

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**

and

**LABORATORY CORPORATION OF AMERICA HOLDINGS**

**AGREEMENT NO. C000720**

This Agreement ("Agreement") is entered into by and between New York State Department of Civil Service ("Department" or "DCS"), having its principal office at the Empire State Plaza, Albany, NY, 12239 and Laboratory Corporation of America Holdings ("Contractor" or "Offeror"), a corporation authorized to do business in the State of New York with a principal place of business located at 500 Perimeter Park Drive, Suite C, Morrisville, North Carolina 27665. The foregoing are collectively referred to as "the Parties."

**WITNESSETH**

WHEREAS, the Employee Health Service ("EHS") Unit of the Testing Services Division of the Department, provides to all New York State departments and agencies ("Customer Agencies") medical examination services including pre-employment, fitness-for-duty/return to work, and occupational health examinations mandated by Civil Service Law;

WHEREAS, on May 9, 2019, the Department issued a Request for Proposal ("RFP") entitled, "Clinical Laboratory Services" to competitively secure the services of a qualified organization, either directly or through subcontracts with qualified organizations, to: perform clinical laboratory testing services; phlebotomy and other specimen collection services; specimen pick-up / courier services; and testimony at legal and/or administrative proceedings;

WHEREAS, the Contractor submitted a proposal in response to the RFP;

WHEREAS, after thorough review and evaluation by the Department of proposals submitted in response to the RFP, the Contractor's proposal was selected as offering the best value to the State by a responsive and responsible bidder; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver Project Services, in the manner set forth in the RFP and the Contractor's Proposal, pursuant to the terms and conditions set forth in the Agreement.

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

**Section 1 CONTRACTOR RESPONSIBILITIES AND QUALIFICATIONS**

- 1.1 The Contractor is responsible for providing Project Services as set forth in section 6, in such a manner to comply with the requirements in the Agreement and the RFP and for meeting all contractual obligations in this Agreement, including all attachments, and any subsequent amendments mutually agreed to in writing between the Parties.
- 1.2 Contractor acknowledges that the Agreement is being entered into by the Department in reliance on Contractor's representations concerning the particular qualifications,

experience, financial standing, management expertise and technical expertise of the Contractor and its staff assigned and subcontractors, if any, engaged to provide Project Services under this Agreement.

- 1.3 Throughout the term of this Agreement, in the event there is a substantial or material change, as defined below, in the ownership or financial viability of the Contractor, its corporate affiliates, subsidiaries or divisions, the Contractor is required to provide notice and details of any such change to the Department via written notice promptly when such is first known by Contractor, its corporate affiliates, subsidiaries or divisions, or subcontractors. "Substantial" or "material" change shall be defined to include, but not be limited to: sale, acquisitions, mergers or takeovers involving the Contractor, its corporate affiliates, subsidiaries or divisions or partners which result in a change in the controlling ownership or assets of such entity after the submission of the Proposal; or entry of an order for relief under Title 11 of the United States Code; the making of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in bankruptcy of Contractor, its corporate affiliates, subsidiaries or divisions, or partners' business or property; or action by Contractor, its corporate affiliates, subsidiaries or divisions, or partners under any state insolvency or similar law for the purposes of its bankruptcy, reorganization or liquidation; or court ordered liquidation against Contractor, its corporate affiliates, subsidiaries or divisions, or partners.
- 1.4 The Contractor's obligations to perform under the Agreement shall not be affected or impaired by any reorganization, consolidation or merger to which the Contractor is, or may become, a party. In any such event, the Contractor shall continue to be bound by, and shall perform under, all terms and conditions set forth herein.
- 1.5 The Contractor acknowledges and agrees that, pursuant to State Finance Law Section 163(10)(e), the Department may authorize and approve purchases from the resulting contract to other New York State agencies, authorities, the United State government or any other state, with the concurrence of the New York State Office of the State Comptroller ("OSC") under appropriate circumstances. This process is commonly referred to as "piggybacking".
- 1.6 The following Contractor responsibility for Subcontractor(s) requirements shall supplement the requirements of Appendix B.
  - 1.6.1 The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract.
  - 1.6.2 The Contractor shall be solely responsible to the Department for the acts or defaults of its Subcontractor(s) and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.
  - 1.6.3 Any deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Agreement to be provided or furnished by the Contractor.
  - 1.6.4 The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements of the Agreement, including:

- a. Those relating either directly or indirectly to the deliverables to be provided and the materials to be furnished or Services provided pursuant to its respective subcontract;
  - b. The requirement to maintain and protect against any unauthorized disclosure of records with respect to work performed under the subcontract in the same manner as required of the Contractor; and
  - c. Those relating to the State's rights to audit records and the Subcontractor(s) requirement to cooperate with any investigation, audit, or other inquiry related to the Agreement or any litigation relating thereto.
- 1.6.5 The Contractor agrees that every such subcontract shall expressly stipulate that all labor performed, and materials furnished pursuant thereto shall strictly comply with the requirements of the Agreement and that no subcontract shall impair the rights of the State or create any contractual relationship between the Subcontractor and the Department.
- 1.6.6 Failure to disclose the identity of any and all Subcontractor(s) used by the Contractor as required hereunder may, at the sole discretion of the Department, result in a disqualification of the Subcontractor, if not immediately cured, or may result in termination of the Agreement for cause.
- 1.6.7 The Contractor shall pay all Subcontractors for and on account of Services and/or deliverables provided by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the Department, the Contractor shall submit satisfactory evidence that it has made such payment.
- 1.6.8 The Contractor shall, within five (5) Business Days of the Department's written request, file promptly with the requestor a copy of any subcontract providing services for the Agreement.
- 1.6.9 The Contractor shall require that the Subcontractor must pass through all terms and conditions of the Agreement, including but not limited to Appendix A, to any lower tier subcontractors.

## **Section 2 AGREEMENT DURATION AND AMENDMENTS**

- 2.1 The Agreement shall begin on April 1, 2020 and end on March 31, 2025. This Agreement is subject to the approval of the New York State Attorney General's Office ("AG") and OSC.
- 2.2 The Agreement is subject to amendment(s) only upon consent of the Parties, reduced to writing and approval by the AG and OSC.
- 2.3 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 AG and OSC.

### **Section 3 DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE**

- 3.1 The Agreement shall be composed solely of the following documents which, in the event of an inconsistency or conflicting terms, shall be given precedence in the order indicated:
  - 3.1.1 Appendix A (Standard Clauses for All New York State Contracts), dated January 2014, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein;
  - 3.1.2 Any Amendments to the body of the Agreement;
  - 3.1.3 The body of the Agreement (that portion preceding signatures);
  - 3.1.4 Appendix B (Standard Clauses for Department Contracts), dated February 2014, attached hereto, is expressly made a part of this Contract as fully as if set forth at length herein;
  - 3.1.5 Appendix C Intentionally Omitted;
  - 3.1.6 Appendix D (Participation by Minority and Women-Owned Business Enterprises: Requirements and Procedures), attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein;
  - 3.1.7 Appendix D-1 (MWBE Equal Employment Opportunity Policy Statement) attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein;
  - 3.1.8 Appendix E (Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses), attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein;
  - 3.1.9 Attachment 1 which consists of RFP Section 3 (Project Scope), attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein; and
  - 3.1.10 Attachment 2 which sets forth the Contractor's prices for services, as received on May 31, 2019.
- 3.2 Only documents expressly enumerated above shall be deemed a part of the Agreement, and references contained in those documents to additional Contractor documents not enumerated above shall be of no force and effect.
- 3.3 All prior agreements, representations, statements, negotiations and undertakings are superseded. All statements made by the Department shall be deemed to be representations and not warranties.
- 3.4 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 the Agreement.

- 3.5 The terms, provisions, representations, and warranties contained in the Agreement shall survive performance hereunder.

#### **Section 4 LEGAL AUTHORITY TO PERFORM**

- 4.1 The Contractor represents that it possesses the legal authority to perform Project Services in accordance with the terms and conditions of the Agreement.
- 4.2 The Contractor shall maintain appropriate corporate and/or legal authority, which shall include, but is not limited to, the maintenance of an administrative organization capable of delivering Project Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Project Services are to be delivered.
- 4.3 The Contractor shall provide the Department with prompt notice in writing of the initiation of any legal action or suit which relates in any way to the Agreement or which may affect performance of the Contractor's duties under the Agreement.

#### **Section 5 RESPONSIBILITY TERMS**

- 5.1 The Contractor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed Contractor's Vendor Responsibility Questionnaire (hereinafter "Vendor Responsibility Questionnaire") provided to the Contractor by the Department prior to execution of the Agreement. The Contractor further covenants and represents that as of the date of execution of the Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Vendor Responsibility Questionnaire.
- 5.2 The Contractor shall provide to the Department updates to the Vendor Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Vendor Responsibility Questionnaire becomes available.
- 5.3 Notwithstanding the above, the Department reserves the right, in its sole discretion, at any time during the term of the Agreement to: (i) require updates or clarifications to the Vendor Responsibility Questionnaire upon written request; (ii) inquire about information included in or require information omitted from the Vendor Responsibility Questionnaire; and (iii) require Contractor to provide such information to the Department within a reasonable timeframe.
- 5.4 The Department reserves the right to make a final determination of Contractor's non-responsibility (hereinafter "Determination of Non-responsibility") at any time during the term of the Agreement based on: (i) any information provided in the Vendor Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (ii) the Department's discovery of any other material information which pertains to Contractor's responsibility.

