

# NEW YORK STATE DEPARTMENT OF HEALTH

Office of Primary Care and Health Systems Management

## REQUEST FOR PROPOSAL

### New York State Donate Life Registry

RFP No. 15697

#### **Schedule of Key Events**

|   |                                |
|---|--------------------------------|
| RFP Release Date                            | August 28, 2014                |
| Written Questions Due                       | September 11, 2014             |
| Letter of Interest Due (optional)           | September 11, 2014             |
| Response to Written Questions (on or about) | September 22, 2014             |
| Proposal Due Date                           | October 10, 2014 at 4:00 PM ET |
| Anticipated Contract Start Date             | December 1, 2014               |

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*Contacts Pursuant to State Finance Law §§ 139-j and 139-k*

**Designated Contact:**

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For further information regarding these statutory provisions, see the summary in Section 5.13 (Lobbying [Statute](#)) of this solicitation.

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## 1. INTRODUCTION

Organ transplantation is a standard treatment for end-stage heart, liver and kidney disease. Unfortunately, the demand for donated organs far exceeds the supply. Eighteen people die every day in the United States due to unavailable organs.

In New York State, the need is even more critical. Currently, more than 10,500 people await organ transplants. In 2012, a total of 612 individuals died while waiting for a donated organ; on average, someone in New York dies every 15 hours because of the organ shortage. The State of New York has one of the lowest donor registry registration rates in the nation with an enrollment rate of 22% opposed to the 45% rate reported by other states.

The New York State Department of Health (the Department) and the New York State Department of Motor Vehicles (NYSDMV) established the New York State Life Pass it On Organ and Tissue Donor Registry in 2000 to increase the number of organ, eye and tissue donors. This registry recorded an individual's "intent" to be an organ, eye, and tissue donor. However, in the event of the individual's death, intent registries were required by law to obtain next of kin's permission to proceed with the anatomical donation. Subsequent amendments to Article 43 of the Public Health Law (PHL) renamed the registry the New York State Donate Life Registry (NYSDLR) and recast it as a means of providing legal consent to organ, eye and tissue donation instead of simply expressing intent to donate. Consequently, organ procurement organizations (OPOs) and eye and tissue banks can legally recover organs/eyes/tissues upon the death of an enrolled individual without the additional permission of her/his family/next of kin. OPOs and eye and tissue banks access the NYSDLR when they receive a referral by a hospital, as required by federal and state laws, upon a person's death or imminent death.

The NYSDLR is an electronic database administered by the Department and the Office of Information Technology Services (ITS) and is restricted to authorized staff for the purpose of registry administration and to the following organizations for the sole purpose of determining potential donor status at or near the time of death: (a) OPOs certified by the federal Centers for Medicare and Medicaid Services; (b) eye and tissue banks licensed by the Department; and (c) other entities as formally approved by the Commissioner of Health (to date no such additional entities have been authorized). OPOs and eye and tissue banks access the NYSDLR through ITS' secure portal, the Health Commerce System.

Most recently, Chapter 60 of the Laws of 2014 added language to Article 43 of the PHL authorizing the Commissioner of Health to enter into a multi-year contract with a not-for-profit organization for the operation and promotion of the NYSDLR.

## 1.1 The Current NYSDLR Registration Process

Individuals become potential donors by registering in the NYSDLR through one of the following ways:

- a. Signing the organ, eye and tissue donor consent section of their NYSDMV applications for initial or renewed driver licenses or non-driver identification cards. The donor information is electronically transferred to the Department as a secure automated bulk file transfer for inclusion in the NYSDLR.
- b. Online through their NYSDMV “myDMV” account. Selecting the link to enroll in the Donate Life Registry after signing on to their account redirects registrants to the NYSDLR website. The myDMV account uses an identity verification process, which allows registrants to enroll using an electronic signature.
- c. Completing the paper registration tear-off section of the New York State Board of Elections (NYSBOE) voter registration form. NYSBOE offices located throughout the state mail the enrollment forms to the Department so the data can be manually entered into the NYSDLR.
- d. Completing a NYSDLR paper registration form with the local OPO or eye and tissue bank or directly through the Department. The OPO or eye and tissue bank can enter the information into the NYSDLR but also must mail the signed paper registration form to the Department.
- e. Online at the Department’s NYSDLR website. Members of the public can submit their information electronically but must also download a form, which must be manually signed and mailed to the Department.

In all methods, the registrant’s legally binding signature is required by statute. Electronic signatures compliant with the New York State Electronic Signature and Records Act (<http://www.its.ny.gov/policy/esra/esra.htm>) are permitted.

**Table 1.1 NYSDLR Average Monthly Registrations**

| Source                            | Form                           | Format  | Avg. Monthly Registrations |
|-----------------------------------|--------------------------------|---|----------------------------|
| NYSDMV                            | NYSDMV application             | Individuals complete paper form. NYSDMV enters the data and submits via secure file transfer to the Department. | 31,500 to 40,500           |
| NYSDMV's myDMV account            | Online registration            | Electronic Signature  | 700                        |
| NYSSOE                            | Voter Registration Form        | Mail  | 2,000 to 3,000             |
| Local OPO or eye and tissue banks | NYSDLR Paper Registration Form | Data can be entered in NYSDLR by the organization but the organization must mail the signed consent form.       | 1,000                      |
| NYSDLR Website                    | Online registration            | Individuals enter the data electronically but also must mail a signed consent form.                             | 200                        |
| AVG. TOTAL                        |                                |   | 35,400 to 45,400           |

## 1.2 The NYSDLR Confirmation, Amendment and Revocation Process

Once a registration is received and processed by the Department:

- a. The Department notifies registrants by mailing a welcome letter pursuant to Article 43 of the PHL. This notification provides registrants with detailed information about how they can amend their registration. When a person initially registers in the NYSDLR, the person is giving legal consent to the donation of all organs, eyes and tissues. The letter explains what the individual needs to do if she/he wishes to amend this donation (e.g., only donate for transplant, not research, or limit the organs, eyes or tissue to be donated). See *Table 1.2* for current NYSDLR Workload.
- b. Registrants who register from their NYSDMV myDMV account can choose to download an electronic version of their welcome letter.
- c. Registrants can make changes to their registration at any time by contacting the Department. All requests to amend or revoke a registration from the NYSDLR must be in writing and include the registrant's signature. See *Table 1.2* for current NYSDLR Workload.
- d. Registrants whose notifications of registration are returned to the Department as undeliverable are removed from the NYSDLR database.

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- e. Additionally, the Department maintains a toll-free phone number to respond to questions regarding registration as well as general questions regarding organ, eye and tissue donation and transplantation.

***Table 1.2 NYSDLR Workload***

| <b>Description</b>                         | <b>Monthly Average</b> |
|--|------------------------|
| Notification letters mailed to registrants | 35,000 to 45,000       |
| Registration amendment/revocation requests | 1,700                  |
| Inquiries by phone to the toll-free line   | 500                    |

## 2. GENERAL INFORMATION

The Department has published this Request for Proposals (RFP) to seek bids from experienced, responsive, responsible and financially sound organizations that will assume responsibility for the operation and promotion of the NYSDLR under the Department's direction and in accordance with Article 43 of the PHL.

The Department anticipates awarding a five-year contract with up to \$1,378,500 of available funding. This funding is allocated for execution of the deliverables required by this RFP. Funding amounts available by registry function and contract year are outlined in the chart below. Funding allocated for each year must be expended by the end of that year. Bidders are to presume that the contract will begin on December 1, 2014. The contract is subject to the approval of the New York State Office of the State Comptroller (OSC) and the New York State Office of the Attorney General (OAG).

**Table 2 - Maximum State Funding Available per Contract Year\***

| Function   | Year 1    | Year 2    | Year 3    | Year 4    | Year 5    | TOTAL (5yr) |
|--|-----------|-----------|-----------|-----------|-----------|-------------|
| I. Development and Maintenance of NYSDLR System and Administration & Operational Support | \$265,700 | \$150,000 | \$100,000 | \$100,000 | \$100,000 | \$715,700   |
| II. Education and Marketing  | \$200,000 | \$115,700 | \$115,700 | \$115,700 | \$115,700 | \$662,800   |
| TOTAL (per yr.)  | \$465,700 | \$265,700 | \$215,700 | \$215,700 | \$215,700 | \$1,378,500 |

*\* Amounts shown are subject to annual appropriations by the New York State Legislature. Bidders that request more than the maximum amount of State funding available per year, per function, as described herein, will be disqualified.*

The Department recognizes that additional funding may be needed to fully meet the deliverables of this RFP. It is expected that the Contractor selected under this RFP will subsidize with funding from other sources for both the operational and education and marketing deliverables of the RFP. All donations accepted by the Contractor in the name of the NYSDLR must be reinvested in the activities as described in this RFP.

It is the intent of the Department to reimburse the Contractor for project costs at a rate proportionate to the State's share of the total cost. See Section 4.2 ([Cost Proposal](#)) for details.

## 2.1 Eligibility

All not-for-profit organizations are eligible to bid provided they meet the following requirements:

- a. Experience working with organ, eye and tissue procurement organizations;
- b. Expertise in conducting organ, eye and tissue donor promotional campaigns; and
- c. Affiliation with the organ, eye and tissue donation community throughout the state.

Bidders may not use subcontracting relationships to meet any of the above stated eligibility criteria; however, the successful bidder may enter into relationships with subcontractors to carry out the work described in this RFP, subject to Section 2.2 ([Subcontracting](#)).

## 2.2 Subcontracting

Bidders may propose subcontracting. Subcontracts may be utilized when approved by the Department. If subcontractors are to be proposed, a letter of commitment from each must be included with the Technical proposal. Any resulting sub contractual agreements must be approved by the Department.

## 3. DETAILED SPECIFICATIONS

The detailed specifications below includes specifications for the operation and promotion of the NYSDLR. The operation and promotion of the NYSDLR includes development, implementation and maintenance of the NYSDLR, administration of daily operations, education and marketing, and annually reporting on such activities to the Department.

### Project Strategic Goals

The Contractor will need to work cooperatively with the Department and must have the capacity to provide qualified professional services and resources to ensure that the strategic goals of this project are met.

The strategic goals of the NYSDLR are:

- a. Improve the efficiency and timeliness of organ, eye and tissue donor registration for all stakeholders involved in the process.
- b. Electronically and securely capture organ, eye and tissue donor registrations primarily using a secure, reliable, sustainable, and supportable web-based solution.
- c. Encourage organ, eye and tissue donations through education and marketing efforts.

**Project Scope**

The Department has the following expectations of the Contractor and its working relationship with the Department.

- a. The Contractor will commit fully qualified professional resources to all phases of the NYSDLR project; the Department reserves the right to approve or reject key personnel (project leadership) who may have responsibility for the NYSDLR project.
- b. The Contractor will ensure the security and confidentiality of the NYSDLR and the information thereon; every project participant will be required to sign a confidentiality and non-disclosure agreement with the Department.
- c. The Department will assign/delegate a project manager to the project. The project manager will serve as the Department's primary contact with the successful bidder's project manager.
- d. The Contractor will deliver a complete, detailed project plan that contains identifiable milestones, which will be approved by the Department.
- e. The Contractor will design, develop, test and implement a secure computer system that is electronically accessible to its users at all times consistent with PHL § 4310.
- f. The Contractor will present a technical solution, as defined further in Attachment 14 (Technical Proposal Requirements for NYSDLR Narrative), for inspection and will plan for and conduct a beta evaluation of the system using actual users, but not live data. The Contractor will be required to deliver a beta-ready secure system that is ready for user involvement and user acceptance and has been accepted by the Department.
- g. The Contractor will develop, test, document, obtain Department acceptance, and implement all computerized administrative and operational processes of the NYSDLR within 12 months of the start date of the contract.
- h. The Contractor will operate and maintain a secure computer system, that includes online, mailed and other forms of organ, eye and tissue donor registration, verification, amendment and revocation and meets requirements of State government functionality and reporting, including the ability to exchange data with, and accommodate receipt of, data in electronic or written form from other entities involved in facilitating registration (such as members of the public, the NYSDMV, the NYSBOE, OPOs and eye and tissue banks licensed by the Department, and others as subsequently identified), and that is compliant with relevant state policies and guidelines, including those of the Department, ITS, and the New York State Division of Homeland Security and Emergency Services.
- i. The Contractor will assume, either directly or indirectly, all administrative and operational activities of the NYSDLR.

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- j. The Contractor will provide experienced staff to support all functions specified in the RFP.
  - k. The Contractor will develop and implement effective controls designed for objective oversight and monitoring of all NYSDLR operations.
  - l. The Contractor will develop and implement a strategic plan to encourage organ, eye and tissue donation through education and marketing to facilitate organ/eye/tissue donation, as well as for statewide promotion of the NYSDLR.
  - m. The Contractor will adhere to all relevant security requirements as described in Attachment 10 Security Requirements, Attachment 12 Data Breach Policy and Attachment 13 Business Continuity for System Downtime.
  - n. The Contractor will meet all technical requirements as described in Attachment 14 Technical Proposal Requirements.

