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3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information.
4. .Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at under “Permitted Uses and Disclosures By Business Associate” which applied prior to termination; and
5. .Return to covered entity [or, if agreed to by covered entity, destroy] the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

5. Violations

- (a) Any violation of this agreement may cause irreparable harm to OCFS. Therefore, OCFS may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.

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(b) Business Associate shall indemnify and hold OCFS harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this agreement. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless OCFS from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of OCFS.

6. Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- (c) Interpretation. Any ambiguity in this Appendix shall be interpreted to permit compliance with the HIPAA Rules.
- (d) HIV/AIDS. If HIV/AIDS information is to be disclosed under this agreement, Business Associate shall comply with the confidentiality requirements of Public Health Law Article 27-F.

Appendix MWBE

Participation by Minority and Women-Owned Business Enterprises: Requirements and Procedures

Revised January 2018

I. General Provisions

- A. The Office of Children and Family Services (“OCFS”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OCFS, to fully comply and cooperate with OCFS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds, assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to OCFS pursuant to the Contract and applicable law.

II. Contract Goals

- A. For purposes of this Contract, OCFS hereby establishes an overall goal of _____% for MWBE participation, _____% for New York State-certified minority-owned business enterprise (“MBE”) participation and _____% for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address:
<https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.
- D. The Contractor must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
 - 1. Evidence of outreach to MWBEs;
 - 2. Any responses by MWBEs to the Contractor's outreach;
 - 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 - 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OCFS with MWBEs; and,
 - 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity ("EEO")

[OCFS-3460 – MWBE – Equal Employment Opportunity Policy Statement](#)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
 - 1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 2. The Contractor shall submit an EEO policy statement to OCFS within seventy-two (72) hours after the date of the notice by OCFS to award the Contract to the Contractor.

Completed forms should be sent via email to mwbeinfo@ocfs.ny.gov. **Please do not upload MWBE forms to the Contract Management System (CMS).**

3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, OCFS may require the Contractor or subcontractor to adopt a model statement (see Form – [OCFS-3460 – MWBE – Equal Employment Opportunity Policy Statement](#)).
4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. [OCFS-4629 – Project Staffing Plan Form](#)

This section applies to OCFS contracts with a total value in excess of \$250,000 only.

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by OCFS. Completed forms should be sent via email to mwbeinfo@ocfs.ny.gov. **Please do not upload MWBE forms to the Contract Management System (CMS).**

D. [OCFS-2171 – Workforce Utilization Report Form](#)

This section applies to non-grant contracts only.

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by OCFS on a quarterly basis during the term of the Contract. The completed Workforce Utilization Report must be submitted via email to eeo@ocfs.ny.gov no later than 10 days following the end of each quarter during the term of the Contract.
 2. Separate forms shall be completed by the Contractor and any subcontractors.
 3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

[OCFS-4361 – MWBE Utilization Plan Form](#)

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by OCFS, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to OCFS, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OCFS shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through a non-electronic method provided by OCFS ([OCFS-4442 – MWBE Request for Waiver Form](#)). Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, OCFS shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If OCFS, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, OCFS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

[OCFS-4441 – MWBE Quarterly Report Form](#)

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to OCFS by the 10th day following the end of each quarter during the term of the Contract. Completed forms should be sent via email to mwbeinfo@ocfs.ny.gov. **Please do not upload MWBE forms to the Contract Management System (CMS).**

VII. Liquidated Damages - MWBE Participation

- A. Where OCFS determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to OCFS liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by OCFS, the Contractor shall

pay such liquidated damages to OCFS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

APPENDIX X

MODIFICATION AGREEMENT

Agency Code: Contract No. Period: -

Funding Amount for Period \$

This contract is funded with non-Federal funds only

This contract is funded in whole or in part with Federal funds (see Appendix A3, paragraph 14 for Federal audit information))

OCFS has determined that the Contractor is NOT a subrecipient)

OCFS has determined that the Contractor is a subrecipient

The Federal Funds for this contract are from Catalogue of Federal Domestic Assistance (CFDA) Number(s):

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the Office of Children and Family Services, having its principal office at 52 Washington Street, Rensselaer, New York 12144 (hereinafter referred to as the STATE), and
(hereinafter referred to as the CONTRACTOR), for modification of Contract Number _____,
as amended in attached Appendix(ices)

All other provisions of said AGREEMENT shall remain in full force and effect.