- 5.5 If the Department preliminarily determines Contractor to be non-responsible, the Department shall provide written notice to Contractor detailing the reason(s) for the preliminary determination and shall provide Contractor with an opportunity to be heard.
- 5.6 Upon a Determination of Non-responsibility of Contractor, the Department reserves the right to terminate the Agreement.

## **Section 6 PROJECT SERVICES**

- 6.1 During the term of the Agreement, the Contractor will be responsible for performing clinical laboratory testing services, phlebotomy and other specimen collection services; specimen courier services; and testimony at legal and/or administrative proceedings (collectively referred to as "Project Services"), in the manner set forth in Attachment 1 of this Agreement, except as amended.
  - 6.1.1 The Note in RFP Section 3.1 regarding the Health Insurance Portability and Accountability Act (HIPAA) Business Associate requirements is deleted and replaced with section 9 of this Agreement.
  - 6.1.2 RFP Section 3.1(1), Clinical Laboratory Testing Services, is amended to insert the following:

Contractor will perform clinical laboratory tests and provide its routine and customary service as may be requested by the Department, if available, during the term of the Agreement as outlined herein for employment-related testing programs exclusively. The Department represents and warrants that the services shall only be requested by a person authorized to do so by applicable state and federal laws, rules and regulations. The services shall include those tests in the attached fee schedule, as the same may be modified by the mutual written agreement of the Parties, subject to the approval of the NYS Office of the State Comptroller.

As Contractor is required to report infectious disease testing and/or notifiable conditions (as specified by the New York State Department of Health), the Department will include the full name of the patient and the patient's complete home address on the test requisition form or comparable document.

- 6.1.3 The first paragraph of RFP Section 3.1(2), Test Results Reporting, is deleted and replaced with the following:

Electronic reporting of test results is required. Results reporting for the following clinical laboratory tests, routine drug screening, and blood alcohol testing must be received by EHS within two (2) business days following the collection of the specimen unless there is a problem with the specimen that makes it unable to be analyzed as expected. The clinical laboratory tests include: singular panels for chemistry screen panels, for hematology panels and complete urinalysis; grouped laboratory test for profile 1 and

profile 2, and routine drug screening and blood alcohol testing that yield negative results. The Parties agree that the separate tests identified in RFP Section 3.1(c), and routine drug screening and blood alcohol testing that yield presumptive positive results, and are not subject to the two (2) business day turn around requirement. These test results shall be reported to EHS within one (1) business day after their longer incubation periods and/or sophisticated testing techniques are complete.

6.1.4 RFP Section 3.5(2) is deleted and replaced with the following:

As of the start date of the Contract and throughout its entire term, the Offeror must have in effect, at a minimum, a standard policy of errors and omissions insurance affording coverage for the Offeror and each Key Subcontractor, wherein the person(s) insured include any authorized individual of the Offeror's laboratory employees and other personnel employed on a full-time, part-time, per diem, contract or retainer basis, while acting in the scope of his or her duties, subject to a minimum limit of liability in the amount of \$3,000,000 for each occurrence.

6.2 The Contractor's public locations must be compliant with all Americans with Disabilities Act (ADA) guidelines, including:

6.2.1 All ADA parking spaces shall be identified with appropriate signage and located less than 200 feet from the handicap accessible door.

6.2.2 Signs shall be located at every primary entrance and major junction in the handicap accessible route directing individuals toward the handicap accessible entrance.

6.2.3 Curb ramps shall be in place at street crossings or anywhere that a pedestrian walkway crosses a curb; and sidewalks and walking areas shall be a minimum of 48" wide.

6.2.4 For toilet usable by disabled persons, the top of the toilet seats shall be between 17" to 19" above the floor, with the flush valve shall be located on the wide side of the toilet area. In addition:

- a. Grab bars shall not rotate in their fittings and must be mounted between 33" above the floor or 36" above the floor for the rear grab bar on tank type toilets.
- b. A side grab bar shall be a minimum of 42" long and extend 54" beyond the back wall of the water closet; and the back-grab bar must be 36" long and extend 24" on the wide side of the toilets center line.
- c. A shelf shall be accessible for placement of urine samples no more than 34" above the floor.
- d. The toilet paper dispenser shall be located on the side wall within 7" to 9" to the center of the front edge of the toilet seat and 19" above the

floor.

- 6.2.5 Doors used by disabled persons shall be a minimum of 36” wide with a minimum clearance of 32” when open at a 90-degree angle.
- 6.2.6 Elevators to be used by disabled persons shall be available in any location that encompasses more than the ground floor level, with designated signage that directs pedestrian traffic to them.

## **Section 7 PAYMENT FOR SERVICES**

- 7.1 The Department agrees to reimburse the Contractor up to a maximum of \$1,705,000.00 over the term of this Agreement based on the fees set forth in Attachment 2. The Contractor shall invoice the Department in accordance with the provisions set forth herein, for Project Services rendered, together with full supporting detail(s) to the State’s satisfaction. Such invoice shall be emailed to [accountspayable@ogs.ny.gov](mailto:accountspayable@ogs.ny.gov). The subject line should include the Invoice Number and the term “Department of Civil Service”.
- 7.1.1 Such invoice must include:
  - Name of the NYS Agency being billed;
  - Name of the vendor and NYS Statewide Financial System (SFS) Vendor Number; and
  - Contract number.
- 7.1.2 In addition to the invoice, a spreadsheet must be included in the same electronic submission. Such spreadsheet must include:
  - The names and identification number of the individuals examined for which the Contractor seeks reimbursement;
  - The date of the respective exam, price and description of the services performed; and
  - The agency for which each examined individual works or seeks employment.
- 7.2 The Contractor shall only invoice the Department once per month after the service has been rendered and in accordance with the provisions set forth herein.
- 7.3 After the Department approves the Contractor’s invoice, the Department shall process the Contractor’s invoice to OSC for payment. OSC shall render payment for invoices under the Agreement in accordance with ordinary State procedures and practices. The Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. The Contractor acknowledges that timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law. Submission of an invoice and payment

thereof shall not preclude the Department, as applicable, from reimbursement or demanding a price adjustment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Agreement.

## **Section 8 MODIFICATION OF SERVICES**

- 8.1 In the event that laws or regulations enacted by the federal government and/or the State of New York have an impact upon the conduct of the Agreement in such a manner that the Department determines that any design elements or requirements of the Agreement must be revised, the Department shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable timeframe within which to implement such revisions.
- 8.2 To the extent that any of the events as set forth in this section shall take place and constitute a material and substantial change in the delivery of Project Services that are contemplated in accordance with the terms of the Agreement as of the Agreement's beginning date and which the Contractor is required to perform or deliver under the Agreement, the Contractor may submit a written request to the Department to initiate review of the fee(s) received by the Contractor for Project Services provided and guarantees made by the Contractor under the terms of the Agreement, accompanied by appropriate documentation. The Department reserves the right to request and the Contractor shall agree to provide additional information and documentation to the Department within a reasonable period of time and in its sole discretion make a written determination as to whether such request shall be approved or rejected. Should the Department approve the Contractor's request to modify the fee(s), such approval shall be subject to written amendment and approval by the AG and OSC.

## **Section 9 USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION**

- 9.1 For purposes of this section, the term "Protected Health Information" ("PHI") means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein collectively as "Department's PHI."
- 9.2 The Contractor acknowledges that EHS within the Department is a "health care provider" as that term is defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) implementing regulations at 45 CFR 160.103. The Contractor further acknowledges that as a covered entity under the HIPAA Rules, the Contractor is not performing or delivering health care services on behalf of the New York State Department of Civil Service. The Contractor is an independent health care provider and the exchange of information between the Department and the Contractor is for



purposes of providing wellness to the individual constituting a treatment relationship, and the Contractor's provision of Project Services will involve the Department, or other service providers on behalf of the Department, disclosing to the Contractor individually identifiable health information, as well as the Contractor's disclosure to the Department of individually identifiable health information.

- 9.3 **Permitted Uses and Disclosures of the Department's PHI:** The Contractor may use and/or disclose the Department's PHI solely in accordance with the specifications set forth in this Agreement. [45 CFR §164.504(e)(2)(i)].
- 9.4 **Nondisclosure of the Department's PHI:** The Contractor shall not use or further disclose the Department's PHI otherwise than as permitted or required by this Agreement or as otherwise required by law. [45 CFR §164.504(e)(2)(ii)(A)].
- 9.5 **Safeguards:** The Contractor shall use reasonable and appropriate safeguards to prevent the use or disclosure of the Department's PHI otherwise than as provided for by this Agreement. [45 CFR §164.504(e)(2)(ii)(B)]. The Contractor shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.
- 9.6 **Breach Notification:**
- 9.6.1 **Reporting:** The Contractor shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware.
- 9.6.2 **Required Information:** Such report shall include, to the extent possible:
- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - b. 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);
  - c. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
  - d. A description of what the Contractor is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
  - e. Contact procedures for the Department to ask questions or learn additional information.
- 9.6.3 The Contractor will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed,

acquired or disclosed as a result of a breach, as well as the Secretary and the media, as required by 45 CFR Part 164;

- 9.6.4 The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request,
- 9.6.5 For purposes of this Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on the Contractor's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of electronic PHI, and for which no additional reporting shall be required; and
- 9.6.6 The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by this Agreement.
- 9.7 **Availability of Information to the Department:** The Contractor shall make available to the Department such information as the Department may require to fulfill the Department's obligations to provide access to, to provide a copy of, and to account for disclosures with respect to the Department's PHI in accordance with HIPAA and its implementing regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR §164.504(e)(2)(ii)(E) and (G)].
- 9.8 **Internal Practices:** The Contractor shall make its internal practices, policies and procedures, books, records, and agreements relating to the use and disclosure of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, available to Department and/or the Secretary of the United States Department of Health and Human Services in a reasonable time and manner as designated by the Department and/or the Secretary for purposes of determining the Department's compliance with HIPAA and its implementing regulations.