### **3.1 Registry Development and Maintenance/Administration and Operation**

#### **3.1.1 Business Requirements**

The Contractor must develop, implement, host, and maintain a secure registry that meets the following business requirements:

- a. Accommodate registration of consent to make an anatomical gift through:
  - i. indication made on the NYSDMV driver's license application or renewal form;
  - ii. indication made on a NYSDMV non-driver identification card application or renewal form;
  - iii. indication made on a voter registration form pursuant to Election Law § 5-210(5);
  - iv. registration through the NYSDLR website; (v) paper registration submitted through the NYSDLR; or
  - v. any other method identified by the Commissioner of Health.
- b. Accommodate mailed registrations or amendments to or revocation of registrations into the NYSDLR, which are entered into the system by the staff of the Contractor.
- c. Develop and implement an Extraction, Transformation, and Load process (ETL) to transfer all existing registrations from the current NYSDLR.

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- d. Allow registrants to specify what organs/eyes/tissues they wish to donate.
  - e. Allow registrants to specify whether donations are made for transplant and/or research.
  - f. Provide written notice of registration in the NYSDLR to the person registering, either electronically or, if electronic contact information is unavailable or electronic notice is undeliverable, through the United States Postal Service. Registration in the NYSDLR will take effect upon the contractor sending such notice. Notice of registration to registrants must be provided on at least a weekly basis.
  - g. Develop and implement a process to remove all registrants whose notification of registration, either written or electronic, is returned to the Contractor as undeliverable.
  - h. Identify individuals registered in the NYSDLR before July 23, 2008, who will be deemed to have expressed intent to donate only, until they file an amendment to their registration or a new registration expressing consent to donate.
  - i. Place registrations received through NYSDMV by means other than electronic signature and from the NYSBOE in a 28-day pending status in order to address claims of erroneous registrations.
  - j. Provide a system that is able to receive registration data transferred by the NYSDMV to the NYSDLR on a weekly basis using secure electronic transfer.
  - k. Provide a system that will record the person responsible for data entry and date/time for all database insertions, updates, and deletions.
  - l. Provide a system that complies with all relevant state requirements, including but not limited to the statutes, regulations, policies and procedures referenced in this RFP.
  - m. Provide a system that will record the source of each registration (e.g., OPO, NYSDMV, NYSBOE).
  - n. Provide a system that will search the NYSDLR for a matching registrant record and consider a match an update to the existing record so as to reduce duplicates in the NYSDLR. For registrant data coming from NYSDMV, Client ID will be used; otherwise, the matching will be performed using first name, last name and date of birth and NYSDMV Client ID, if provided.
  - o. Provide a system that will not remove any records from the database but will make extensive use of history tables to store “removed” information.
  - p. Provide the ability for individuals to register in the NYSDLR, or amend or revoke their registration, electronically with the use of an electronic signature, the process of which must meet an assurance level 3 pursuant to New York State Electronic Signatures and

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Records Act (ESRA) Guidelines (G04-001) and Identity Assurance Policy (NYS-P10-006) available at <http://its.ny.gov/tables/technologypolicyindex.htm> and consistent with any other applicable policies or guidelines of ITS.

- q. Provide monthly registration datasets for the Health Data NY website, which supports the OPEN NY initiative and its respective state data transparency website.
- r. Maintain the NYSDLR in a manner that allows immediate access to organ, eye and tissue records 24 hours a day, 7 days a week to the NYSDLR operator (Contractor), the Department, OPOs, licensed eye and tissue banks and such other entities which may be approved by the Department for purposes consistent with Article 43 of the PHL as follows:
  - i. the Contractor, OPOs, licensed eye and tissue banks and such other entities that may be approved by the Department shall have 24 hours a day, 7 days a week access to organ, eye, and tissue electronic records for purposes of determining donor status at or near the time of death of an individual;
  - ii. OPOs and eye and tissue banks licensed by the Department are authorized users of the NYSDLR and need the capability to enter registrant information through a secure portal maintained by the Contractor;
  - iii. the Department shall have access to the NYSDLR for any purpose; and
  - iv. the Contractor shall have access to the NYSDLR for purposes of quality assessment and improvement, technical support, and donor services.
- s. Provide OPOs and eye and tissue banks licensed by the Department with the ability to indicate that a registrant has been identified as a potential donor and record whether a donation was made.
- t. Provide access to the NYSDLR to registrants for the purposes of allowing them to confirm the accuracy and validity of their registration, or to amend or revoke their registration subject to reasonable procedures to verify identity.
- u. Provide an audit trail to track when an OPO, an eye or tissue bank, the Department, or the Contractor has accessed a record and what record was accessed.

### **3.1.2 Change Orders**

A “change order” is any modification, addition, or deletion to the work as described in this RFP and as set forth in the project plan. Change orders can be requested, in writing, by either the Department or the Contractor, and presented using Attachment 9 ([Change Request Form](#)). The work identified in the change orders will be provided by the Contractor with adjustment to the

project schedule and required timeframes as appropriate. Fulfillment of change orders will be the responsibility of the Contractor.

Change order activities will be subject to negotiation and approval by the Department and is subject to the approval of OSC.

- a. The contents of change orders shall include at a minimum:
  - i. a description of the requested change; and
  - ii. a description of the impact to the project schedule, scope, and quality.
- b. Change orders required after contract execution will include fixed time estimates in which the work will be completed. The project schedule may be adjusted commensurately according to the estimate; all work necessary to achieve completion of the change order must be completed within the timeframe of the provided estimate.
- c. All change orders must be represented on all project reports, clearly indicating progress and their status.
- d. No work shall commence on any change order without written agreement and approval from the Department.

### **3.1.3 Additional License and Ownership Rights**

The Department acknowledges that work papers prepared by the Contractor may remain the property of the Contractor; however, the Department reserves the right to obtain copies at its discretion.

In order to protect vendor intellectual property rights for proprietary technology, the Department is willing to consider perpetual licensing in place of ownership.

To ensure the safety and confidentiality of information used during this contract, all software, source code, databases, data, hardware or firmware, reports, documents, and other materials developed, purchased, or otherwise obtained in the course of this project by the Contractor must be returned to the Department or destroyed with proof of destruction, as specified by the State. This includes and is not limited to data backups, archives, version and revision controls.

All source code must be periodically sent to the Department for testing and/or archiving purposes. See Attachment 18 ([New York State Boilerplate Contract with Appendices](#)), Appendix J (Additional Contract Clauses), section 7, for information on source code escrow requirements.

The Department recognizes that some proposed solutions may incorporate third party technologies which have associated licensing requirements. In this case, such third party

technologies and their licensing requirements – including costs – must be documented in the Proposal and will not be paid by the State. If the bidder is uncertain whether a third party technology included in its proposal is considered by the Department to be “standard IT environment technology,” it should ask for clarification from the Department during the questions and answers period specified in the Schedule of Key Events portion of this RFP. Inquiries after this date will not be entertained.

Title and ownership to Existing Software Product(s) delivered by the Contractor under the contract that 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 Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner’s standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor’s proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User’s satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User’s Purchase Order or work order, including any approved assignment rights; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV’s owner’s standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

### **3.1.4 Registry Transition/Turnover**

In order to ensure the successful transfer of operation of the NYSDLR at the end of the contract, if that is required, the Contractor must meet the following requirements.

- a. The Contractor will be required to define and execute a knowledge transfer plan for transitioning NYSDLR system knowledge to staff identified by the Department or by the successor vendor.
  - i. The plan must include a process by which the vendor’s system can be fully migrated to the Department’s or successor vendor’s resources.
  - ii. The plan must include walk-throughs with the State’s or successor vendor’s staff of the fully configured system and documentation, as to be installed in the State’s or successor vendor’s production environment.

- 
- iii. The plan must include all aspects of system and user administration, roles and responsibilities, software installation, and configuration.
  - iv. The plan must also include full conveyance of knowledge of the software and its implementation and execution to the State's or successor vendor's identified trainer(s).
  - v. The plan will be subject to the State's approval and satisfaction.
- b. The State requires that all software assets developed and paid for under this contract be turned over to the State or successor vendor at the end of the contract in their entirety, regardless of what tools were used to create and manage them.

### **3.2 Acceptance of Work Products (Performance Evaluation)**

After the award, the Department and/or its delegate may define detailed quality and acceptance criteria, as well as inspection and acceptance/rejection procedures that will be applied to the technical solution.

Once defined, the quality criteria and goals must be executed and proven by the Contractor before delivery of the technical solution to the Department for inspection. The Department and ITS may define specific, measurable quality criteria for these general areas of inspection:

- a. Achievement of requirements (see [Section 3.2.3](#));
- b. System architecture (see [Section 3.2.4](#));
- c. System security (see [Section 3.2.5](#));
- d. System reliability (see [Section 3.2.6](#));
- e. System ease of use (see [Section 3.2.7](#));
- f. System performance (see [Section 3.2.8](#));
- g. Technical systems and user documentation (see [Section 3.2.9](#)); and
- h. Beta/user acceptance program entry and exit criteria (see [Section 3.2.10](#)).

#### **3.2.1 Technical Solution Validation**

The Department and/or its delegate will verify and validate the technical solution deliverable from the Contractor. The Department and/or its delegate will verify and validate the achievement

of requirements and/or tasks and associated quality goals. The Department and/or its delegate retains the right to reject the technical solution as presented by the Contractor.

The Department, with input from the Contractor, will establish a reasonable timeframe for technical solution inspection.

The Department and/or its delegate will not be restricted from conducting ad-hoc testing—testing that is not included in the test plan or the technical solution. However, the results of such testing will not be used as the basis for rejecting a deliverable, but may result in rejecting the technical solution.

### **3.2.2 Open Issues**

The Contractor is required to maintain an ongoing report of open issues that will be reviewed with the Department weekly. The weekly open issues report will serve as the focus for discussion of outstanding risk beyond achieved quality goals. The issues report will be maintained on a platform accessible to both the Contractor and the Department.

The Department reserves the right to require further corrections based on the information presented in this report. These corrections may be required without penalty to the Contractor.

### **3.2.3 Achievement of Requirements**

The “achievement of requirements” quality goal is: delivery to and acceptance by the Department of 100% of all requirements, as defined in this RFP and any additional requirements identified and mutually agreed upon during any analysis phase of the project.

### **3.2.4 System Architecture**

The “system architecture” quality goal is: positive assessment proving demonstrated achievement of system architecture goals and requirements.

### **3.2.5 System Security**

The “system security” quality goal is: a positive security risk assessment by ITS with no outstanding critical incidents. Specific goals may vary.

Security assessment may generally follow this guidance:

- a. Achievement of specific security test plans; and
- b. Independent assessment of system security by the ITS CISO or designated staff; this assessment may include, but not be limited to, discussions highlighting weaknesses,

unaddressed risks, or questionable areas of the solution in the context of exploit and security breach.

### 3.2.6 System Reliability

The “system reliability” quality goal is: 99.5% passing tests with no critical incidents outstanding. Specific goals may vary.

**Note:** A passing test is one that can be run in its entirety without error. A test that cannot be run because it or the feature it tests is not implemented or fully implemented will be counted as a failure.

The Department expects to follow these general rules:

*Table 3.2. Passing Test Percentages*

| Passing         | Indication   |
|-----------------|--|
| < 80.0%         | Not ready for ITS acceptance.  |
| > 80.0% < 99.5% | Ready for open issues review and discussion with ITS; review of critical issues with ITS. ITS may, at its discretion, not accept the technical solution. |
| > 99.5%         | Department acceptance (excepting critical incidents).  |

### 3.2.7 System Ease of Use

The “system ease of use” quality goal is: correction of all reported ease of use issues and a positive ease of use defect discovery trend per ongoing inspection with no outstanding critical incidents.

### 3.2.8 System Performance

The “system performance” quality goal is: positive assessment proving demonstrated achievement of system performance goals and requirements.

### 3.2.9 Technical Systems and User Documentation

The “technical systems and user documentation” quality goal is: positive assessment with no outstanding critical incidents. Specific goals may vary.

The documentation assessment may generally follow this guidance:

- a. Achievement of specific documentation test plans; and
- b. Independent review and assessment of documentation deliverables by ITS staff or its designee; this assessment may include, but not be limited to, discussions highlighting strengths, weaknesses, missing or incomplete information, accuracy, adherence to style or other guidelines, and visual presentation.

### **3.2.10 Beta/User Acceptance Program Entry and Exit Criteria**

Specific criteria to qualify for ITS authorization to begin the beta/user acceptance program will be determined cooperatively during the project and will depend minimally on the following factors:

- a. reliability and stability of the system,
- b. achievement of requirements necessary for meaningful user involvement, and
- c. availability of users for participation.

Specific criteria to qualify for conclusion of the beta/user acceptance program will be determined cooperatively during the project and will depend minimally on the following factors:

- a. decreasing rates of user feedback, and
- b. decreasing issue discovery trend per ongoing user participation.

### 3.3 Administration and Operational Support

The Contractor will administer and operate the NYSDLR program 24 hours a day, 7 days a week. The Contractor should put forth a plan to accomplish the following tasks related to operation of the NYSDLR:

- a. Develop policies and procedures related to all aspects of the NYSDLR.
- b. Develop an agreement with NYSDMV for the secure transfer of the data necessary to register consenting individuals in the registry.
- c. Develop and implement a process to evaluate and monitor organizations that request access to the NYSDLR to determine their eligibility under PHL § 4310.
- d. Develop, implement and enforce a user agreement for all users of the NYSDLR database. At a minimum, this agreement must include confidentiality requirements, user's responsibilities, Contractor's responsibilities and the potential consequences of non-compliance.
- e. Develop and implement ongoing training for NYSDLR users as well as the provision of on-going technical support for such users.
- f. Develop and implement training for staff. Training should include general information regarding organ, eye and tissue donation and the NYSDLR, confidentiality requirements and training specific to job duties (e.g., data entry, customer service).
- g. Develop and enforce a confidentiality agreement for all staff associated with the NYSDLR.
- h. Develop and implement internal controls for all aspects of the NYSDLR. The plan must include a schedule for continuous testing and evaluation of controls.
- i. Develop and provide monthly and cumulative aggregate data reports on the performance of the NYSDLR to the Department, NYSDMV, and users. At a minimum, this must include reports by age, sex, county, and zip code. Reports must include a breakdown of DMV registrations by registration source (weekly file transmission or via MyDMV).
- j. Prepare and submit annual written reports, which must include: (i) a performance matrix including the number of registrants in the NYSDLR and an analysis of the registration rates, including but not limited to, location, method of registration, demographic, and state comparisons; (ii) the characteristics of registrants as determined from the NYSDLR information; (iii) the annual dollar amount of voluntary contributions received by the contractor for the purposes of maintaining the NYSDLR and/or educational and promotional campaigns and initiatives; (iv) a detailed description and evaluation of the

promotional campaigns and initiatives implemented during the year; and (v) accounting statements of expenditures for the purposes of maintaining the NYSDLR and promotional campaigns and initiatives.

- k. Provide written or electronic notification of registration to all individuals registering in the NYSDLR, as well as those whose registration has been amended or revoked.
- l. Meet annually and as needed with the State's interagency work group, which has been established to review the status of the NYSDLR, to examine the steps that might be taken by state agencies to enhance its performance and to make recommendations to the contractor.

### **3.3.1 Customer Service Center**

The Contractor will maintain a toll-free customer call center to respond to inquiries from the public that meets the following requirements:

- a. Phone lines must be answered live during normal business hours of 9:00 a.m. to 5:00 p.m. Eastern Standard Time.
- b. A voice messaging service must be available after hours and on weekends and holidays. This would include the development of all messaging scripts in English and Spanish. Prior to translation of the script into Spanish, the Department must review and approve the English version. The Spanish script must be procured through the New York State translation contract vendor and must be reviewed and approved by the Department prior to use.
- c. Translation services must be provided for individuals with limited English proficiency. All translation activity will be coordinated by the Department and associated costs will be the responsibility of the Contractor.
- d. Consumer voice messages must be responded to within 24 hours from the time of each call during the business week.
- e. Messages received after hours or on weekends or holidays must be promptly handled the following business day.
- f. Maintenance of a call log for the toll-free customer service center that records the date, time, caller's name and contact information, subject of the call and outcome. This must include a plan for log review and analysis to determine patterns that might identify opportunities to improve NYSDLR operation and identify risks.

### 3.3.2 Data Entry and Record Storage

The Contractor will provide secure data entry and record storage that meets the following requirements:

- a. Includes a system to manage data entry of paper and electronic registrations and amendments to and revocations of registrations from multiple sources including: application or renewal forms of a driver's license, non-driver identification card application or renewal forms, voter registration forms, organ procurement organizations, eye and tissue banks, NYSDLR website and paper registration forms.
- b. Ensures that: (i) revocations and amendments through the NYSDLR are processed within two business days of receipt; (ii) registrations from OPOs, eye and tissue banks as well as online registrations are processed within 10 business days; and (iii) registrations from voter registration forms are processed within 20 business days.
- c. Provides written or electronic notification of registration to all individuals registering in the NYSDLR, as well as those whose registration has been amended or revoked.
- d. Includes the development and implementation of a system to image all paper documents for permanent storage and remote access within 30 days of receipt.

### 3.3.3 Website Development and Maintenance

The Contractor will develop and maintain a website that serves as the portal for online registration. The website must meet section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220) or as otherwise subsequently amended. See <http://www.section508.gov>. The website must include coding provided by the Department to allow for Google Analytics.

At a minimum, the website must contain:

- a. General information regarding organ, tissue and eye donation, questions and answers regarding the NYSDLR, a glossary of terms, links to further resources. All content and graphics must be reviewed and approved by the Department prior to posting.
- b. Printable Department forms for registration and amendments to or revocation of registrations must be made available in the following languages: English, Spanish, French, French Creole, Italian, Russian, Chinese and Korean. All translation activity will be coordinated by the Department and associated costs will be the responsibility of the Contractor.

- c. The website must have both an English and Spanish version translation. All translation activity will be coordinated by the Department and associated costs will be the responsibility of the Contractor. All translations must be reviewed and approved by the Department prior to posting.
- d. The website must also make available translated printable informational materials in the following languages: English, Spanish, French, French Creole, Italian, Russian, Chinese and Korean. All translation activity will be coordinated by the Department and associated costs will be the responsibility of the Contractor.
- e. There must be an easy to find and accessible general email account for inquiries from the general public. Inquiries to this email account regarding registration status must be responded to within 24 hours. If an email is received on weekends or holidays, it must be promptly handled the next business day. All other email inquiries must be handled within 1 to 2 business days. A notice describing the email response policy must be posted in a conspicuous location on the website.

### **3.4 Education and Marketing**

The Contractor will provide – directly or in conjunction with another entity, consistent with the requirements of the introductory paragraph of Section 3 ([Detailed Specifications](#)) – education on organ, eye and tissue donation and marketing for the NYSDLR on a statewide basis.

The goals of this initiative are:

- a. To educate New Yorkers about the need for organ, eye and tissue donation;
- b. To educate New Yorkers about the NYSDLR; and
- c. To increase the number of NYSDLR registrants.

The objectives to be achieved are:

- a. Increase New Yorkers’ knowledge of the need for organ, eye and tissue donation by 50% in Years 2 through 5;
- b. Increase New Yorkers’ knowledge of the NYSDLR by 50% in Years 2 through 5;
- c. Increase visits to NYSDLR website by 10% in Year 2 and 25% in Years 3 through 5; and
- d. Increase online registration in NYSDLR by 1% in Year 2 and 5% in Years 3 through 5.

The Contractor will:

- a. Develop and implement a strategic plan for statewide education of the NYSDLR. It should include:
  - i. Members of the organ, eye and tissue donation community (i.e., OPOs, New York state-licensed eye and tissue banks, not-for-profit organizations, the Department, NYSDMV, NYSBOE, and the New York State Transplant Council) in the planning and development of the plan.
  - ii. Replication of successful, proven registry and education strategies used in New York State and/or other parts of the United States. Examples of such strategies have been identified by the Health Resources and Services Administration (HRSA) of the United States Department of Health and Human Services in its Donor Designation Collaborative.
  - iii. Specific benchmarks for attainment of NYSDLR registrations and a detailed plan for reaching each benchmark.
  - iv. A robust evaluation mechanism to assess the success of the plan of the education activities during each of Years 2 through 5.
- b. Research, design and execute a media buy for an annual statewide marketing campaign to promote the NYSDLR. The media buy must be reviewed and approved by the Department prior to execution and must include the following:
  - i. Quantitative research in the form of focus groups. Describe the methods used to recruit community members as participants, the location of groups, the development of moderator guides, the experience of facilitators and the final reporting structure to the Department.
  - ii. A comprehensive statewide marketing plan for Years 2 through 5 which describes the process of concept development, creative execution, and distribution.
  - iii. A detailed statewide media plan for Years 2 through 5 which describes campaign objectives, target audiences, and key media outlets.
  - iv. Evaluation of each marketing campaign should be conducted and shared with the Department on a monthly and end of campaign basis showing how objectives were met for Years 2 through 5.

## **4. PROPOSAL REQUIREMENTS**

This section provides directions for preparing the technical and cost proposals in response to this RFP. Bidders are responsible for carefully reading the RFP and responding to all requests for information. The proposal should address the Technical Proposal and the Cost Proposal as required by this RFP. Bidders must submit separate technical and cost proposals. No cost information can be included in the Technical Proposal. The details of the submission of proposals are addressed in Section 5.4 ([Submission of Proposals](#)).

Bidders are to presume that the contract will begin on December 1, 2014.

### **4.1 Technical Proposal**

**(75 percent)**

The bidder must submit a Technical Proposal. The bidder will describe a plan to accomplish the deliverables set forth in Section 3 ([Detailed Specifications](#)). The Technical Proposal should be clearly divided into five (5) sections with headers for each section. No cost information can be included in the Technical Proposal.

The Technical Proposal should include the Transmittal Letter (Attachment 1) and the Table of Contents in addition to the following five (5) sections:

- a. Executive Summary;
- b. Organizational Experience and Capacity;
- c. NYSDLR Program Narrative;
- d. Administration and Operational Support; and
- e. Education and Marketing.

In any section of the Technical Proposal where the bidder proposes to use subcontractors to meet the requirements, the bidder must identify all such subcontractors and the relevant experience of each in addition to the following:

- a. The subcontractor(s) role and experience should be clearly defined and described.
- b. The bidder must submit a letter from each planned major subcontractor stating its commitment to participate in the project described in this RFP, and its understanding of what its responsibilities will be in relation to this project.

- c. The narrative should demonstrate that:
- i. the subcontractor is qualified to provide such services;
  - ii. the subcontractor has experience providing such services; and
  - iii. the bidder has successful experience supervising, managing, and collaborating with subcontractors in the provision of similar services;

Any subcontracting is subject to the approval of the Commissioner of Health and may be subject to the approval of OAG and OSC. Any subcontracting valued at or above \$100,000 is subject to the vendor responsibility review process described in Section 5.11 ([Vendor Responsibility Questionnaire](#)). Subcontractors proposed after the contract is awarded must be approved by the Department.

#### **4.1.1 Transmittal Letter and Table of Contents**

The bidder should not include any information regarding the cost of the proposal in the transmittal letter. The transmittal letter should be submitted on the official business letterhead and signed in ink by an official of the bidding organization. The signatory should be authorized to bind the organization to the provisions of the RFP and the bidder's Proposal. A template for the transmittal letter is provided in Attachment 1 (Transmittal Letter). The transmittal letter is not scored; it will be evaluated as part of the Compliance Evaluation screening. The transmittal letter should be the first page of the Technical Proposal and may be single spaced.

The Table of Contents should contain beginning page numbers for each section and subsection of the proposal.

#### **4.1.2 Executive Summary**

The Executive Summary should be concise and highlight the contents of the bidder's Technical Proposal in such a way as to provide the Department with a broad understanding of the entire Technical Proposal. In addition, the Executive Summary should summarize the bidder's understanding of the various components of this RFP. The Executive Summary should include a clear and condensed summary of the proposed approach to the Project Detail Specifications and staffing structure, as well as the bidder's past experience in the conduction of relevant projects. In particular, if the proposal involves the use of a subcontractor, the Executive Summary should provide the identity, experience and background of such subcontractor, the planned role of the subcontractor, and a description of the bidder's experience in supervising, managing, and collaborating with subcontractor on similar projects. Please do not include confidential information in the Executive Summary.

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### 4.1.3 Organizational Experience and Capacity

The bidder must provide supporting documentation that it meets all of the eligibility requirements as stated in Section 2.1 ([Eligibility](#)).

#### 4.1.3.1 Experience

This section of the Technical Proposal should explain in detail the bidder's specific plan for performing the required tasks and activities outlined in Section 3 ([Detailed Specifications](#)). As appropriate, the proposed approach should thoroughly describe how the bidder's past experiences will be applied to the project outlined in this RFP. Specifically:

- a. Computer system development and maintenance preferably for at least one donor registry or similar project,
- b. Successful experience in administration and operational support for a donor registry or similar project, and
- c. Experience in health education, promotion and marketing.

If the bidder does not have experience in the three areas listed above, and propose to work with an experienced subcontractor to address the area(s), the bidder should describe its successful experience in supervising, managing, and collaborating with such a subcontractor(s) on a similar project.

#### 4.1.3.2 Staffing and Training

The bidder should demonstrate the ability to obtain and train a sufficient number of staff with the experience and expertise to fulfill the NYSDLR contract deliverables as described in Section 3 ([Detailed Specifications](#)). Specifically, the bidder should:

- a. Describe the proposed staffing pattern for each of the deliverables described in this RFP. This must include a job description and the required qualifications for each position.
- b. Describe the organization's recruitment plan for ensuring ideal staffing level and how the bidder will retain staff and avoid turnover.
- c. Provide proposed training strategy for educating and re-educating new and existing staff in their job duties, as well as ongoing training to keep staff abreast of new developments in the areas of information technology, customer service, organ, eye and tissue donations, and NYSDLR promotion.
- d. Submit information that demonstrates the bidder's ability to dedicate the necessary resources required to provide the requested services.

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The bidder should outline a staffing proposal for all aspects of the NYSDLR that includes an organization chart depicting:

- a. All functional units of the project;
- b. Number and types of staff for each unit;
- c. Lines of authority governing the interactions of staff; and,
- d. Relationships with subcontractors, if applicable.

#### ***4.1.3.3 References***

Proposals should include at least one business reference for the prime contractor and one business reference for each subcontractor included throughout the bidder's proposal. See Attachment 16 ([References/Client List](#)). References will be contacted to verify the Section 2.1 ([Eligibility](#)) requirements. Please ensure the contact information provided for each reference is accurate and up-to-date.