**Section 10 NOTICES**

- 10.1 The Contractor shall immediately notify the Department upon learning of any situation that can reasonably be expected to adversely affect Project Services being rendered.
- 10.2 All notices permitted or required hereunder shall be in writing and shall be transmitted via e-mail. Such notification must be sent to:

State of New York Department of Civil Service

Name: Dr. Christine Pluviose  
Title: Administrator Employee Health Service  
Address: 55 Mohawk St, Ste 201, Cohoes NY, 12047  
Telephone Number: 518-233-3100  
E-Mail Address: [Christine.Pluviose@cs.ny.gov](mailto:Christine.Pluviose@cs.ny.gov)

Laboratory Corporation of America Holdings

Name: Pamela S. Edwards  
Title: Vice President  
Address: 500 Perimeter Park Drive, Suite C, Morrisville NC 27665  
Telephone Number: 919-481-5319  
E-Mail Address: [edwardp@labcorp.com](mailto:edwardp@labcorp.com)

- 10.3 Any such notice shall be deemed to have been given upon receipt of email.
- 10.4 The contact information may be changed at any time with either party giving fifteen (15) days written notice to the other party sent in accordance herewith.

**Section 11 SUSPENSION OF WORK**

- 11.1 Notwithstanding any other provision of the Agreement, the Department reserves the unconditional right to suspend any or all activities under the Agreement, at any time, with or without cause and in the best interests of the State or Department. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as the Department issues a formal written notice either authorizing a resumption of work or providing notice of the Department's intent to pursue the Department's rights pursuant to the Agreement.

**Section 12 GENERAL PROVISION AS TO REMEDIES**

- 12.1 The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, an event otherwise constituting a breach or default under the Agreement.
- 12.2 In addition, the Department has the following remedies which may include, but are not limited to, the following:
  - 12.2.1 The right for the Department to withhold payment of some or all of the amounts due and owed under the Agreement until Contractor's performance is brought within the specified parameters.
  - 12.2.2 The application of credits against amounts due and owed by the Department under the Agreement.

## **Section 13 COOPERATION WITH INVESTIGATIONS AND AUDITS**

- 13.1 In addition to the audit authority requirements specified in Appendices A and B to this Agreement, the Contractor agrees to cooperate with the Department, any other authorized State or Federal Department, and any law enforcement authority, in the investigation, documentation and litigation of any alleged illegal act, misconduct or unethical behavior related to the Agreement, or in connection with any audit.

## **Section 14 WARRANTIES**

- 14.1 A breach of any provision of this section shall be deemed a “material breach” for purposes of default under the Agreement. Contractor hereby warrants and represents:
- 14.1.1 Representations and Warranties. Contractor assumes responsibility for the cost and timely accomplishment of all obligations and duties required by the Agreement whether or not the Contractor, or subcontractors, performs such obligations or duties. Project Services rendered by the Contractor shall be performed in accordance with all the terms and conditions, covenants, statements and representations contained in the Agreement, including all appendices.
  - 14.1.2 Workmanship Warranty. During the term of the Agreement, the Contractor will provide the necessary levels of qualified personnel to ensure proper performance by Contractor of its obligations and responsibilities under the Agreement.
  - 14.1.3 Contractor Compliance. The Contractor shall pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees, and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Agreement. Prior to award and during the Agreement term and any extension thereof, Contractor must establish to the satisfaction of the Department that it meets or exceeds all requirements of the Agreement and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workers’ compensation, and shall provide such proof as required by the Department. Failure to do so may constitute grounds for the Department to cancel or suspend the Agreement, in whole or in part, or to take any other action deemed necessary by the Department.
- 14.2 Survival of Warranties. All warranties contained in the Agreement shall survive the termination of the Agreement.
- 14.3 Limitations. The warranties set forth in this Agreement are in lieu of all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

## **Section 15 DATA SHARING AND OWNERSHIP**

- 15.1 In addition to ownership provisions set forth elsewhere in Appendices A and B, the Contractor agrees that information and documents developed pursuant to the Agreement specifically for the Department are the property of the State of New York and that the Contractor will not share, sell, release, or make the materials available to third parties in any manner without the express written authorization of the Department. This provision shall survive the expiration or termination of the Agreement.

## **Section 16 TERMINATION**

In addition to the Termination of Agreement requirements specified in Appendices A, and B to this Agreement, the following provisions shall apply:

- 16.1 The State retains the right to cancel the Agreement without cause and in its sole discretion, provided that the Department shall give written notice to the Contractor not less than thirty (30) days prior to the date upon which termination shall become effective. Such notice shall be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not be understood as waiving the right of the Department to terminate the Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision. In the event of cancellation without cause by the Department under this Agreement, the Department agrees to negotiate a payment based on time, materials and other documented expenses directly attributable to the Agreement actually expended by Contractor.
- 16.2 If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Department, in its sole discretion, may terminate the Agreement or may exercise such other remedies as shall be available under the Agreement, at law and/or equity;
- 16.3 No delay or omission to exercise any right, power or remedy accruing to the State of New York or the Department upon breach or default by the Contractor under the Agreement shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing;
- 16.4 Termination Notice. Notices required by this section shall be provided consistent with section 10 of this Agreement.



## **Section 17 LEGAL TERMS AND CONDITIONS**

- 17.1 All of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope and volume of services. If, during the course of the Agreement, the Contractor enters into arrangements with any other customers providing services which are equal to or greater than those services to be provided under the Agreement at more favorable terms, the Agreement shall thereupon be deemed amended to provide the same to the Department.
- 17.2 Appendix B Changes:
- 17.2.1 Section 10 of Appendix B, Indemnification, is amended to insert "reasonable" in the first paragraph, line 12, after "...not limited to".
- 17.2.2 Section 11 of Appendix B, Patent, Copyright or Proprietary Rights Infringement, is amended to replace "immediately" in the third paragraph, line 13, after "...shall" with "promptly".
- 17.2.3 Section 12 of Appendix B, Date/Time Warranty, is amended to insert "If applicable" at the beginning of this Section.
- 17.2.4 Section 14 of Appendix B, Title and Ownership Warranty, is amended to insert "If applicable" at the beginning of this Section.
- 17.2.5 Section 26 of Appendix B, Conflict of Interest, is amended to replace "immediately" in the first paragraph, line 10, after "... Contractor shall notify the Department in writing" with "promptly".
- 17.2.6 Section 29 of Appendix B, Information Security Requirements, is amended to replace "immediately" in the first paragraph, line 7 after "... Contract shall" with "promptly."
- 17.2.7 Section 29 of Appendix B, Information Security Requirements, is amended to add "promptly" in the first paragraph, line 9, after "... Contractor shall also".
- 17.2.8 Section 29 of Appendix B, Information Security Requirements, is amended to strike "immediately" in the first paragraph, line 9, after "...of the System".
- 17.2.9 Section 30 of Appendix B, Nondisclosure of Confidential Information, is amended to include a new subsection (c) as follows:
- Information that is lawfully disclosed to the receiving party by a third party who is not obligated to maintain and preserve such information as confidential and proprietary.

17.2.10 The final paragraph in Section 30 of Appendix B, Nondisclosure of Confidential Information, is amended to include the following sentence at the end:

In the alternative, the Contractor shall have all individuals who work on this Contract execute a Contractor non-disclosure agreement that will remain in effect during and up to 12 months after employment with Contractor.

17.2.11 Section 32 of Appendix B, Termination of Agreement, is amended to replace “or” in the sixth paragraph, line 6, after “...notice of termination” with “is”.

## **Section 18 ENTIRE AGREEMENT**

18.1 The Agreement, including all appendices and attachments, constitutes the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by both Parties hereto, except as otherwise provided herein.


(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto have hereunto signed this AGREEMENT on the day and year appearing opposite their respective signatures.


Agency Certification: "In addition to the acceptance of this Agreement, I also certify that original copies of this signature page will be attached to all exact copies of this Agreement."

Contractor Certification: By signing I certify my express authority to sign on behalf of myself, my company, or other entity and full knowledge and acceptance of this Agreement and all appendices. By signing, I affirm my understanding of and agreement to comply with the Department's procedures relative to the Procurement Lobbying Law as required by State Finance Law §139-j and §139-k.

**NEW YORK STATE  
DEPARTMENT OF CIVIL SERVICE**

Name: Rebecca A. Corso  
Title: Deputy Commissioner  
By:   
Date: 8/26/20

**LABORATORY CORPORATION OF  
AMERICA HOLDINGS**

Name: Pamela S. Edwards  
Title: Vice President  
By:   
Date: June 10, 2020

**CORPORATION ACKNOWLEDGMENT**

STATE OF } North Carolina

Sworn Statement:

COUNTY OF } Durham

On the 10th day of June in the year 2020, before me personally appeared Pamela S. Edwards, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that she maintains an office at Town of Morrisville, County of Wake, State of North Carolina; and further that: she is the Vice President of Laboratory Corporation of America Holdings, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

Notary Public 

Date: 10/17/2020

Approved as to form: \_\_\_\_\_

Approved: \_\_\_\_\_

Letitia James  
ATTORNEY GENERAL

Thomas P. DiNapoli  
STATE COMPTROLLER

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

By: 

<b>APPROVED</b>
DEPT. OF AUDIT & CONTROL

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

Date: 

Oct 16 2020 Melanie L Young
FOR THE STATE COMPTROLLER

**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 \$10,000, 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 Section 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 because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by 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 (2NYCRR 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 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 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 section. 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](mailto:opa@esd.ny.gov)

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

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

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to 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) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (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 Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law

Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

a contract and appears on the Prohibited Entities list after contract award.

**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 Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or 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:

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

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

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

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



**New York State Department of Civil Service**

**APPENDIX B - STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS**

**1. INTEGRATION**

The contract executed between the Department and the Contractor (or Purchase Order issued by the Department) is hereinafter referred to as the Agreement. The Agreement, including all Exhibits and Appendices, including this Appendix B, copies of which are attached thereto, and incorporated therein by reference, constitutes the entire agreement between the Parties for the purpose of the fulfillment of Program Services or Project Services. All prior agreements, representations, statements, negotiations and undertakings are superseded hereby.

All statements made by the Department shall be deemed to be representations and not warranties.

**2. EXECUTORY PROVISION**

Section 112 of the State Finance Law requires that any contract made by a State department which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The Parties recognize that, if the Agreement is for fifty thousand dollars or more, it is wholly executory until and unless approved by the Comptroller of the State of New York.

**3. CHOICE OF LAW**

The Parties agree that the Agreement shall be interpreted according to the laws of the State of New York, except where the federal supremacy clause requires otherwise. The Contractor shall be required to bring any legal proceeding against the Department arising from the Agreement in New York State courts located in Albany County.

**4. DISPUTE RESOLUTION**

Except as otherwise provided in the Agreement, any dispute raised by the Contractor concerning any question of fact or law arising under the Agreement which is not disposed of by mutual agreement of the Parties shall be decided initially by the designee of the President of the Civil Service Commission (President). A copy of the written decision shall be furnished to the Contractor. The Parties shall proceed diligently with the performance of the Agreement and shall comply with the provisions of such decision and continue to comply pending further resolution of any such dispute as provided herein. The decision of the designee of the President shall be final and conclusive unless, within ten (10) Days from the receipt of such decision, the Contractor furnishes the President a written appeal. In the event of an appeal, the President shall promptly review the initial decision, and confirm, annul, or modify it. The decision of the President shall be final and conclusive unless, as determined by a court of competent jurisdiction, it violates one of the provisions of section 7803 of the Civil Practice Law and Rules. Pending final decision of any Article 78 Proceeding hereunder, both Parties shall proceed diligently with the performance of the Agreement in accordance with the President's decision.

**5. WAIVER OF BREACH**

No term or provision of the Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by a Party to, or waiver of, a breach under the Agreement shall constitute a consent to, a waiver of, or excuse for any other, different or subsequent breach.

**6. NEW YORK STATE REQUIREMENTS**

The Contractor acknowledges that it is bound by the terms of Appendix A, Standard Clauses For All New York State Contracts, which is attached and incorporated by reference to the Agreement.

**7. OUTSIDE OF SCOPE**

The Contractor agrees that any and all work performed outside the scope of the Agreement shall be deemed to be gratuitous and not subject to any charge, cost or payment of any kind.

**8. NON-ASSIGNABILITY**

Neither the rights nor the obligations of the Contractor under the Agreement may be conveyed, assigned, delegated, or otherwise transferred in any manner whatsoever by the Contractor, either in whole or in part, without the prior written approval of the Department.

**9. NOTIFICATION**

All notices permitted or required by the Agreement to be given by one Party to the other shall be in writing and shall be transmitted either (1) via certified or registered mail, return receipt requested; (2) by facsimile transmission; (3) by personal delivery; (4) by expedited delivery service; or (5) by e-mail.

**10. INDEMNIFICATION**

The Contractor agrees to indemnify, defend and save harmless the Department, the State, its officers, agents and employees, for any claims or losses the Department, the State or any individuals may suffer when such claims or losses result from the claims of any person or organization for any and all injuries or damages caused by the negligent acts or omissions of the Contractor, its officers, employees, agents, consultants and/or sub-contractors in performance of the Agreement. Furthermore, the Contractor agrees to indemnify, defend and save harmless the Department and the State, its officers, agents, and employees from any and all claims or losses caused by the acts or omissions of any and all contractors, sub-contractors, consultants and any other persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of the Agreement and from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of the Agreement, and against any loss, damages or actions, including, but not limited to, costs and expenses, for violation of proprietary rights, copyrights, patents, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any material, information or data furnished under the Agreement, or based on any libelous or otherwise unlawful matter contained in such material, information or data, except as otherwise provided in the Article entitled "Patent Copyright or Proprietary Rights Infringement" of this Appendix B.

The Contractor also shall provide indemnification against all losses, and/or cost expenses (including reasonable counsel fees) that may be incurred by reason of the Contractor's breach of any term, provision, covenant, warranty, or representation contained herein and/or in connection with the enforcement of the Agreement or any provision hereof.

The Department does not agree to any indemnification provisions in any documents attached hereto that require the Department or the State of New York to indemnify or save harmless the Contractor or third parties.

Notwithstanding anything to the contrary in the Agreement, neither the Department nor the Contractor shall be liable to the other for any special, consequential, or punitive damages, or loss of profits or revenues, whether such damages are alleged as a result of tort (including strict liability), contract,

warranty, or otherwise, arising out of or relating to either Party's acts or omissions under the Agreement.

**11. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT**

The Contractor, solely at its expense, shall defend any claim or suit which may be brought against the Department or the State for the infringement of United States patents, copyrights or proprietary rights arising from the Contractor's or the Department's use of any software, equipment, data, materials and/or information of any kind prepared, developed or furnished by the Contractor in connection with performance of the Agreement and, in any such suit, shall satisfy any final judgment for such infringement. The Department shall give the Contractor written notice for such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.

If principles of governmental or public law are involved, the State of New York may participate in the defense of any action identified under this Article, but no costs or expenses shall be incurred upon the account of the Contractor without the Contractor's written consent.

If, in the Contractor's opinion, any software, equipment, data, materials and/or information prepared, developed or furnished by the Contractor is likely to or does become the subject of a claim of infringement of a United States patent, copyright or proprietary right, then, without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Department's prior written approval, substitute other equally suitable software, equipment, materials, data and/or information. In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any software, equipment, materials and/or information under the Agreement infringes on any patent, copyright, or proprietary right, such action shall be forwarded by the Department to the Contractor for defense and indemnification under this Article and to the Office of the Attorney General of the State of New York together with a copy of the Agreement. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the defense and indemnification set forth herein, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York, in writing, and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of the Agreement. The Contractor shall in such event protect the interests of the State of New York and shall take the steps necessary to secure a continuance to permit the State of New York to appear and defend its interest in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses which the State shall have.

**12. DATE/TIME WARRANTY**

The Contractor warrants that products furnished pursuant to the Agreement shall be able to accurately process, date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific products and/or services must perform as a package or system, this warranty shall apply to the products and/or services as a system.

Where the Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), the Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure, or error due to the inaccuracy of the Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap

year calculations. The Contractor shall be responsible for damages resulting from any delays, errors, or untimely performance resulting there from, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of the Agreement through a) ninety (90) days or b) the Contractor's or product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under the Agreement for breach of warranty.

### **13. VIRUS WARRANTY**

Product contains no viruses, either known to the Contractor or which reasonably should have been known to the Contractor exercising due diligence. The Contractor is not responsible for viruses introduced at the Department's site.

### **14. TITLE AND OWNERSHIP WARRANTY**

The Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Product(s) transferred to the Department under the Agreement. The Contractor shall be solely liable for any costs of acquisition associated therewith. The Department may require the Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The Department's request or failure to request such documentation shall not relieve the Contractor of liability under this warranty.

### **15. USE RESTRICTIONS AND INTELLECTUAL PROPERTY**

The Parties agree that all work by the Contractor for the Department is intended as work for hire. The Parties agree that the Contractor's work is specifically ordered and commissioned for use as contributions to a collective work, or is other such work as specified by section 101(2) of the U.S. Copyright Act [17 U.S.C. 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York and the Department. Furthermore, the Department and the Contractor agree that the State of New York and the Department are the owners of all copyrights regarding the work. The Contractor warrants to the State of New York and the Department that the Contractor, and all of its subcontractors and their employees, who have been, or may be used in regard to the Agreement, forfeits all past or future claims of title or ownership to the work produced.

Materials such as forms and publications used by the Contractor in the course of its performance under the Agreement which have been agreed upon by the Parties as generic materials are specifically excluded from this provision.

### **16. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES**

For purposes of this Article, the term "Department" is understood to mean the Department acting on behalf of the State.

#### **(A) Definitions**

1. Product(s): A deliverable furnished under the Agreement by or through the Contractor, including existing and custom Product(s), including, but not limited to: a) components of the hardware environment; b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); c) third party software; d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and e) any properties embodied therein, whether in tangible or

intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

2. Existing Product(s): Tangible Product(s) and intangible licensed Product(s) which exist prior to the commencement of work under the Agreement. The Contractor retains the burden of proving that a particular product existed before commencement of the Agreement.
3. Custom Product(s): Product(s), preliminary, final or otherwise, which are created or developed by the Contractor, or its subcontractors, partners, employees, or agents under the Agreement for the benefit of the Department.