#### ***4.1.3.4 Financial Capacity***

The Department recognizes that additional funding may be needed to fully meet the deliverables of this RFP. It is anticipated that the Contractor will subsidize with funding from other sources for both the operational and marketing and education deliverables. The bidder should demonstrate the ability to obtain additional funding to support the deliverables of this RFP.

- a. The bidder should describe how it plans to raise the additional funds needed to support both the operational and marketing and education deliverables of this RFP. Do not make reference to specific fundraising dollars that will be raised for this RFP.
- b. The bidder should describe its success with past fundraising activities.

#### **4.1.4 NYSDLR Narrative**

The bidder should propose a detailed plan for performing the required tasks and activities outlined in Section 3.1 ([Registry Development and Maintenance/Administration and Operation](#)), Section 3.2 ([Acceptance of Work Products \(Performance Evaluation\)](#)) and Attachment 14 ([Technical Proposal Requirements for NYSDLR Narrative](#)). The bidder must complete Attachment 15 ([Proposed Solution Technology](#)) to fully describe and define the proposed infrastructure, software development and implementation plan. In addition, the bidder must complete Attachment 11 ([Security Proposal](#)). Where appropriate, the bidder should describe how its past experiences will be applied to the project outlined in this RFP. If use of

subcontractor(s) is proposed, the Bidder should adhere to guidance provided in Section 4.1 ([Technical Proposal](#)).

#### **4.1.5 Administration and Operational Support**

Administrative and operational support of the NYDLR program: The bidder should provide a plan describing how it will perform all of the functions outlined in Section 3.3 ([Administration and Operational Support](#)). The bidder should attach in an appendix, examples of operational policies and procedures, message center scripts and website content. The appendix does not count toward page totals. If use of subcontractor(s) is proposed, the bidder should adhere to guidance provided in Section 4.1 ([Technical Proposal](#)).

#### **4.1.6 Education and Marketing**

Education and marketing: The bidder should provide a plan with clear milestones to successfully address all the components in Section 3.4 ([Education and Marketing](#)).

Bidders should attach in an appendix, final printed examples of education materials and statewide marketing campaigns. The marketing campaign examples should include marketing and media plans as well as samples of radio and TV spots, screenshots of digital media, photos of out-of-home media and any other collateral materials.

The appendix does not count toward page totals. If use of subcontractor(s) is proposed, the bidder should adhere to guidance provided in Section 4.1 ([Technical Proposal](#)).

All bidders within 10 points of the highest scoring bidder after all other parts of the evaluation are completed will be invited to Albany, New York, to make an oral presentation on their proposed marketing and media campaign for Years 2 through 5. Bidders also should show how they would evaluate the campaign's effectiveness. The invited bidders will be given up to one hour to make an oral presentation, including a question and answer period. Oral presentations must be made by staff who will be responsible for conducting the marketing and advertising activities. Each bidder will be responsible for any travel or other costs involved in making its presentation.

## 4.2 Cost Proposal

### (25 percent)

The bidder must submit a Cost Proposal separate from the Technical Proposal. Details regarding submission of proposals are set forth in Section 5.4 ([Submission of Proposals](#)).

The Cost Proposal should include pricing in each deliverable function as specified on Attachment 4 ([Sample Bid Form](#)). A Microsoft Excel bid form is available on the RFP website and must be completed in its entirety. See Attachment 5 ([Bid Form](#)).

Within the bid form, the bidder should submit a separate annual bid price for each of the deliverables for each of the five years of the proposed contract term. The bidder should include in its pricing, any unrestricted funding it plans to use in support of the project deliverables as described in their technical proposal. Unrestricted funding is defined as funds received by the not-for-profit organization by a private donor without any prescribed use, or those with a prescribed use that is consistent with this RFP's project deliverables and not otherwise intended for a specified project. Lastly, the bidder should specify the amount of funding requested from the State for each year of the project. Bidders that request more than the maximum amount of State funding available per function in any year, as described in Table 2 of Section 2 ([General Information](#)), will be disqualified.

Bidders are cautioned not to commit unrestricted funding to the project that they do not reasonably expect to obtain. The amount of each claim submitted to the Department for this project will be reduced by the Contractor's share of the project cost as calculated in the cost proposal. See Attachment 4 ([Sample Bid Form](#)).

The Cost Proposal also should include the following completed forms:

- a. Attachment 2: [Lobbying Form](#);
- b. Attachment 6: [Vendor Responsibility Attestation](#);
- c. Attachment 7: [M/WBE Procurement Forms List](#); and
- d. Attachment 8: [Encouraging Use of New York Businesses in Contract Performance](#).

## 4.3 Method of Award

### 4.3.1 Vendor Selection

At the discretion of the Department, any or all bids may be rejected. The evaluation of the bids will include, but not be limited to the following considerations:

#### Pass/Fail Assessment (Mandatory Requirements)

- a. Submission of Technical Proposal prior to due date.
- b. Submission of Cost Proposal prior to due date.
- c. The eligibility requirements as stated in Section 2.1 ([Eligibility](#)) are met.
- d. Cost Proposal requests no more than the maximum amount of State funding available per year, per function, as described in Table 2 of Section 2 ([General Information](#)).
- e. Subcontracting requirements, if applicable, in Section 4.1 ([Technical Proposal](#)) are met.
- f. Submission of completed Attachment 11 ([Security Proposal](#)).
- g. Submission of completed Attachment 15 ([Proposed Solution Technology](#)).

#### Evaluation Process

The Department will conduct a comprehensive, fair, and impartial evaluation of each proposal in response to this RFP according to New York State laws and regulations and Department rules.

The evaluation of proposals will determine which proposal provides the “Best Value” to the State. Under New York State Procurement Guidelines, “Best Value” is the basis for awarding all service contracts, which optimizes quality, cost, and efficiency among responsive and responsible offerers. Separate teams of staff will evaluate the Technical and Cost Proposals.

After the preliminary technical and cost evaluations have been completed, and composite scores have been calculated, presentations will be requested from all bidders within 10 points of the highest scoring bidder.

The final score will be computed after the presentations are scored.

The basis of the award will be the highest composite Technical Evaluation (75%) and Cost Evaluation (25%) score.

References provided by highest scoring (technical/cost) bidder will be contacted. In the event that the references disqualify the bidder (minimum qualifications are not met), NYSDOH may pursue a contract for the services proposed by the next highest scoring bidder.

The Department will notify all bidders in writing after it makes its final selection and the Department has approved the selection. The Department will then develop a binding contract with the selected bidder to provide the services. In the case where there is a failure to execute a contract with the selected bidder, the Department may pursue a contract for the services proposed by the next highest scoring bidder.

The Department staff will administer any contract that is executed between the Contractor and the State. In the event of a tie, the determining factor(s) for award, in descending order of importance, will be:

- Lowest cost;
- Minority/Women-Owned Business Enterprise (M/WBE) utilization;
- Experience; and
- References.

The Department's Selection Committee will select the bidder with the highest score whose proposal meets all the project requirements and, in the committee's judgment, has the organizational capacity to assume responsibility for the NYSDLR.

## **5. ADMINISTRATIVE**

### **5.1 Issuing Agency**

This RFP is a solicitation issued by the New York State Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all proposals.

### **5.2 Inquiries**

Any questions concerning this solicitation must be directed to:

Kimberly Valente, RN  
Health Policy Associate  
Division of Hospitals and Diagnostic and Treatment Centers  
Office of Primary Care and Health Systems Management  
New York State Department of Health  
875 Central Avenue, WS A  
Albany, NY 12206  
Tel. (518) 402-1026  
Email: [Kimberly.Valente@health.ny.gov](mailto:Kimberly.Valente@health.ny.gov)

All questions must be submitted in writing by the date specified in the Schedule of Key Events.

Questions and answers, as well as any RFP updates and/or modifications, will be posted on the Department's website at <http://www.health.ny.gov/funding> by the date indicated on the Schedule of Key Events. This Q&A document also will be mailed to all potential bidders who have either submitted a Notice of Intent to Submit or have requested in writing such information. Bidders wishing to receive these documents via mail or email must send a request, in writing, to the Department at the address above.

### **5.3 Letter of Interest (Optional)**

Bidders may provide an optional Letter of Interest (Attachment 17). If submitted, this letter should designate an Official Representative and be emailed to the Permissible Subject Matter Contact listed on page ii of the RFP by the due date noted in the Schedule of Key Events on the cover page of this RFP.

## 5.4 Submission of Proposals

Interested vendors must submit the Technical Proposal and the Cost Proposal separately, no later Than the proposal due date specified in the Schedule of Key Events Calendar.

The Technical Proposal and Cost Proposal Submission should be in the following form:

- a. The Technical Proposal should be submitted in a sealed package labeled: “New York Donate Life Registry, RFP # 15697: Technical Proposal.” Submit two (2) signed originals, eight (8) signed copies in three (3) ring binders and one CD, DVD or flash drive.
- b. The Cost Proposal should be submitted in a sealed package labeled: “New York State Donate Life Registry, RFP # 15697: Cost Proposal.” Submit two (2) signed originals, eight (8) signed copies in three (3) ring binders and one CD, DVD or flash drive.

Responses should be directed to:

New York State Department of Health  
Division of Hospitals and Diagnostic and Treatment Centers  
Office of Primary Care and Health Systems Management  
New York State Department of Health  
875 Central Avenue, WS A  
Albany, NY 12206  
Attention: Kimberly Valente, RN

It is the bidder’s responsibility to see that its bid is delivered to the above address prior to the date and time of the bid due date specified on the Schedule of Key Events. Bids which are late due to delay by the carrier or otherwise are not received in the Department’s mail room by the deadline will not be considered.

The bidder should ensure that:

- a. the Bid Form (Attachment 5) is filled out in its entirety;
- b. the Transmittal Letter identifies the responsible corporate officer for contract negotiation and is signed by such officer;
- c. the [Transmittal Letter](#) (Attachment 1) is the first page of the technical proposal; and
- d. the original Technical Proposal and original Cost Proposal are clearly marked “ORIGINAL” and contain original signatures.

The Technical Proposal (including all copies) should meet the following general format requirements:

- a. Letter size paper (8.5 x 11 inch), double sided text, should be used;
- b. All margins should be at a minimum of one inch;
- c. Font type for narrative information should be a minimum of 12 point;
- d. Tab dividers should be used for each section of the proposal; and
- e. Pages of the proposal should be clearly numbered, with each section of the proposal separately numbered and identified in the Table of Contents.

## **5.5 Reservation of Rights**

The Department reserves the right to:

- a. Reject any or all proposals received in response to the RFP;
- b. Withdraw the RFP at any time, at the agency's sole discretion;
- c. Make an award under the RFP in whole or in part;
- d. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
- e. Seek clarifications and revisions of proposals;
- f. Use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
- g. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- h. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
- i. Change any of the scheduled dates;

- j. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- k. Waive any requirements that are not material;
- l. Negotiate with the successful bidder within the scope of the RFP in the best interests of the State;
- m. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- n. Utilize any and all ideas submitted in the proposals received;
- o. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 365 days from the bid opening; and,
- p. Require clarification at any time during the procurement process and/or require correction, arithmetic or other, of apparent errors for the purpose of assuring a full and complete understanding of an offeror's proposal and/or to determine an offeror's compliance with the requirements of the solicitation.

## 5.6 Payment

If awarded a contract, the Contractor shall submit invoices and/or vouchers to the State's designated payment office:

- a. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [DOHaccounts payable@ogs.ny.gov](mailto:DOHaccounts payable@ogs.ny.gov) with a subject field as follows:  
Subject: <<Unit ID: 345XXXX>> <<Contract #>>
- b. Alternate Method: Mail vouchers to the Office of General Services Business Services Center at the following U.S. postal address:

**NYS Department of Health  
Unit ID 345<<xxxx>>  
PO Box 2093  
Albany, NY 12220-0093**

Payment for invoices and/or vouchers 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

Email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518-474-6019. The CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract 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.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9 must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/epay>.

Completed W-9 forms should be submitted to the following address:

NYS Office of the State Comptroller  
Bureau of Accounting Operations  
Warrant & Payment Control Unit  
110 State Street, 9<sup>th</sup> Floor  
Albany, NY 12236

Payment of such invoices and/or vouchers by the State (the New York State Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be:

Vendor may bill upon completion of and the Department's acceptance of the following fixed cost deliverables, as outlined in Attachment 5 ([Bid Form](#)):

- a. Develop NYSDMV data transfer process to update NYSDLR on a weekly basis;
- b. Develop Extraction, Transformation, and Load process (ETL) to transfer all existing registrations from the current NYSDLR;
- c. Develop interface for paper based registrations by DOH, OPOs or Contractor;
- d. Develop required reports/forms;
- e. Acquire third party technology licenses (the Department will reimburse for third party licenses at cost); and
- f. Develop public registration portal with electronic signatures.
- g. Execute and evaluate the milestone components of the state media buy (Years 2 through 5) as outlined in the media plan and invoiced upon successful completion of such components.

Vendor may bill, in 12 equal increments, a monthly fee for the two remaining deliverables (Administration and Operational Support and Education and Marketing Activities), based on the annual amounts submitted for these deliverables in winning bidder's cost proposal.