**(B) Title to Project Deliverables**

The Contractor acknowledges that it is commissioned by the Department to perform services detailed in the Agreement. Unless otherwise specified in writing in the Agreement, the Department shall have ownership and/or license rights as follows:

1. Existing Product(s):
  - a) Hardware - Title and ownership of Existing Hardware Product shall pass to Department upon acceptance.
  - b) Software - Title and ownership to Existing Software Product(s) delivered by the Contractor under the Agreement which is normally commercially distributed on a license basis by the Contractor or other independent software vendor/proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or other independent software vendor/proprietary owner ("ISV"). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless the Contractor advises the Department as part of the Contractor's bid proposal that adaptation will violate existing agreements or statutes and the Contractor demonstrates such to the Department's satisfaction) and distribute Existing Licensed Product to the Department up to the license capacity stated in the work order with all license rights necessary to fully effect the general business purpose(s) stated in the Agreement and (b) recognize the State of New York as the licensee. Where these rights are not otherwise covered by the ISV's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Department shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.
2. Custom Product(s):

Effective upon creation of Custom Product(s), the Contractor hereby conveys, assigns and transfers to State the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Product(s) are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under the Agreement in the course of the Contractor's business.

Where payment for Custom Product does not involve Certificates of Participation (COPS) pursuant to Article 5-A of the State Finance Law or other third party financing, the Department may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of State taking exclusive ownership and title to such Products. In such case, the Department shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated herein.

In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value as determined by the Parties at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the State which complies with the terms of this paragraph.

3. Documentation, Data & Reports

The Department shall own title to all documentation, drawings, (e.g., engineering drawings, system diagrams, logic/schematics, plans, reports, training, maintenance or operating manuals), including network design, equipment configurations and other documentation prepared or developed pursuant to the Agreement, whether preliminary, final or otherwise. The Contractor shall deliver to the possession of the Department all work-in-progress documentation as it becomes available, but in no case longer than thirty (30) days after creation.

**17. FORCE MAJEURE**

Neither Party to the Agreement shall be liable or deemed to be in default for any delay or failure in performance under the Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accident, fire, explosions, earthquakes, floods, the elements, acts or omissions of public utilities or strikes, work stoppages, slowdowns or other labor interruptions due to labor/management disputes involving entities other than the Parties to the Agreement, or any other causes not reasonably foreseeable or beyond the control of a Party. The Parties are required to use best efforts to eliminate or minimize the effect of such events during performance of the Agreement and to resume performance of the Agreement upon termination or cessation of such events.

**18. TIME OF THE ESSENCE**

The Department and the Contractor acknowledge and agree that time is of the essence for the Contractor's performance under the Agreement.

**19. RIGHTS AND REMEDIES**

The rights, duties and remedies set forth in the Agreement shall be in addition to, and not in limitation of, rights and obligations otherwise available at law.

**20. FEDERAL AND STATE COMPLIANCE**

The Contractor shall ensure that its employment practices comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended. Further, the Contractor shall ensure compliance with the Americans With Disabilities Act (42 USC §2101 et. seq.) such that programs and services provided during the course of performance of the Agreement shall be accessible under Title II of the Americans With Disabilities Act and as otherwise applicable under the Americans With Disabilities Act.



**21. TAXES**

It shall be understood that the Department, as an agency of the State of New York, is not liable for the payment of any sales, use, excise, or other form of tax however designated, levied or imposed, and shall agree to reimburse the Contractor for same only if taxes would have been incurred through the Department's normal business operations.

**22. INDEPENDENT CONTRACTOR**

The Parties agree that the Contractor is an independent contractor, and the Contractor, its officers, employees, agents, consultants and/or sub-contractors in the performance of the Agreement shall act in an independent capacity and not as agents, officers or employees of the State or the Department. Neither the Contractor nor any sub-contractor shall thereby be deemed an agent, officer, or employee of the State. The Contractor agrees, during the term of the Agreement, to maintain at the Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, State, and local taxes, and all FICA contributions.

**23. NO THIRD PARTY BENEFICIARIES**

Nothing contained in the Agreement, expressed or implied, is intended to confer upon any person, corporation, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Agreement.

**24. HEADINGS OR CAPTIONS**

The headings or captions contained within the Agreement are intended solely for convenience and reference purposes and shall in no way be deemed to define, limit or describe the scope or intent of the Agreement or any provisions thereof.

**25. PARTIAL INVALIDITY**

Each Party agrees that it shall perform its obligations under the Agreement in accordance with all applicable federal and State laws, rules, and regulations, policies and/or guidelines now or hereafter in effect. If any term or provision of the Agreement shall be found to be illegal or unenforceable, then, notwithstanding such term or provision, the Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken.

**26. CONFLICT OF INTEREST**

The Contractor shall ensure that its officers, employees, agents, consultants and/or sub-contractors comply with the requirements of the New York State Public Officers Law ("POL"), as amended, including but not limited to sections 73 and 74, as amended, with regard to ethical standards applicable to State employees, and particularly POL sections 73(8)(a)(i) and (ii) regarding post-employment restrictions affecting former State employees. Additionally, the Contractor shall ensure that no violation of these provisions will occur by reason of the Contractor's proposal for or negotiation and execution of the Agreement or in its delivery of services pursuant to the Agreement. If, during the term of the Agreement, the Contractor becomes aware of a relationship, actual or potential, which may be considered a violation of the POL or which may otherwise be considered a conflict of interest, the Contractor shall notify the Department in writing immediately. Should the Department thereafter determine that such employment is inconsistent with State law; the Department shall so advise the Contractor in writing, specifying its basis for so determining, and may require that the contractual or

employment relationship be canceled. Failure to comply with these provisions may result in suspension or cancellation of the Agreement and criminal proceedings as may be required by law.

The Contractor is required to make full disclosure of any circumstances that could affect its ability to perform in complete compliance with the POL. Any questions as to the applicability of these provisions should be addressed by the Contractor to the New York State Ethics Commission, 540 Broadway, Albany, NY 12207 (518) 408-3976.

## **27. AUDIT AUTHORITY**

The Contractor acknowledges that the Department and the Office of the State Comptroller have the authority to conduct financial and performance audits of the Contractor's delivery of Program Services (or Project Services) in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities. Such audit activity may include, but not necessarily be limited to, the review of documentary evidence to determine the accuracy and fairness of all items on the Contractor's submission of claims for payment under the Agreement, and the review of any and all activities relating to the Contractor's performance and administration of the Agreement.

The Contractor shall make available documentary evidence necessary to perform such reviews. Documentation made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation and pertinent contracts and correspondence.

The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the State Comptroller as set forth in Appendix A of the Agreement - Standards Clauses for All New York State Contracts.

## **28. CONFIDENTIALITY**

All records maintained by the Contractor and relating to the Agreement are confidential and shall be used by the Contractor and its officers, employees, and subcontractors or agents solely for the purpose of carrying out its obligations under the Agreement. Except as directed by a court of competent jurisdiction or as may be permitted or required by applicable New York State or federal law or regulations, no such records may be otherwise used or released to any person by the Contractor, its employees, subcontractors or agents, either during the term of the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement.

The Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of services under the Agreement, including any information provided by the Department, except as required by subcontractors or agents solely for the purpose of carrying out obligations under the Agreement or as required by law.

The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or applicable subcontractors contains a provision that conforms strictly to the provisions of this Article.

## **29. INFORMATION SECURITY REQUIREMENTS**

In accordance with the Information Security Breach and Notification Act (ISBNA) (General Business Law §889-aa, State Technology Law §208), Contractor shall be responsible for complying with provisions of the ISBNA and the following terms contained herein with respect to any private information (as defined in ISBNA) received by Contractor under the Agreement (Private Information) that is within the control of the Contractor either on the Department's information security systems or the Contractor's information security system (System). In the event of a breach of the security of the System (as defined by ISBNA), Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and restore security of the System to prevent any further breaches. Contractor shall also notify the Department of any breach of the security of the System immediately following discovery of such breach.

Except as otherwise instructed by the Department, Contractor shall, to the fullest extent possible, first consult with and receive authorization from the Department prior to notifying any individuals, the State Office of Cyber Security and Critical Infrastructure Coordination (CSCIC), the State Consumer Protection Board and the Office of the Attorney General (OAG) or any consumer reporting agencies of a breach of the security of the System or concerning any determination to delay notification due to law enforcement investigations. Contractor shall be responsible for providing the notice to all such required recipients and for all the costs associated with providing such notice. Contractor shall be liable for any other costs associated with noncompliance of ISBNA if caused by the Contractor or Contractor's agents, officers, employees, or subcontractors. Nothing herein shall in any way impair the authority of the OAG to bring an action against the Contractor to enforce the provisions of ISBNA or limit Contractor's liability for any violation of the ISBNA. Additional information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach>

Contemporaneous with the execution of the Agreement, the Contractor and its designees shall execute the Department's Third Party Connection and Data Exchange Agreement and any other protocol required by the Department, and shall ensure its employees, agents and designees complete the related Third Party Acceptable Use Policy and Agreement if applicable, to ensure the security of data transmissions and other information related to the administration of the Agreement. This request may be waived by the Department in its sole discretion.

## **30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors have access in the course of the Contractor's performance under the Agreement. For purposes of the Agreement, all State information of which the Contractor, its officers, agents, employees and subcontractors becomes aware during the course of performing services for the Department shall be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

- (a) information that is previously rightfully known to the receiving party without restriction on disclosure;
- (b) information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and information that is independently developed by the Contractor without use of confidential information of the State.

The Contractor shall hold the State and the Department harmless from any loss or damage to the State or the Department resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such Confidential Information.

The Contractor shall provide for its officers, agents, employees, and subcontractors to acknowledge and execute a nondisclosure agreement containing substantially the terms described in this Article, if requested to do so by the Department or the State.

This representation shall survive termination of the Agreement.