**All vouchers submitted to the Department for the project will be reduced by the vendors' share of the costs, as calculated in line (D) of the bid form submitted as the cost proposal (Attachment 5).**

## 5.7 Reporting

If awarded a contract, the Contractor shall submit quarterly reports to:

Kimberly Valente, RN  
Division of Hospitals and Diagnostic and Treatment Centers  
Office of Primary Care and Health Systems Management  
New York State Department of Health  
875 Central Avenue, WS A  
Albany, NY 12206

The Contractor will be required to submit a quarterly report of activities being conducted in accordance with the work plan including, but not limited to:

- a. The monthly number of transactions of the NYSDLR processes (e.g., revocations, amendments, paper registrations);
- b. Call volumes for the NYSDLR message center including the number of translator-assisted calls;
- c. Monthly website activities and requests for assistance or information;
- d. NYSDLR registration data by age, county, zip code and enrollment source; and
- e. Minutes of downtime in the reporting cycle, including the nature, cause, date, time, duration, and resolution of each outage.
- f. Status updates of education and marketing activities such development, execution and findings on strategic plan and focus groups; development and execution of creative campaign(s); and, the development, execution and evaluation of advertisement performance across all media buy outlets.

The Contractor will also be required to participate in quarterly, or more frequently as needed, conference calls and/or meetings with the Department's staff

## 5.8 Term of Contract

This agreement shall be effective upon approval of OSC.

It is anticipated that a contract resulting from this RFP will take effect on or about December 1, 2014, for a term of five (5) years.

This agreement may be canceled at any time by the Department giving to the Contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

## 5.9 Debriefing

Once an award has been made, bidders may request a debriefing of their proposal. Please note the debriefing will be limited only to the strengths and weaknesses of the bidder's proposal, and will not include any discussion of other proposals. Requests must be received no later than ten (10) business days from date of award or non-award announcement.

## 5.10 Protest Procedures

In the event unsuccessful bidders wish to protest the award resulting from this RFP, bidders should follow the protest procedures established by OSC. These procedures can be found in Chapter XI, Section 17, of the Guide to Financial Operations (GFO), which is available online at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

## 5.11 Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors should file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [www.osc.ny.gov/vendrep](http://www.osc.ny.gov/vendrep) or go directly to the VendRep system online at <https://portal.osc.ny.gov>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.ny.gov/vendrep](http://www.osc.ny.gov/vendrep) or may contact the Department or OSC for a copy of the paper form. Winning bidders also must complete and submit Attachment 6 ([Vendor Responsibility Attestation](#)).

## 5.12 State Consultant Services Reporting

Chapter 10 of the Laws of 2006 amended certain sections of the State Finance Law and the Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State.

The winning bidders for procurements involving consultant services must complete a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

Winning bidders must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" for each state fiscal year included in the resulting contract. This report must be submitted annually to the Department, OSC, and the Department of Civil Service.

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at:

<http://www.osc.ny.gov/procurement/>.

### **5.13 Lobbying Statute**

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, made significant changes as it pertains to development of procurement contracts with governmental entities. The main changes were as follows:

- a. made the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. required the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. required governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. authorized the New York State Joint Commission on Public Ethics to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e. directed the New York State Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f. required the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. expanded the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal-State Agreements, and procurement contracts;
- h. modified the governance of the New York State Joint Commission on Public Ethics;
- i. provided that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. increased the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and

- k. established the Advisory Council on Procurement Lobbying.

Subsequently, Chapter 14 of the Laws of 2007 amended the Lobbying Statute, particularly as it related to specific aspects of procurements as follows: (i) prohibiting lobbyists from entering into retainer agreements on the outcome of government grant making or other public funding; and (ii) reporting lobbying efforts for grants, loans and other disbursements of public funds over \$15,000.

The most notable, however, is the increased penalties provided under Section 20 of Chapter 14 of the Laws of 2007, which replaced old penalty provisions and the addition of a suspension option for lobbyists engaged in repeated violations.

Questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Joint Commission on Public Ethics.

#### **5.14 Accessibility of State Agency Web-based Intranet and Internet Information and Applications**

Any web-based intranet and internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with New York State Enterprise IT Policy P08-005, "Accessibility of Web-based Information and Applications," and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and internet information and applications are accessible to persons with disabilities. Web content must conform to New York State Enterprise IT Standard NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by the Department, contractor or other, and the results of such testing must be satisfactory to the Department before web content will be considered a qualified deliverable under the contract or procurement.

#### **5.15 Information Security Breach and Notification Act**

State Technology Law (STL) § 208 and General Business Law (GBL) § 899-aa require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code and access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided, however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation.

When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: OAG, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC), and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach/>

In accordance with the Information Security Breach and Notification Act (ISBNA) (GBL § 889-aa and State Technology Law § 208), the Contractor shall be responsible for complying with the provisions of the ISBNA and the following terms contained herein with respect to any private information (as defined in ISBNA) received by the Contractor under this contract (Private Information) that is within the control of the Contractor either on DOH's information security systems or the Contractor's information security systems (System). In the event of a breach of the security of the System (as defined by ISBNA), the Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and restore the security of the System to prevent any further breaches. The 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, the Contractor shall, to the fullest extent possible, first consult with and receive authorization from the Department prior to notifying any individuals, the Department of State (DOS), 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. The Contractor shall be responsible for providing the notice to all such required recipients and for all costs associated with providing such notice. Nothing herein, shall in any way impair the authority of OAG to bring an action against Contractor to enforce the provisions of ISBNA or limit the Contractor's liability for any violations of the ISBNA. In the event that the Contractor is advised by a law enforcement agency pursuant to GBL §899-aa(4) to delay the notice under GBL §899-aa(3), the Contractor shall provide the notice under GBL §899-aa(3) to the State not more than twenty-four hours after the Contractor has been advised by the law enforcement agency that notice under GBL §899-aa(3) can be provided.

## **5.16 Public Information**

Disclosure of information related to this procurement and the resulting contract shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL), Public Officers Law (POL) Article 6. The Department shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this Procurement that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL, must be clearly marked and identified as such by the Contractor upon submission. If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall at the time of submission, request the exemption in writing and provide an explanation of (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor, or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to POL § 87(2). Acceptance of the identified information by the Department does not constitute a determination

that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the Department.

### **5.17 New York State Tax Law § 5-A**

Tax Law § 5-a, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Tax and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the Contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to an offerer meeting the registration requirements but who is not so registered in accordance with the law.

The Contractor must complete and submit directly to DTF Contractor Certification Form ST-220-TD. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

The Contractor must complete and submit to the Department the form ST-220-CA, certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render an offerer non-responsive and non-responsible. Offerers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Forms ST-220-TD and ST-220-CA may be accessed electronically at:

ST-220-TD:

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) and

ST-220-CA:

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

## 5.18 Piggybacking

New York State Finance Law § 163(10)(e) (see also <http://www.ogs.state.ny.us/procurecounc/pgbguidelines.asp>) allows the Commissioner of the New York State Office of General Services to consent to the use of this contract by other New York State agencies and other authorized purchasers, subject to conditions and the Contractor's consent.

## 5.19 Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

Pursuant to Article 15-A of the New York State Executive Law, New York State Department of Health recognizes its obligation to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises and the employment of minority group members and women in the performance of New York State Department of Health contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in state procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that New York State Department of Health establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

### Business Participation Opportunities for MWBEs

For purposes of this solicitation, New York State Department of Health hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises (MBE) participation and 10% for Women-Owned Business Enterprises (WBE) participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract (Contract) must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and

Contractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>.

For guidance on how New York State Department of Health will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and New York State Department of Health may withhold payment from the Contractor as liquidated damages.

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.

By submitting a bid or proposal, a bidder on the Contract (Bidder) agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.
- B. The New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to:

New York State Department of Health  
Division of Administration  
Bureau of Contracts  
Empire State Plaza  
Corning Tower Building, Room 2709  
Albany, New York, 12237  
Attention: Justin Engel

or by email at [Justin.Engel@health.ny.gov](mailto:Justin.Engel@health.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, the New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to

file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- D. The New York State Department of Health may disqualify a Bidder as being non-responsive under the following circumstances:
- a) If a Bidder fails to submit a MWBE Utilization Plan;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If the New York State Department of Health determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to New York State Department of Health, but must be made prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report on Form #3 to the New York State Department of Health address, phone and fax information, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 (Equal Employment Opportunities for Minorities and Women). The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form #4) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the New York State Department of Health, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will 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.

**Note:** Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

## **5.20 Executive Order No. 38**

Bidders should be aware of Executive Order 38, signed January 18, 2012, which imposes limits on administrative costs and executive compensation which may be paid by certain entities receiving state funds or state authorized payments.

## **5.21 Iran Divestment Act**

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies 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” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the Department receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department 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 Department shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

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

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

## **5.22 Encouraging Use of New York Businesses in Contract Performance**

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. All bidders should complete Attachment 8 ([Encouraging Use of New York Businesses in Contract Performance](#)) to indicate their intent to use/not use New York businesses in the performance of this contract.

## 6. APPENDICES

The following will be incorporated as appendices into any contract resulting from this RFP. This Request for Proposal will, itself, be referenced as an appendix of the contract.

- APPENDIX A - Standard Clauses for New York State Contracts
- APPENDIX B - Request for Proposal
- APPENDIX C - Proposal  
The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.
- APPENDIX D - General Specifications
- Unless the CONTRACTOR is a political subdivision of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:

- CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage Is Not Required; OR
- C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
- SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.

Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:

- CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage Is Not Required; OR
- DB-120.1 – Certificate of Disability Benefits Insurance
- DB-155 – Certificate of Disability Benefits Self-Insurance

- APPENDIX G - Notices
- APPENDIX J – Additional Contract Clauses
- APPENDIX M – Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures
- APPENDIX X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

## 7. ATTACHMENTS

1. Transmittal Letter
2. Lobbying Form
3. No Bid Form
4. Sample Bid Form
5. Bid Form
6. Vendor Responsibility Attestation
7. M/WBE Procurement Forms List
8. Encouraging Use of New York Businesses in Contract Performance
9. Change Request Form
10. Security Requirements
11. Security Proposal
12. Data Breach Policy
13. Business Continuity for System Downtime
14. Technical Proposal Requirements for NYSDLR Narrative
15. Proposed Solution Technology
16. References/Client List
17. Letter of Interest (Optional)
18. New York State Boilerplate Contract with Appendices
  - Appendix A- Standard Clauses for New York State Contracts
  - Appendix X - Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
  - Appendix B - Invitation for Bids
  - Appendix C - Proposal
  - Appendix J - Additional Contract Clauses
  - Appendix D - General Specifications
  - Appendix G - Notices
  - Appendix M - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures

*Attachment 1 Transmittal Letter*

**Transmittal Letter**

(Please place on company letter head)

|   |                                |
|---|--------------------------------|
| Date:                                   | Bidder Phone No.:              |
| Bidder Contact Name:                    | Bidder Fax No.:                |
| Bidder Address:                         | Bidder Contact Email Address:  |
| Federal Employee Identification Number: | Charities Registration Number: |

Vendor RFP Designated Contact Person: *<bidder representative for RFP response>*  
 Vendor RFP Designated Contact Details: *<address [if different from above], telephone(s), fax, email>*

- 1) I agree on behalf of *<bidder name>* to acceptance of all terms and conditions specified in this RFP.
- 2) I agree on behalf of *<bidder name>* that the offer submitted in this proposal is valid for a period of three hundred and sixty-five (365) calendar days from the date of submission of the proposal.
- 3) I agree on behalf of *<bidder name>* that *<bidder name>* will be responsible to the Department for all work specified in the RFP, including work assigned to subcontractors.
- 4) I agree on behalf of *<bidder name>* that *<bidder name>* will not place any conditions, reservations, limitations, or substitutions in their proposal with regard to the contract language, or include any statements intended to alter the order of precedence as defined in the RFP.
- 5) A description of the existence of, or potential for, conflict of interest on the part of the vendor or its subcontractors due to prior, current, or proposed contracts, or affiliations is provided below. If no such conflict of interest exists, a statement to that effect must be made.

Description:

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- 6) I agree on behalf of *<bidder name>* that the description provided above is accurate and true.
- 7) I attest that *<bidder name>* meets all eligibility requirements as set forth in Section 2.1 ([Eligibility](#)).
- 8) I attest that *<bidder name>* is authorized to do business in New York State.

#### Compliance Checklist

##### Mandatory

- Submission of the Technical Proposal is enclosed and received prior to due date.
- Submission of the Cost Proposal is enclosed and received prior to due date (Microsoft Excel bid form).
- Cost Proposal requests no more than the maximum amount of State funding available per year, per function, as described in Table 2 of Section 2 ([General Information](#)).
- Subcontracting requirements, if applicable, in Section 4.1 ([Technical Proposal](#)) are met.
- Submission of completed Attachment 11 ([Security Proposal](#)).
- Submission of completed Attachment 15 ([Proposed Solution Technology](#)).
- Submission of supporting documentation that bidder meets all of the eligibility requirements as stated in Section 2.1 ([Eligibility](#)).

##### Administrative

- References/Client List - *Attachment 16*
- Lobbying Form – *Attachment 2*
- Vendor Responsibility Attestation – *Attachment 6*
- M/WBE Procurement Forms List – *Attachment 7*
- Encouraging Use of New York Business in Contract Performance – *Attachment 8*

I attest that I am a corporate officer and have the authority to legally represent *<bidder name>* in responding to all aspects of this RFP. Additionally, I attest that I agree with all statements above and that all information and disclosures provided by *<bidder name>* in response to this RFP are accurate.

**Legal Company Authority Name:** *<individual legally authorized to bind the bidder to the proposal and to a contract>*

**Title:** *<individual's title>*

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

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

*Attachment 2 Lobbying Form*NEW YORK STATE  
DEPARTMENT OF HEALTH**Lobbying Form**

PROCUREMENT TITLE: NYS Donate Life Registry  
**RFP # 15697**

Bidder Name:  
 Bidder Address:

Bidder Vendor ID #:  
 Bidder Federal ID#:

**A. Affirmations & Disclosures related to State Finance Law §§ 139-j & 139-k:**

Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the Department of Health relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6)(b).

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid or Request for Proposal* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid, Request for Proposal, or other solicitation document*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No

Yes

If yes, please answer the next questions:

- 1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No

Yes

1b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

1c. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

2a. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

2b. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

**B.** Offerer/Bidder certifies that all information provided to the Department of Health with respect to State Finance Law §139-k is complete, true and accurate.

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|                              |                      |
|------------------------------|----------------------|
| _____<br>(Officer Signature) | _____<br>(Date)      |
| _____<br>(Officer Title)     | _____<br>(Telephone) |

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(email Address)

*Attachment 3 No Bid Form*

**No Bid Form**

PROCUREMENT TITLE: New York State Donate Life Registry

RFP # 15697

**Bidders choosing not to bid are requested to complete the portion of the form below:**

We do not provide the requested services. Please remove our firm from your mailing list

We are unable to bid at this time because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please retain our firm on your mailing list.

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer Title)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(Email Address)

**FAILURE TO RESPOND TO BID INVITATIONS MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST FOR THIS SERVICE.**

Attachment 4 Sample Bid Form

**Attachment 4 - SAMPLE BID FORM  
New York State Donate Life Registry**

Procurement #: 15597  
Bidder Name:  
Bidder SFS Vendor ID:

**Directions:** For each year of the project, bidder should enter into the green shaded cells the total project cost for the deliverables listed under Functions 1 and 2. Bidder should enter into the yellow shaded cells the total amount requested from the State for each function and each year. Bidder's that request more than the maximum amount of State funds available per year, per function, as described in Section 2 Table 2 of the RFP, will be disqualified. This bid form will be used to establish the State's share of costs associated with the project each year. An example of a payment calculation is provided below. See Section 5.6 Payment, for additional details on payment. Fields shaded in grey are auto-calculated and do not require entry.

**\*\*FIGURES ARE FOR ILLUSTRATIVE PURPOSES ONLY\*\***

| Function 1   | Year 1    | Year 2    | Year 3    | Year 4    | Year 5    | Total     |
|--|-----------|-----------|-----------|-----------|-----------|-----------|
| <b>Registry Development and Maintenance (As Described in Section 3.1.1)*</b>   |           |           |           |           |           |           |
| Develop NYSDMV data transfer process to update NYSDLR on a weekly basis  | \$10,000  |           |           |           |           |           |
| Develop Extraction, Transformation, and Load process (ETL) to transfer all existing registrations from the current NYSDLR. | \$10,000  |           |           |           |           |           |
| Develop interface for paper based registrations by DOH, OPOs or Contractor   | \$10,000  |           |           |           |           | \$10,000  |
| Develop Required Reports/Forms   | \$10,000  |           |           |           |           | \$10,000  |
| Acquire 3rd Party Technology Licenses  | \$200,000 | \$0       | \$0       | \$0       | \$0       | \$200,000 |
| Develop Public Registration Portal with Electronic Signatures  | \$25,000  |           |           |           |           |           |
| <b>Administration &amp; Operational Support (As Described in Section 3.3)</b>  |           |           |           |           |           |           |
| Administration & Operations (to be paid as monthly fee in 12 equal increments)   | \$25,000  | \$150,000 | \$125,000 | \$125,000 | \$125,000 | \$550,000 |
| <b>Function 1 Project Totals</b>   | \$290,000 | \$150,000 | \$125,000 | \$125,000 | \$125,000 | \$770,000 |
| <b>Amount Requested from the State for Function 1</b>  | \$265,700 | \$150,000 | \$100,000 | \$100,000 | \$100,000 | \$715,700 |

| Function 2  | Year 1    | Year 2    | Year 3    | Year 4    | Year 5    | Total       |
|---|-----------|-----------|-----------|-----------|-----------|-------------|
| <b>Education and Marketing</b>  |           |           |           |           |           |             |
| **Media Buy   |           | \$140,000 | \$140,000 | \$140,000 | \$140,000 | \$560,000   |
| Education and Marketing Activities (to be paid as monthly fee in 12 equal increments) | \$200,000 | \$80,000  | \$80,000  | \$80,000  | \$80,000  | \$520,000   |
| <b>Function 2 Project Totals</b>  | \$200,000 | \$220,000 | \$220,000 | \$220,000 | \$220,000 | \$1,080,000 |
| <b>Amount Requested from the State for Function 2</b>                                 | \$200,000 | \$115,700 | \$115,700 | \$115,700 | \$115,700 | \$662,800   |
| <b>(A) Combined Project Total (Both Functions)</b>                                    | \$490,000 | \$370,000 | \$345,000 | \$345,000 | \$345,000 | \$1,850,000 |
| <b>(B) Total Amount Requested from the State (Both Functions)</b>                     | \$465,700 | \$265,700 | \$215,700 | \$215,700 | \$215,700 | \$1,378,500 |
| <b>(C) Amount Supported By Bidders Unrestricted Funding</b>                           | \$24,300  | \$104,300 | \$129,300 | \$129,300 | \$129,300 | \$471,500   |
| <b>(D) Vendor's Share of Costs Upon Invoice = C/A</b>                                 | 5%        | 28%       | 37%       | 37%       | 37%       |             |
| <b>(E) State's Share of Costs Upon Invoice = B/A</b>                                  | 95%       | 72%       | 63%       | 63%       | 63%       |             |

\* Fixed cost deliverables. Bid price should be inclusive of labor, security requirements, hardware and other infrastructure costs.

\*\*It is expected that the commission charged for media buys will be at a reasonably competitive rate.

| Example of Payment Calculation          | <b>**FIGURES ARE FOR ILLUSTRATIVE PURPOSES ONLY**</b> |   |          |   |                      |
|---|---|---|----------|---|----------------------|
| Invoice Received for \$98,000 in Year 1 | \$465,700   | X | \$98,000 | = | \$93,140 State Share |
|   | \$490,000   |   |          |   | \$4,860 Vendor Share |

*Attachment 5 Bid Form*

Complete the Excel Spreadsheet provided at the RFP website and submit as the Cost Proposal per Section 4.2 ([Cost Proposal](#)).

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*Attachment 6 Vendor Responsibility Attestation*

**Vendor Responsibility Attestation**

To comply with the Vendor Responsibility Requirements outlined in Section 5.11 ([Vendor Responsibility Questionnaire](#)) of this RFP, I hereby certify:

**Choose one:**

- An online Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.
  
- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.
  
- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: \_\_\_\_\_

Print/type Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

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

*Attachment 7 M/WBE Procurement Forms*

**M/WBE Procurement Forms List**  
New York State Department of Health

The following forms are required to maintain maximum participation in M/WBE procurement and contracting:

M/WBE Form #1: Bidder's M/WBE Utilization Plan

M/WBE Form #2: M/WBE Utilization Waiver Request

M/WBE Form #3: Quarterly Update M/WBE Contractor Compliance Plan

M/WBE Form #4: M/WBE Staffing Plan

M/WBE Form #5: Equal Employment Policy Statement (Sample)

M/WBE Form #6: M/WBE Workforce Employment Utilization Report

**M/WBE Form #1: Bidder’s M/WBE Utilization Plan**

|                         |                  |
|-------------------------|------------------|
| Bidder/Contractor Name: |                  |
| Vendor ID:              | Telephone No.    |
| RFP/Contract Title:     | RFP/Contract No. |

Description of Plan to Meet M/WBE Goals

**PROJECTED M/WBE USAGE**

|                                       | %   | Amount |
|---------------------------------------|-----|--------|
| 1. Total Dollar Value of Proposal Bid | 100 | \$     |
| 2. MBE Goal Applied to the Contract   |     | \$     |
| 3. WBE Goal Applied to the Contract   |     | \$     |
| 4. M/WBE Combined Totals              |     | \$     |

In order to achieve the MBE Goals, bidder expects to subcontract with New York State certified MINORITY-OWNED entities as follows:

| MBE Firm<br>(Exactly as Registered)   | Description of Work (Products/Services) [MBE] | Projected MBE<br>Dollar Amount |
|---|---|--------------------------------|
| Name<br><br>Address<br><br>City, State, ZIP<br><br>Employer I.D.<br><br>Telephone Number<br>( ) - |   | \$ _____                       |
| Name<br><br>Address<br><br>City, State, ZIP<br><br>Employer I.D.<br><br>Telephone Number<br>( ) - |   | \$                             |
| Name<br><br>Address<br><br>City, State, ZIP<br><br>Employer I.D.<br><br>Telephone Number<br>( ) - |   | \$ _____                       |

In order to achieve the WBE Goals, bidder expects to subcontract with New York State certified WOMEN-OWNED entities as follows:

| WBE Firm<br>(Exactly as Registered)   | Description of Work (Products/Services) [WBE] | Projected WBE<br>Dollar Amount |
|---|---|--------------------------------|
| Name<br><br>Address<br><br>City, State, ZIP<br><br>Employer I.D.<br><br>Telephone Number<br>( ) - |   | \$ _____                       |
| Name<br><br>Address<br><br>City, State, ZIP<br><br>Employer I.D.<br><br>Telephone Number<br>( ) - |   | \$                             |
| Name<br><br>Address<br><br>City, State, ZIP<br><br>Employer I.D.<br><br>Telephone Number<br>( ) - |   | \$ _____                       |

**M/WBE Form #2: M/WBE Utilization Waiver Request**

|                                |                         |
|--------------------------------|-------------------------|
| <b>Bidder/Contractor Name:</b> |                         |
| <b>Vendor ID:</b>              | <b>Telephone No.</b>    |
| <b>RFP/Contract Title:</b>     | <b>RFP/Contract No.</b> |

**Explanation why Bidder/Contractor is unable to meet M/WBE goals for this project:**

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Include attachments below to evidence good faith efforts:

- Attachment A. List of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.
- Attachment B. List of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- Attachment C. Descriptions of the contract documents/plans/specifications made available to certified MWBEs by the contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- Attachment D. Description of the negotiations between the contractor and certified MWBEs for the purposes of complying with the MWBE goals of this contract.
- Attachment E. Identify dates of any pre-bid, pre-award or other meetings attended by contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the contract.
- Attachment F. Other information deemed relevant to the request.

**Section 4: Signature and Contact Information**

By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote MWBE participation pursuant to the MWBE requirements set forth under the contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.

Submitted by : \_\_\_\_\_ Title: \_\_\_\_\_

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

**M/WBE Form #3: Quarterly Update M/WBE Contractor Compliance Plan**

|                  |              |
|------------------|--------------|
| Contractor Name: |              |
| Contract Title:  | Contract No. |

**TOTAL PROJECTED M/WBE USAGE (from original M/WBE Utilization Plan)**

|   | %   | Amount |
|---|-----|--------|
| 1. Total Dollar Value Contract              | 100 | \$     |
| 2. Planned MBE Goal Applied to the Contract |     | \$     |
| 3. Planned WBE Goal Applied to the Contract |     | \$     |
| 4. M/WBE Combined Totals                    |     | \$     |

**ACTUAL M/WBE USAGE\* AS OF \_\_\_\_\_ (insert date)**

|   | %   | Amount |
|---|-----|--------|
| 1. Total Dollar Value Completed to date | 100 | \$     |
| 2. MBE Utilization to date              |     | \$     |
| 3. WBE Utilization to date              |     | \$     |
| 4. M/WBE Combined Utilization to date   |     | \$     |

\* Report usage from contract start date to quarterly end-date inserted above.

Explain any deficiencies in attaining M/WBE goals in the space below:

Submitted by: \_\_\_\_\_ Title: \_\_\_\_\_

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

**M/WBE Form #4: M/WBE Staffing Plan**

Check applicable categories:

**Project Staff**

**Consultants**

**Subcontractors**

**Contractor Name** \_\_\_\_\_

**Address** \_\_\_\_\_

\_\_\_\_\_

| <b>STAFF</b>                        | <b>Total</b> | <b>Male</b> | <b>Female</b> | <b>Black</b> | <b>Hispanic</b> | <b>Asian/<br/>Pacific<br/>Islander</b> | <b>Other</b> |
|-------------------------------------|--------------|-------------|---------------|--------------|-----------------|--|--------------|
| <b>Administrators</b>               |              |             |               |              |                 |  |              |
| <b>Managers/Supervisors</b>         |              |             |               |              |                 |  |              |
| <b>Professionals</b>                |              |             |               |              |                 |  |              |
| <b>Technicians</b>                  |              |             |               |              |                 |  |              |
| <b>Clerical</b>                     |              |             |               |              |                 |  |              |
| <b>Craft/Maintenance</b>            |              |             |               |              |                 |  |              |
| <b>Operatives</b>                   |              |             |               |              |                 |  |              |
| <b>Laborers</b>                     |              |             |               |              |                 |  |              |
| <b>Public Assistance Recipients</b> |              |             |               |              |                 |  |              |
| <b>TOTAL</b>                        |              |             |               |              |                 |  |              |
|                                     |              |             |               |              |                 |  |              |

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

**M/WBE Form #5: Equal Employment Policy Statement (Sample)****M/WBE AND EEO POLICY STATEMENT**

I, \_\_\_\_\_, the (awardee/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 M/WBE 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 M/WBEs 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 M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**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) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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

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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.