### **31. FREEDOM OF INFORMATION LAW**

Disclosure of information and material provided to the Department by the Contractor in the course of the Contractor's performance under the Agreement shall be permitted consistent with the laws of the State of New York, and specifically the Freedom of Information Law (FOIL), Article 6 of the Public Officers Law. The Department shall take reasonable steps to protect from public disclosure any of the records relating to the Contractor's performance under the Agreement that otherwise are exempt from disclosure under FOIL.

If the Contractor believes that any information or material provided to the Department constitutes trade secret information that should be exempted from FOIL disclosure, the Contractor must, at the time of the materials' submission, request the exemption in writing, specifically identifying the material by page number, line, or other appropriate designation, and provide a particularized explanation as to why the material constitutes trade secret information and how the disclosure of the identified information would cause substantial injury to the Contractor's competitive position. The material sought to be protected from disclosure must be clearly marked in yellow highlighter, on a duplicate copy of the submission and may be provided in hardcopy or on a CD. Generically marking all material as "Confidential" will not be considered adequate for the purpose of this Article.

The Department's receipt of the Contractor's submission of material and the Contractor's request for protection of the material from FOIL disclosure does not constitute a determination that the information is exempt from disclosure under FOIL. In the event any information or material is requested pursuant to FOIL, the Department will address each party's interests fully in accordance with the procedures required by Article 6 of the Public Officers Law.

### **32. TERMINATION OF AGREEMENT**

In addition to any termination provisions specified elsewhere in the Agreement, the following provisions also shall apply:

The Agreement may be terminated by mutual written agreement of the Parties.

The Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of the Agreement, including any exhibits incorporated herein, provided that the Department shall give the Contractor written notice via registered or certified mail, return receipt requested, or hand delivery, such written notice to specify the Contractor's failure and the termination of the Agreement. Termination shall be effective ten (10) Business Days after receipt of such notice unless the Contractor, in the opinion of the Department, has cured such failure. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination. Upon termination for cause, the Department shall have the right to award a new contract to another contractor. Termination for cause shall create a liability upon the Contractor

for actual damages incurred and for all reasonable additional costs incurred in reassigning the Agreement.

The Agreement may be terminated if the Department deems that termination would be in the best interest of the State provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery.

The Agreement may be terminated immediately in the event the Department determines that funds are unavailable. The Department agrees to provide notice to the Contractor as soon as it becomes aware that funds are unavailable in the event of termination under this paragraph. If the initial notice is via oral notification, the Department shall provide written notice immediately thereafter. The Department shall be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from the Department.

In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion. The Contractor agrees, after consultation with the Department, to cancel such outstanding obligations as the Contractor deems appropriate in the exercise of sound business judgment.

Upon termination of the Agreement each Party shall, if applicable, return to the other all papers, materials, and other properties of the other Party held by each for purposes of performance under the Agreement. In addition, each Party shall assist the other Party in orderly termination of the Agreement and the transfer of all aspects hereof, tangible, and intangible, as may be necessary to ensure the orderly administration of the State program.

### **33. CONTRACTOR PERSONNEL**

The Contractor shall designate an Account Executive, who shall be the contact person for all matters arising under the Agreement.

The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its personnel. These functions shall be carried out by the Contractor in accordance with the provisions of the Agreement and with all applicable federal and State laws and regulations.

The Contractor is required to commit key personnel for the administration of all aspects of the Agreement. In the event that any of the key personnel will be or are unavailable for the performance of their duties, the Contractor will designate and propose to the Department an equally qualified alternate with full authority to act for the unavailable key person.

The Contractor shall notify the Department in writing of any changes in the key personnel designated for performance of the Agreement. This shall include any changes in the personnel designated to bind the Contractor.

The Department reserves the right to demand the reassignment or cancellation of assignment to duties under the Agreement of any Contractor personnel so assigned. The Department shall not exercise the authority unreasonably. The Contractor agrees to replace any employees so reassigned or canceled

with an employee of equal or better qualifications. If the Department exercises its right under this provision, it agrees to provide written notice to the Contractor setting forth its reasons with specificity.

### **34. OPERATIONAL CONTACTS**

The Contractor shall maintain appropriate corporate and/or legal authority, which shall include, but not be limited to, the maintenance of an organization capable of delivering Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which Program Services are to be delivered pursuant to the Agreement. The Contractor also shall maintain operations, financial and legal staff that shall be directly available to the Department's operations, financial and legal staff, respectively. For purposes of the Agreement, maintenance of such staff and staff availability by the Contractor shall in no way create any agency relationship between the Department and the Contractor.

The Contractor acknowledges and agrees that no aspect of the Contractor's performance under the Agreement is contingent upon Department personnel or the availability of Department resources, with the exception of all proposed actions of the Contractor specifically identified in the Agreement as requiring the Department approval. With respect to such approval, the Department shall act promptly and in good faith.

The Contractor must cooperate fully with any other contractors who may be engaged by the Department relative to the Agreement.

The Contractor must ensure that all contacts by the Contractor personnel with other New York State agencies, external organizations (Federal Agencies, Unions, etc.) which result in any charge, cost or payment of any kind, must receive prior written authorization from the Department's Contract Manager.

### **35. SUBCONTRACTING**

If allowed in the solicitation instrument (e.g., Request for Proposal, Invitation for Bids, etc.) that results in the Agreement, the Contractor may arrange for specified portion(s) of its responsibilities under the Agreement to be subcontracted to a Key Subcontractor(s). A "Key Subcontractor" means that vendor(s) with whom the Contractor subcontracts to provide any portion of Program Services. If the Contractor determines to subcontract a portion(s) of Program Services, the Key Subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under the Agreement must be fully explained by the Contractor to the Department. The Contractor retains ultimate responsibility for all Program Services performed under the Agreement.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of the Agreement including, but not be limited to, the body of the Agreement, Appendix A - Standard Clauses For All New York State Contracts, Appendix B - Standard Clauses for All Department Contracts and if applicable as determined by the Department, Appendix C - Third Party Connection and Data Exchange Agreement. Unless waived in writing by the Department, all subcontracts between the Contractor and a Key Subcontractor shall expressly name the State of New York, through the Department, as the sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract with a Key Subcontractor, as well as any amendments to said subcontract(s), and this right shall not make the Department or the State of New York a party to any subcontract or create any right, claim, or interest in the Key Subcontractor or proposed Key Subcontractor against the Department.



The Department reserves the right, at any time during the term of the Agreement, to verify that the written subcontract between the Contractor and Key Subcontractor(s) is in compliance with all of the provision of this Article and any subcontract provisions contained in the Agreement. In addition to other remedies allowed by law, the Department reserves the right to terminate the Agreement for cause if an executed subcontract does not contain all of the provisions/statements stipulated above. If during the term of the Agreement, any executed subcontract between the Contractor and a Key Subcontractor is amended, the Contractor shall, within 30 calendar days of such amendment, provide a copy to the Department.

The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a Key Subcontractor or which may affect the performance of the Contractor's duties under the Agreement. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the Agreement.

### **36. PUBLICITY AND COMMUNICATIONS**

The Contractor shall ensure that all requests for the Contractor's participation in events where the Contractor will be participating on behalf of the Department receive prior written authorization from the Department.

No public discussion or news releases relating to the Agreement shall be made or authorized by the Contractor or the Contractor's agent without the prior written approval of the Department, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Agreement and answer any questions relating thereto to any State or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

### **37. CONSULTANT DISCLOSURE REQUIREMENTS**

Unless directed otherwise by the Department, the Contractor shall demonstrate its compliance with Chapter 10 of the Laws of 2006 throughout the term of the Agreement by submitting to the Department and to the Office of the State Comptroller a "State Consultant Services - Contractor's Annual Employment Report" for each State Fiscal Year. Such report shall be due no later than May 15<sup>th</sup> of each year following the end of the State Fiscal Year being reported. Such report shall be required of any contract that includes services for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health and mental health services, accounting, auditing, paralegal, legal, or similar services. Such report shall conform with Bulletin No. G-226 – Form B as issued by the Office of the State Comptroller. The report must be submitted to the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11<sup>th</sup> floor, Albany, NY 12236, ATTN: Consultant Reporting; and to the Department's Contract Manager.

### **38. PROCUREMENT LOBBYING RESTRICTIONS UNDER STATE FINANCE LAW SECTIONS 139-j AND 139-k**

The Contractor certifies that all information that it has provided or will provide to the Department pursuant to State Finance Law sections 139-j and 139-k is complete, true, and accurate, including but not limited to information regarding prior determinations of non-responsibility within the past four years based upon (i) impermissible contacts of other violations of SFL section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity.

The Department reserves the right to terminate the Agreement in the event it is found that the Contractor's certification of its compliance with SFL sections 139-j or 139-k was intentionally false or intentionally incomplete. The Department may exercise this right to terminate the Agreement by providing written notification to the Contractor in accordance with Article 9 of this Appendix B.

### **39. VENDOR RESPONSIBILITY**

The Contractor is required to provide the DCS with an updated Vendor Responsibility Questionnaire when requested to do so by the DCS throughout the term of the Agreement. Regardless, the Contractor is required to report to the DCS any material changes in the information reported in its initial Vendor Responsibility Questionnaire.

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

Suspension of Work (for Non-Responsibility): The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when s/he discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner or his/her designee issues a written notice authorizing a resumption of performance under the Contract.

Termination (for Non-Responsibility): Upon written notice to the Contractor, a reasonable opportunity to be heard with the appropriate DCS officials or staff, the Contract may be terminated by the Commissioner or his/her designee to be non-responsible. In such an event, the Commissioner or his/her designee may complete the contractual requirements in any manner s/he may deem advisable and pursue legal or equitable remedies for breach.