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Name

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Title

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Signature

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Date

**M/WBE Form #6: M/WBE Workforce Employment Utilization Report**

Check applicable categories:

**Project Staff**

**Consultants**

**Subcontractors**

Contractor Name \_\_\_\_\_ Contract # \_\_\_\_\_

Staff Used on Contract for the quarter / / to / /

| STAFF                        | Total | Male | Female | Black | Hispanic | Asian/<br>Pacific<br>Islander | Other |
|------------------------------|-------|------|--------|-------|----------|-------------------------------|-------|
| Administrators               |       |      |        |       |          |                               |       |
| Managers/Supervisors         |       |      |        |       |          |                               |       |
| Professionals                |       |      |        |       |          |                               |       |
| Technicians                  |       |      |        |       |          |                               |       |
| Clerical                     |       |      |        |       |          |                               |       |
| Craft/Maintenance            |       |      |        |       |          |                               |       |
| Operatives                   |       |      |        |       |          |                               |       |
| Laborers                     |       |      |        |       |          |                               |       |
| Public Assistance Recipients |       |      |        |       |          |                               |       |
| <b>TOTAL</b>                 |       |      |        |       |          |                               |       |
|                              |       |      |        |       |          |                               |       |

Explain variances from original staffing plan submitted in the space below:

\_\_\_\_\_  
Name Title

\_\_\_\_\_  
Signature Date

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## *Attachment 8 Encouraging Use of New York Businesses in Contract Performance*

### **Encouraging Use of New York Businesses in Contract Performance**

#### **I. Background**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing service and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

#### **II. Required Identifying Information**

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?

YES       NO

If yes, identify New York State businesses that will be used and attach identifying

information. Information should include at a minimum: verifiable business name, New York address and business contact information.



*Attachment 9 Change Request Form*

**Change Request Form**

| <b>PROJECT IDENTIFICATION</b>   |                                       |
|---|---------------------------------------|
| Project Name:   |                                       |
| Project Sponsor:  |                                       |
| Project Director:   |                                       |
| Project Manager:  |                                       |
| Date:   |                                       |
| <b>CHANGE REQUEST INFORMATION</b>   |                                       |
| Request Date:   |                                       |
| Requested By:   | Organization:                         |
| <b>DESCRIPTION OF CHANGE</b>  |                                       |
| <i>Enter a detailed description of the change being requested.</i>  |                                       |
| Priority: (High, Medium, Low)   | Overall Impact (Large, Medium, Small) |
|   |                                       |
| <b>SCOPE IMPACT</b>   |                                       |
| <i>Enter a complete list of deliverables that are being added, changed or removed from the project. Otherwise, enter "No impact".</i> |                                       |

| <b>SCHEDULE IMPACT</b>  |
|---|
| <i>If the changes to the project's scope, quality management plan or budget will affect start and end dates on the project schedule, list milestones here with previous dates and new, estimated dates. In some instances, a change to the schedule will be driving the change and cause impacts to the scope, project schedule and budget. Otherwise, enter "No impact". Alternatively, you can attach a proposed project schedule to this change request.</i> |

| <b>QUALITY IMPACT</b>   |
|---|
| <i>If the changes to the project's scope, schedule or budget will result in a deviation from the approved quality management plan, list specific quality assurance activities that will not occur, any new risk of the activities not occurring, the likelihood of the risk occurring, and the impact to the project if the risk does occur. In some instances, a change in the quality management plan will be driving the change and cause impacts to the scope, schedule and budget. Otherwise, enter "No impact".</i> |



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*Attachment 10 Security Requirements***Security Requirements**

The Department has the following requirements:

- a) The solution must comply with all NYS security policies and standards found at <http://its.ny.gov/tables/technologypolicyindex.htm>.
- b) The successful bidder, contractors, or subcontractors must conduct themselves in a manner that ensures utmost adherence to the letter and spirit of the security requirements and standards associated with this project.
- c) The successful bidder, contractors, or subcontractors must ensure the confidentiality of any and all non-public information associated with this project.
- d) The successful bidder will be required to meet with ITS' Health Cluster Application Development and Support Group (ADSG) and Chief Information Security Officer (CISO) prior to beginning development efforts and present a detailed technical design document (including process and data flow diagrams) and security plan (per NYS Secure Coding and Secure System Development Lifecycle standards found at <http://its.ny.gov/tables/technologypolicyindex.htm>) for review and approval.
- e) The successful bidder will be required to meet with ADSG and the CISO regularly and at the CISO's discretion during the project to review technical implementation and security issues and to ensure the proposed solution is compatible with ITS and The Department's security requirements.
- f) The CISO reserves the right to reject, redirect, or otherwise require architectural changes to ensure solution compliance with security requirements.

All systems supporting for the New York State Department of Health (NYSDOH), whether hosted by NYS or externally both internal and external, must comply with the NYS Security Policy and standards, as described and listed at <http://its.ny.gov/tables/technologypolicyindex.htm/security>, and other NYSDOH-specific security requirements listed in this document.

Contractors and/or NYSDOH program area are required to work with the ITS Health Cluster Chief Information Security Officer (CISO) to satisfy these requirements.

An acceptable Security Plan will be a mandatory project deliverable and must be completed prior to commencement of detailed application and systems development, unless otherwise approved by the ITS Health Cluster CISO. The Security Plan must address the following components and be presented to the ITS Health Cluster CISO for approval. The Security Plan template will be provided prior to commencement of the project.

### Security Plan Components

- 1) Secure Transmission**
- 2) Systems and Network Security**
- 3) Application Security Requirements**
- 4) Data integrity,**
- 5) Data availability**
- 6) Account management**
- 7) Security Incident Management and Audit Requirements**
- 8) Proprietary Information, Copyright and Software Licensing**
- 9) Data Confidentiality**

For management and maintenance of existing systems, ITS Health Cluster CISO-approved security may already be in place for many of the security components required. Addressing gaps in these requirements within existing components will be the responsibility of the NYSDOH program area unless otherwise specified. Contractors and/or NYSDOH program area will have the responsibility to ensure new components are in compliance with the security standards in this document, as applicable.

Each project may not need to provide mechanisms for every security component, particularly if the proposed system/solution will leverage existing NYSDOH/ITS systems. NYSDOH program area, working in conjunction with the ITS Health Cluster CISO as necessary, may make known in any RFP or project description which requirements will be managed by NYSDOH outside the scope of this project.

Contractors and NYSDOH program area are encouraged to use existing NYS security services whenever possible and could be asked to provide integration with existing services and solutions to facilitate broader NYSDOH or NYS efforts.

Security plans should reference policy and standards compliance efforts and should make use of standard technologies and existing solutions whenever possible. Systems which require NYS government, NYSDOH business partners or NYS citizens to authenticate will be expected to use NY.gov ID and/or Health Commerce System (HCS) unless a specific requirement precludes use of these solutions. Justification for using other solutions must be documented.

Documentation must exist in the form of schematics and / or diagrams of the network layout of the system and a description of how security will be performed. This network plan must be submitted for review and approval to ITS Health Cluster CISO during development and again just prior to production. This should include diagrams with servers, communications paths, and data flows clearly labeled. The plan should clearly explain the system's networking security

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policy (which can be included as an appendix to the Security Plan), and should clearly describe how vulnerability scans and other on-going security measures will be implemented including frequency of security measures and tests. The ITS Health Cluster CISO must approve the design. Details of all components of the system and all security components must be reviewed by the ITS Health Cluster CISO.

Any changes to the approved network layout must be reviewed and approved by ITS Health Cluster CISO for continued compliance with NYSDOH network standards. A change management process must be documented and include security risk review. NYSDOH shall be granted access to change management systems and/or documents. The ITS Health Cluster CISO reserves the right to review the development plan and may apply additional requirements for promotion of applications.

Documentation must be submitted to ITS Health Cluster CISO for review and approval of how sessions are established and managed.

Assurance must be provided that when user sessions for an application or network connection terminate, either normally or abnormally, all related network sessions will also terminate.

Systems, applications and networks must comply with NYS Secure Configuration, Security Logging and Encryption Standards and security plans must address these areas in detail.

The ITS Health Cluster CISO reserves the right to run periodic vulnerability scans or penetration tests and to review reports from scans or logs as needed.

All hosts and applications must have applicable security testing, such as application or host scanning. Scans and tests will be performed prior to production being implemented on production networks implementation and after software or operating systems or configuration changes are made.

All source code developed for NYSDOH must be provided for periodic review by made available ITS Health Cluster CISO. Critical vulnerabilities identified during scans must be fixed and all ITS Health Cluster CISO's security recommendations must be followed. Scans and tests must be performed at least annually and more frequently for critical and/or high-risk systems, such as those exposed to external users and/or the Internet. Scan frequencies should be defined within the scope of work and must, at minimum, comply with NYS standards and policies.

All hardware, networking components, physical devices and software related to the project/system are to be protected and no unauthorized person should be able to access these hardware and software components. Any intrusion and unauthorized accesses must be stopped and reported to the ITS Health Cluster CISO as they occur.

Description and documentation must exist of the steps to physically secure the location of servers, storage, media, or workstations that will contain applications, source code and/or databases related to the project/system. This must contain how all these physical devices are protected.

Description and documentation must exist regarding disaster recovery/business continuity of the systems. Periodic back-ups of data, databases, software, applications including and not limited to source code of anything defined within the project scope must be performed according to the disaster recovery/business continuity requirements. . Security of data at rest must be maintained in accordance with the classification of the information and applicable laws, regulations, statutes, policies and standards.

Application vulnerability areas include the following and must be addressed in the Security Plan as applicable.

- a) **Input Validation:** ensure that all input validation be achieved in a manner to prevent any malicious requests or code from being processed.
- b) **Output Validation:** ensure that all data retrieved from inter process operations, including responses from database connections and web service calls, has been appropriately validated.
- c) **Type Checking:** Ensure that all data retrieved from inter process operations, including screen input, has been validated for the expected data type.
- d) **Bounds Checking:** ensure that all variables be bounded by the length they are designed to be. This is a critical and integral part of Input Validation.
- e) **Writing Directly to a File:** ensure that at no time any sensitive information be written to any external files (text or otherwise) except to log files, unless approved by the ITS Health Cluster CISO. This includes sensitive information and includes any external files used within the application on a temporary basis.
- f) **URL Passed Variables:** ensure that variables will not be passed via a URL or are subjected to a high standard for Input Validation. Wherever possible, internal session variables should be used and only session reference given.
- g) **Caching SSL Pages:** ensure all feasible precautions are taken to ensure that any cached SSL pages be removed upon exiting of the browser and/or the website.
- h) **Hidden Form Variables:** ensure use of hidden form fields is limited; treat these fields with the same limited trust as other form fields and validate data provided in these fields as such.
- i) **Cookies:** ensure that any cookies required for any and all web based applications will expire upon completion of the application. No cookies should be allowed to remain for an indefinite period of time. A Maximum Auth Cookie timeout will be required. Cookie values received from the client should be validated as with all other input. Authorization cookies must have an expiration time and comply with NYS Cyber Security Policy P03-002.

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- j) Tool Sets and External Code: Use of third-party modules and/or programs should be limited to items that are known to have undergone thorough security testing. Where possible, source code for any third-party solutions should undergo secure code reviews, including application scanning. No applications or modules should call or access external links or resources, unless this is part of the system's core functions. (For example, if the system is designed to call an external web service and process the result, external reference would be expected)
  - k) Modules should not reference to external libraries for internal execution, however.) Likewise, no applications or modules should display external links unless this is part of the system's core functions. Use of code, modules and/or programs obtained from external sources must be in compliance with licenses agreements.
  - l) Configuration Files: ensure that no external configuration files will contain sensitive information including but not limited to clear-text user names and/or passwords. Encrypted configuration files and/or use of encrypted values within clear-text files are permitted provided keys are managed securely.
  - m) Application Logging: Application Logging: Logs should be reviewed for application security at least each business day and critical issues should be escalated as required by NYSDOH policy and procedures and/or other applicable legal requirements. Logging of application events must satisfy NYS Secure Logging standard requirements and any additional auditing requirements specific to the applicable data
  - n) Databases: connections must be secure. Access to production data must be limited to system accounts with appropriate limited access. Data must be encrypted at rest as required by NYS Encryption Standard and authorization for data should be enforced at both the application and database layers, through technologies such as virtual private directory or similar technologies. Processes must ensure that all database queries are secure, run by authorized users and application(s). Stored procedure shall be employed wherever possible. At no time should input data be passed to the database without appropriate validation.

Software licenses must be reviewed on a periodic basis.

Any unauthorized software is to be isolated and access disabled.

Appropriate licenses for any products provided as part of this project/system must exist. Licenses purchased under a contract are owned by NYSDOH.