### **40. TAX LAW SECTION 5-A - CERTIFICATION REGARDING SALES AND COMPENSATING USE TAXES**

In the event the value of the Agreement exceeds \$100,000, the Contractor must file a properly completed Form ST-220-CA with the Department and a properly completed Form ST-220-TD with the Department of Taxation & Finance before the Agreement may take effect.

In addition, after the Agreement has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if the Agreement's term is renewed; further, a new Form ST-220-TD must be filed with the Department of Taxation & Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete.

### **41. CONTRACT PAYMENT**

Contractor shall provide complete and accurate billing invoices to the Department in order to receive payment. Billing invoices submitted to the Department must contain all information and supporting documentation required by the Agreement, the Department and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under the Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

*February 2014*

## Appendix D

### **PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**

#### **I. General Provisions**

- A. The Department of Civil Service (the “Department”) 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 the Department, to fully comply and cooperate with the Department 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 assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to the Department pursuant to the Contract and applicable law.

#### **II. Contract Goals**

- A. For purposes of this Contract, the Department hereby establishes an overall goal of **0 percent** for MWBE participation, **0 percent** for New York State-certified minority-owned business enterprise (“MBE”) participation and **0 percent** 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>.

## Appendix D

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 25percent 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 the Department 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")

- 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.

## Appendix D

2. The Contractor shall submit an EEO policy statement to the Department within seventy-two (72) hours after the date of the notice by the Department to award the Contract to the Contractor.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, the Department may require the Contractor or subcontractor to adopt a model statement (see Appendix D-1 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. Form EEO-100 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. 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 the Department.

## Appendix D

### D. Form EEO-101 - Workforce Utilization Report

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 the Department on a Quarterly basis 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

- 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 the Department, 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 the Department, 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, the Department shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.



## Appendix D

### 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 the NYSCS, or a non-electronic method provided by the Department. 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, the Department shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If the Department, 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, the Department 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

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 the Department by the 10<sup>th</sup> day following the end of each quarter during the term of the Contract.

### VII. Liquidated Damages - MWBE Participation

- A. Where the Department 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 the Department 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.

## Appendix D

- 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 the Department, the Contractor shall pay such liquidated damages to the Department 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.



Department of Civil Service

MWBE – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT RFP entitled “CLINICAL LABORATORY SERVICES”

M/WBE AND EEO POLICY STATEMENT

Laboratory Corporation of America Holdings the (awardee/contractor) Contractor agree to adopt the following policies with respect to the project being developed or services rendered at

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MWBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
(2) Request a list of State-certified MWBEs from AGENCY and solicit bids from them directly.
(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MWBEs.
(4) Where feasible, divide the work into smaller portions to enhanced participations by MWBEs and encourage the formation of joint venture and other partnerships among MWBE contractors to enhance their participation.
(5) Document and maintain records of bid solicitation, including those to MWBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting MWBE contract participation goals.
(6) Ensure that progress payments to MWBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage MWBE participation.

NOT APPLICABLE

EEO

- (a) This organization 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 programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
(b) This organization shall state in all solicitation 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 disability or marital status.
(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.
(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
(e) This organization will include the provisions of sections (a) through (d) of this agreement 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 State contract

APPENDIX D-1



Department of Civil Service

MWBE – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

Agreed to this 29th day of May, 2019

By [Redacted Signature]

Print: Pamela S. Edwards

Title: Vice President

Pamela S. Edwards is designated as the Minority Business Enterprise Liaison (Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (MWBE-EEO) program.

**M/WBE Contract Goals**

0 percent Minority and Women's Business Enterprise Participation

0 percent Minority Business Enterprise Participation

0 percent Women's Business Enterprise Participation

(Aut [Redacted Signature])

Title: Pamela S. Edwards

Date: 5/29/2019

## Appendix E

### **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The Department recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Department’s contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, the Department conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor.

Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) or 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.



**SECTION 3: PROJECT SCOPE****3.1 Project Services**

For purpose of submitting a Proposal, an Offeror must be capable of providing all the following Project Services:

- Clinical laboratory testing services;
- Phlebotomy and other specimen collection services;
- Specimen courier services; and
- Testimony at legal and/or administrative proceedings.

[**Note:** The use and disclosure of personal health information by the Offeror will be subject to the *Health Insurance Portability and Accountability Act* (HIPAA) Business Associate requirements (Appendix C).]

1. Clinical Laboratory Testing Services

The Clinical Laboratory Testing Services markers are critical components that will ensure the delivery of quality health services to EHS clients by the Offeror. The Clinical Laboratory Testing Services encompass a full range of laboratory tests that will be provided by the Offeror with the approval of EHS.

As EHS seeks to ensure that state-of-the-art testing is available for its clients, all current test procedures and any new procedures that may be added during the term of Contract must be performed in accordance with accepted medical practices.

Listed below are the tests required for the Chemistry Screen Panel, Hematology Panel, and Complete Urinalysis. These tests may be ordered as singular panels as per the requesting State Agency's need or as grouped laboratory tests (Profile) as shown below. EHS will defer to a State Agency's request regarding the client's examination needs.

Additional tests that must be provided individually, but are not included in the Chemistry Screen Panel, Hematology Panel, or Complete Urinalysis are listed below under the heading "Separate Tests."

Finally, routine drug screening and blood alcohol testing is required as described below.

a. Singular Panels

i. Chemistry Screen Panel

The laboratory tests that must be included in the Chemistry Screen Panel are listed below.

Glucose	Sodium	Total Protein
Chloride	BUN	Albumin/Globulin Ratio
BUN / Creatinine Ratio	Globulin	G-Glutamyl Transpeptidase
Calcium	Direct Bilirubin	LDH
Albumin	Transaminase, SGPT	Carbon Dioxide



Total Bilirubin	Cholesterol	EGFR
Alkaline Phosphatase	Transaminase SGOT	Phosphate
Iron	Potassium	Creatinine
Triglycerides		

ii. Hematology Panel

The Hematology Panel must include cell counts, RBC indices, WBC differential, and a microscopic examination (when indicated) as well as the tests and procedures specified below.

WBC	RBC	HGB
HCT	MCH	MCHC
MCV	Basophils	Monocytes
Neutrophils	Eosinophils	Platelet Count
Lymphocytes		
WBC differential must include both a percent and absolute count for each cell type.		

iii. Complete Urinalysis

The Complete urinalysis panel must include both a dipstick and microscopic examination of the urine as well as the following tests and procedures:

Color	Appearance	pH
Specific Gravity	Ketones	Protein
Glucose	Blood	Bilirubin
Leukocyte Esterase	Nitrite	WBC
RBC	Epithelial Cells	Bacteria
The presence of casts, crystals, yeasts, etc., must be noted in the report.		

b. Grouped Laboratory Tests

i. Profile 1

This profile includes all the tests listed in the Chemistry Screen Panel, Hematology Panel and Complete Urinalysis.

ii. Profile 2

This profile includes all the tests in the Profile 1 plus a lipid analysis (with HDL and LDL at a minimum).

c. Separate Tests

The following tests are not part of any panel or profile. The separate tests are ordered individually as needed:

Zinc Protoporphyrin	HIV-1 Elisa Screen with confirmation
Lead, Blood	VDRL
PSA, Total	B. Burgdorferi AB
Hepatitis B surface AB	HCV AB
Hepatitis B surface AG	Polychlorinated Biphenyls
Hepatitis B core AB	Heavy Metals, Urine
Cholinesterase, Plasma	Hemoglobin A1C
Cholinesterase, RBC	Thyroid Profile

## 2. Routine Drug Screening

The Offeror's clinical laboratory must be capable of providing both drug screen panels defined below. Both substance abuse panels must include tests with Gas Chromatography/Mass Spectrometry ("GC/MS") confirmation for the drugs and drug categories listed in each panel. The initial test level and the GS/MS confirmation level must meet the criteria defined for each panel:

### a. Substance Abuse Panel 1

<b><u>Substance</u></b>	<b><u>Initial Test Level</u></b>	<b><u>GC/MS Confirmation Level</u></b>
Amphetamines	1000 ng/mL	500 ng/mL
Barbiturates	300 ng/mL	200 ng/mL
Benzodiazepines	300 ng/mL	200 ng/mL
Buprenorphine	5 ng/mL	2 ng/mL
Cocaine Metabolites	300 ng/mL	150 ng/mL
Hydrocodone	300 ng/mL	300 ng/mL
Marijuana Metabolites	50 ng/mL	15 ng/mL
Methadone	300 ng/mL	200 ng/mL
Methaqualone	300 ng/mL	200 ng/mL
Opiates	300 ng/mL	300 ng/mL
Oxycodone	100 ng/mL	100 ng/mL
Phencyclidine	25 ng/mL	25 ng/mL
Propoxyphene	300 ng/mL	200 ng/mL

### b. Substance Abuse Panel 2

<b><u>Substance</u></b>	<b><u>Initial Test Level</u></b>	<b><u>GC/MS Confirmation Level</u></b>
Amphetamines	1000 ng/mL	500 ng/mL
Barbiturates	300 ng/mL	200 ng/mL
Benzodiazepines	300 ng/mL	200 ng/mL
Buprenorphine	5 ng/mL	2 ng/mL
Cocaine Metabolites	300 ng/mL	150 ng/mL
Hydrocodone	300 ng/mL	300 ng/mL
Methadone	300 ng/mL	200 ng/mL
Methaqualone	300 ng/mL	200 ng/mL

Opiates	300 ng/mL	300 ng/mL
Oxycodone	100 ng/mL	100 ng/mL
Phencyclidine	25 ng/mL	25 ng/mL
Propoxyphene	300 ng/mL	200 ng/mL

### 3. Blood Alcohol Testing

The Offeror's clinical laboratory must be capable of providing blood alcohol testing that includes tests with a GC confirmation test level of 0.01 g/dL.

### 4. Phlebotomy and Other Specimen Collection Services

Drug screening and confirmation specimens that result in positive findings must be retained by the Offeror for one calendar year in the event retesting is necessary.

EHS clinical staff performs all phlebotomy and specimen collection activities when conducting examinations in Cohoes, Hauppauge, Brooklyn, Utica, Syracuse and Buffalo as well as at New York State agency locations. This represents the majority of EHS' laboratory test volume. However, EHS has, on occasion, a need for phlebotomy and other specimen collection activities throughout New York State. EHS clients typically travel to Cohoes or other examination sites from other regions in the State. If a laboratory test must be performed because of one of the following reasons, it is more advantageous to refer the client to a specimen collection site geographically closer to their home rather than having the individual travel back to Cohoes or the original examination site.

- a. Tests must be repeated because the original sample hemolyzed.
- b. Tests must be repeated because abnormal results were obtained with the original sample.
- c. Drug screens and blood alcohol testing need to be conducted or repeated for various reasons.
- d. Client requires testing as a result of blood-borne pathogen exposure.
- e. Client does not require an examination, but only needs a laboratory test (i.e. hepatitis screening or blood lead level).
- f. EHS staff is unable to obtain a specimen from the client (i.e. poor venous access).

The Offeror must make available specimen collection sites throughout New York State.

<u>Geographic Region</u>	<u>Counties</u>
<u>Western New York</u>	<u>Allegany</u> <u>Cattaraugus</u> <u>Chautauqua</u> <u>Erie</u> <u>Genesee</u> <u>Livingston</u> <u>Monroe</u> <u>Niagara</u> <u>Ontario</u> <u>Orleans</u> <u>Seneca</u> <u>Wayne</u> <u>Wyoming</u> <u>Yates</u>
<u>Southern Tier</u>	<u>Broome</u> <u>Chemung</u> <u>Chenango</u> <u>Delaware</u> <u>Schuyler</u> <u>Steuben</u> <u>Tioga</u> <u>Tompkins</u>
<u>Central New York</u>	<u>Cayuga</u> <u>Cortland</u> <u>Fulton</u> <u>Herkimer</u> <u>Madison</u> <u>Montgomery</u> <u>Oneida</u> <u>Onondaga</u> <u>Oswego</u> <u>Otsego</u> <u>Schoharie</u>
<u>Capital Region</u>	<u>Albany</u> <u>Columbia</u> <u>Greene</u> <u>Rensselaer</u> <u>Saratoga</u> <u>Schenectady</u> <u>Warren</u> <u>Washington</u>
<u>Hudson Valley</u>	<u>Dutchess</u> <u>Orange</u> <u>Putnam</u> <u>Rockland</u>

	<u>Sullivan</u> <u>Ulster</u> <u>Westchester</u>
<b><u>New York City</u></b>	<u>Bronx</u> <u>Kings</u> <u>New York</u> <u>Queens</u> <u>Richmond</u>
<b><u>Long Island</u></b>	<u>Nassau</u> <u>Suffolk</u>
<b><u>North Country</u></b>	<u>Clinton</u> <u>Essex</u> <u>Franklin</u> <u>Hamilton</u> <u>Jefferson</u> <u>Lewis</u> <u>St. Lawrence</u>

5. Specimen Courier Services

The Offeror must confirm that specimens collected by EHS shall be picked-up upon request throughout New York State. In addition, a chain of custody determination is required when the Offeror transports specimens that were collected by EHS.

6. Testimony at Legal and Administrative Proceedings

- a. The Offeror's medical and/or technical staff may be required to testify at hearings and administrative proceedings. The Offeror must specify in the Financial Section of the Proposal the hourly rate associated with providing such testimony. Failure of the Offeror's medical and/or clinical staff to testify at required proceedings may result in cancellation of the Contract.
- b. The Offeror and its employees shall not represent nor testify on behalf of any party, other than the State of New York or the Offeror, who is or may be involved in any judicial, arbitration or administrative proceeding to which the State of New York is a party and which may arise out of or are related in any way to Project Services performed under the Contract, except as required by law or as may be expressly authorized by the State of New York in writing.

**3.2 Operational and Administrative Service Requirements**

1. Requisition Forms and Supplies

During the term of the Contract, the Offeror must provide test requisition forms, specimen collection supplies, and specimen preparation and packaging supplies for use by EHS at all its examination sites. Direct delivery of these supplies to examination sites in Cohoes, Hauppauge, Brooklyn, Utica, Syracuse and Buffalo must be provided. The Offeror will provide the necessary supplies for specimen collection when the collection is performed

at the Offeror's own locations, including but not limited to, specimen containers, tubes, tourniquets, needles, sharps and bio-hazard containers.

## 2. Test Results Reporting

Electronic reporting of test results is required. Results reporting for clinical laboratory tests (i.e. Profile 1 and Profile 2), routine drug screening, and blood alcohol testing must be received by EHS within two (2) business days following the collection of the specimen unless there is a problem with the specimen that makes it unable to be analyzed as expected.

If a specimen yields a laboratory result indicating a serious medical abnormality, such as seriously high blood glucose or low potassium levels, the Offeror must telephone this information to the EHS Medical Examination Center in Cohoes within 24 hours.

## 3. Statistical Reports

The Offeror is required to submit to the EHS Administrator quarterly reports stating the total number of each type of test performed. This report is be due by March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup> of each year of the contract, starting on September 30, 2019.

### **3.3 Identification of Individuals**

It is imperative that reasonable steps be taken by the Offeror to accurately identify the candidates presenting themselves for Project Services. The Offeror must not conduct a clinical laboratory test unless one of the following forms of identification is received from the candidate by the Offeror:

1. United States passport;
2. Certificate of United States citizenship;
3. Foreign passport;
4. State-issued driver's license or I.D. card with a photograph or information, including name, sex, date of birth, height, weight, and color of eyes;
5. US military card;
6. US Permanent Resident Card;
7. Application for Status as a Temporary Resident;
8. School identification card with photograph;
9. Voter's registration card;
10. Identification card issued by federal, state, or local government agencies;
11. Military dependent's identification card; or
12. United States Coast Guard Merchant Mariner card.

### **3.4 Appointment Scheduling**

1. All diagnostic testing services will be scheduled with the Offeror by EHS. The Offeror shall not schedule examinations directly for a Customer Agency or client. For the purposes of this RFP, Customer Agency is understood to mean those New York State

departments and agencies to which EHS provides medical examination services mandated or authorized by the Civil Service Law.

2. The Offeror shall schedule and conduct all specimen collections within seven (7) business days from receipt of notification from EHS that a given collection is required. However, an individual may be sent to a collection site for same day blood alcohol and urine drug testing. In addition, preplacement candidates may also appear for unscheduled testing.
3. All appointments shall be scheduled by the Offeror so that adequate time is spent by the Phlebotomist/collector. Appointments must be scheduled to minimize waiting time for individuals referred to the Offeror by EHS.

### **3.5 Insurance Requirements**

1. As of the start date of the Contract and throughout its entire term, the Offeror and its Key Subcontractor(s), if any, must have at least the minimum standard policy or policies for workers' compensation and disability benefits that cover the obligations of the Offeror and its Key Subcontractors required under the New York Workers' Compensation Law (WCL).
2. As of the start date of the Contract and throughout its entire term, the Offeror must have in effect, at a minimum, a standard policy of medical professional liability or malpractice insurance affording coverage for the Offeror and each Key Subcontractor, wherein the person(s) insured include any authorized individual of the named insured including all physicians, physician's assistants, nurse practitioners, nurses, or all laboratory employees and other personnel employed on a full-time, part-time, per diem, contract or retainer basis, while acting in the scope of his or her duties, subject to a minimum limit of liability in the amount of \$3,000,000 for each occurrence.
3. Automobile Liability insurance is required anytime the performance of Project Services might involve a vehicle used as part of the service or work provided. Such insurance shall cover liability arising out of any vehicle used in connection with performance under the contract, including owned, leased, hired, and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. As of the start date of the contract and through its entire term, an Offeror awarded a contract must have Business Automobile Liability Insurance in effect, subject to a minimum limit of at least \$2,000,000 per occurrence.

### **3.6 Facility Requirements**

1. The Offeror shall provide facilities where clients will report to provide specimens.
2. The Offeror's facilities that are open to the public must be accessible to disabled individuals in accordance with the Americans with Disabilities Act. Such facilities shall include the following requirements, at a minimum:
  - a. Entrance to building usable by wheel-chaired persons.
  - b. Toilet usable by disabled persons.



- c. Doors used by disabled persons must be at least 32" wide.
  - d. Elevators, if more than the first floor, to be used by disabled persons.
3. All the Offeror's facilities must meet New York State and Federal regulations. All testing equipment must meet all New York State and Federal regulations for certification (including all x-ray and laboratory equipment).
  4. The Offeror must ensure that all equipment is maintained in accordance with the requirements of the manufacturer and meets the requirements for such test equipment as required by Federal regulations.

### **3.7 Staffing Requirements**

In the *Formal Offer Letter* (Attachment 3), the Offeror must designate a single account executive ("Project Manager") accountable to the State and responsible for ensuring that the needs of the State are met. These activities include scheduling clients, coordinating activities with EHS, and resolving contractual or administrative issues, including but not limited to billing and scheduling problems. The Project Manager shall also notify the Department of any actual or anticipated events impacting the delivery of Project Services and present options available to minimize or eliminate the impact of those events on the delivery of services.