Copying licensed or NYSDOH proprietary software must be limited to legitimate backup processes. NYSDOH will hold individual program areas and/or contractors liable for any inappropriate software use, distribution or license violations.

Any software including software developed, maintained, acquired or in any other way created during the length of this project is the expressed property of the NYSDOH and cannot be used for any other reason than its intended use without prior approval of NYSDOH.

*Attachment 11 Security Proposal*

**Security Proposal**

Describe below how the following three Security areas will be addressed.

1. Confidentiality, Integrity and Availability of data at rest and in motion.

2. Network Security including server management, network configuration, network security vulnerabilities and their prevention, secure transmission of data, account management, incident handling and auditing/log management.

3. Application security; application security audit, review and remediation; and secure coding practices as they pertain to an overall secure software development life cycle (SSDLC), including any tools used in this process.

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*Attachment 12 Data Breach Policy***Data Breach Policy**

All individually identifying information or potentially re-identifiable information transmitted in the course of this contract shall be kept confidential and shall not be used or disclosed except in accordance with the terms of this contract. Any subpoenas served on any agency for the data under this Agreement shall be promptly transmitted to the Department's counsel.

A breach is, generally, an impermissible use or disclosure that compromises the privacy of the information provided by the enrollee. An impermissible use or disclosure of such information is presumed to be a breach unless the contractor demonstrates that there is a low probability that the information has been compromised based on a risk assessment of at least the following factors:

1. The nature and extent of the breached information involved, including the types of identifiers and the likelihood of re-identification;
2. The unauthorized person who used the information or to whom the disclosure was made;
3. Whether the information was actually acquired or viewed; and
4. The extent to which the risk to the information has been mitigated.

There are three exceptions to the definition of "breach." The first exception applies to the unintentional acquisition, access, or use of protected health information by a Contractor workforce member or person acting under the authority of the Contractor, if such acquisition, access, or use was made in good faith and within the scope of authority. The second exception applies to the inadvertent disclosure of information by a person authorized to access the information to another person authorized to such information. In both cases, the information cannot be further used or disclosed in a manner inconsistent with Article 43 of the Public Health Law. The final exception applies if the Contractor has a good faith belief that the unauthorized person to whom the impermissible disclosure was made, would not have been able to retain the information.

If any purported, potential, or actual breaches of the confidential information contained on the NYSDLR occur, Contractor agrees to notify the Department immediately. The Contractor will investigate the circumstances surrounding such breach and perform a risk assessment analysis and provide such analysis to the Department within 24 hours of securing the NYSDLR. Based on the Contractor's risk assessment, the Department will determine what type of breach notifications following an impermissible use or disclosure must be adhered to. All costs associated with the breach notifications and subsequent mitigations shall be the Contractor's responsibility.

The Contractor agrees to provide the Department with a report on the incident detailing the results of such investigation and the steps taken to mitigate the resulting damages.

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### *Attachment 13 Business Continuity for System Downtime*

#### **Business Continuity for System Downtime**

The Contractor is required to maintain the NYSDLR in a manner that allows immediate access to organ, eye and tissue records 24 hours a day, 7 days a week to the bidder, the Department, organ procurement organizations, licensed eye and tissue banks and such other entities which may be approved by the Department for purposes consistent with section 4310 and Article 43B of the Public Health Law.

In the event that an incident occurs which requires the system to be shut down and offline – the Department requires that the Contractor take the necessary steps to identify the nature of the incident, protect the integrity, confidentiality of the information, and finally to provide access to the information as soon as practicable in a manner that continues to ensure the confidentiality and integrity of the information is maintained. The Contractor will make all efforts to contact the Department about the incident

If the incident requires that NYSDRL be offline for any duration of time which would impede access to those authorized to access the system, the Contractor will be responsible for the following:

1. Providing notification to all authorized users that the system will be offline and the estimated duration of such downtime.
2. Restoring access to the data in the most efficient and effective manner.
3. Investigate the circumstances surrounding downtime and determine whether or not there was any breach in the confidential information contained in NYSDLR. If so – follow the protocol under Section 5.15 ([Information Security Breach and Notification Act](#)) and Attachment 12 ([Data Breach Policy](#)).

Routine maintenance must be performed in a manner that allows for continued access to the system as prescribed by law. Any routine maintenance that is performed on the system that causes unintended downtime must adhere to the protocol above.

All costs associated with the downtime and subsequent mitigations shall be the Contractor's responsibility.

The Contractor agrees to provide the Department with a report on the incident detailing the results of such investigation and the steps taken to mitigate, if any, the resulting damages.

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## *Attachment 14 Technical Proposal Requirements for NYSDLR Narrative*

### **Technical Proposal Requirements for NYSDLR Narrative**

#### **1. General Technical Requirements**

The Department prefers bids with solutions utilizing widely accepted mainstream technologies. Examples of web based application technologies include, but are not limited to:

*Table 1.1 Examples of web based application and mainstream technologies*

|                                |   |
|--------------------------------|---|
| <b>Operating Environments:</b> | AIX, Linux, Microsoft Windows Server  |
| <b>Database (RDBMS):</b>       | Oracle, MS SQL, DB2, MySQL  |
| <b>Web Servers:</b>            | Apache, Microsoft IIS, IBM HTTP, RedHat HTTP                                    |
| <b>Application Servers:</b>    | J2EE, WebSphere Application Server, JBOSS, Oracle WebLogic, .NET, Microsoft IIS |
| <b>Programming Languages:</b>  | Java, C#  |

If bidders are uncertain whether a technology which is included in your proposal is considered to be “widely accepted mainstream,” ask for clarification from the Department during the questions and answers period.

Database applications must use ANSI standard SQL on the back-end RDBMS and database independent connectivity methods such as JDBC or ODBC. Data must be stored in a secure database. Development that is Java-based running on LINUX, using RDBMS back-end with web service connectors to authentication, authorization, and user data is preferred. All user access must be web-based using standard current web browsers via HTTPS.

For all bids, and as part of the bid review process, the Department reserves the right to interview proposed project participants.

The Department will allow subcontract arrangements, and reserves the right to approve all subcontracts, but assigns full accountability and responsibility to the successful bidder.

Development, testing, and operational activities must occur within the United States or U.S. Territories or in jurisdictions having contract, privacy, and data protections standards (and legal

framework allowing enforcement of such protections without undue difficulty from with the United States) comparable to those existing in the United States.

With two-week notice, or as otherwise agreed to by the Department, ITS and the bidder, the Department and ITS reserves the right to audit any and all aspects of the solution, including but not limited to:

- Secure software development life cycle and software deployment processes;
- Physical access to the data center(s);
- Any system logs, including network access, authentication, authorization, intrusion detection, and auditing; and
- Server and software patching and release levels.

The Department will require the Contractor to present a “technical solution” for inspection. The technical solution is defined as ‘a complete solution that fully meets and/or implements all of the Business, Technical, and Security requirements outlined in this RFP, unless otherwise agreed upon by the DOH and/or ITS, and upon approval by the Department and ITS will become the final product.

## **2. Software Quality Assurance Requirements**

ITS has the following requirements pertaining to system quality:

- a) The successful bidder will be required to work collaboratively with ITS to ensure that software quality goals and criteria are achieved and proven. Specific and detailed quality goals and criteria will be established with the successful bidder at the start of the project.
- b) The successful bidder will be required to demonstrate that they have tested and met the deliverables and requirements as described in this RPF. Demonstration may include detailed test plans, cases, scenarios, scripts, automation code, and other items or activities relevant and appropriate to the deliverables.

The successful bidder is not restricted from using any existing test infrastructure it may already have in place. The Department reserves the right to audit and approve or require extension of such infrastructure at its discretion in support of quality goals and criteria.

The successful bidder must clearly demonstrate compliance with ITS Information Security Policy P03-002 found at <http://its.ny.gov/tables/technologypolicyindex.htm/security>.

- c) The successful bidder will be required to achieve system performance goals prior to submission of technical solution to ITS. Because system performance validation may require specialized tools, ITS expects a cooperative interaction for validation of this objective.
- d) The successful bidder will be required to take reasonable action to correct incidents identified by ITS.

**Note:** ITS expects reasonable application of “works as designed” as an incident resolution status, and reserves the right to reject “works as designed” if it deems such resolution to be inappropriate, inaccurate, or unreasonable.

### 3. System Evolution

Bidders are required to indicate how they will accommodate system evolution. System evolution activities may include but not be limited to providing technical and system administration support, updates to meet browser and operating system changes, upgrades, fixes, patches, security and exploit vulnerability fixes, corrections to any discovered problems, bugs, defects, failures in the software or documentation, and extensions of the system to accommodate new requirements.

Pursuit of system evolution activities will be optional, at the Department’s discretion and will be executed as extensions to the contract resulting from this procurement. System evolution activities, if elected, will be executed after implementation of the system. Any system evolution activities will be the responsibility of the successful bidder and will be completed at no cost to the State.

### 4. Architecture Requirements

ITS and/or its delegate will review and sign-off on architecture at various points during the project. The specific points at which these architecture reviews will be conducted and approved will be determined mutually with the successful bidder at the start of the project.

ITS must be informed and knowledgeable of possible consequences and trade-offs of architecture decisions. To support its knowledge and provide opportunity for decision input on architecture issues, the Department has the following requirements:

- a) The successful bidder will be required to provide architecture artifacts at selected points of the project, which will be reviewed by ITS and/or its delegate. The specific artifacts required for detailed system architecture and their management and delivery to *ITS* will be established at the start of the project.
- b) The successful bidder will be required to present to ITS architecture overviews and details prior to extensive implementation efforts. The specific points of presentation and

review will be determined mutually at the start of the project. These presentations will be subject to ITS approval.

- c) The successful bidder must include in its architecture presentations consequences, trade-offs, draw-backs or other issues of which it will be important or otherwise useful for ITS to be aware.
- d) ITS will accept architectures that include third party plug-ins or open-source technologies provided those technologies do not compromise security, are sustainable, and do not unduly obligate ITS. ITS will reject as non-responsive any proposed solution that violates this requirement.
- e) The proposed solution will be hosted by the successful bidder.
- f) The proposed solution must be capable of running in a high availability environment, and architected in a manner which does not require the host to maintain a session's state.
- g) The proposed solution must comply with all publically available NYS IT architecture requirements.
- h) The proposal must clearly demonstrate compliance with NYS Secure Configuration standards NYS-S14-008 found at [http://its.ny.gov/policy/Enterprise\\_Secure\\_Configuration\\_v1.0.pdf](http://its.ny.gov/policy/Enterprise_Secure_Configuration_v1.0.pdf)

## **5. Technical Systems and User Documentation and Requirements**

The successful bidder will be required to provide technical systems as well as user documentation in accordance with the following:

- a) ITS requires the successful bidder to thoroughly document all technical and user aspects of the solution as it exists in its final state accepted by the Department.
- b) The successful bidder should deliver complete solution technical and design documentation. This documentation should be a comprehensive description of all technical components of the NYSDLR "technical solution" solution. It may include:
  - software components,
  - application security controls,
  - technical architecture/specifications document,
  - Use Cases and User Interface documents,
  - transaction processing flows,

- 
- external interfaces and data exchanges,
  - service interfaces, internal interfaces and data exchanges (as applicable),
  - network and technical components (as applicable),
  - data models and data dictionaries, and
  - source code documentation (comments).
- c) The successful bidder may be required to deliver complete system administration documentation, including at a minimum detailed instructions for:
- user and system administration,
  - monitoring and reporting,
  - batch processes (as applicable),
  - security and access control, and
  - operational procedures.
- d) The successful bidder will be required to deliver complete end user manuals and context-sensitive online help and instructions to appear on each screen. The documentation deliverables will consist of task-oriented user procedures encompassing end to end registration processing instructions, screen navigation descriptions, field descriptions, and reference information as appropriate.

## **6. Business Continuity Requirements**

The technology support architecture must include business continuity components (i.e., backup/recovery, failover, disaster recovery) which are deemed necessary to effectively manage and support the technology investment.

The Business Continuity Component includes three major areas:

- Backup/Recovery;
- Failover; and
- Disaster Recovery.

Backups are secondary copies of primary information. They provide short-term protection of data to ensure business continuity, are generated at a point-in-time and typically in a periodic

automated fashion. Backups are executed to provide a point-in-time copy of information to protect critical business processes. The goal of the backup/recovery solution is data security through redundancy plus ease in restoring data in the case of failure or corruption.

Failover refers to the process and infrastructure required to switch from production to a full-service alternate environment due to a disruption due to daily issues, such as failed disk or server, bad communications line, etc.

Disaster recovery refers to major disruption, such as a flooded building, fire, or earthquake disrupting an entire installation. Plans, procedures, and infrastructure need to be established to recover from a major disaster and resume daily operations with minimal downtime.

## **7. Backup/Recovery Requirements**

The successful bidder must:

- a) Backup all databases and data files that reside on the multiple environments. Database recovery points must not exceed 6 hours. These backups must be executed in such a way that any data set can be restored from the backup medium within three (3) hours of the discovery and notification that a restoration is needed. On a weekly basis the Contractor will backup all databases and other data and store the backups at a secure off-site location;
- b) Provide a backup/recovery component comprised of a high capacity backup and recovery infrastructure for all required component data. Secure backups will include but are not limited to the following datasets:
  - i. Database Data (all databases in solution);
  - ii. Files (all formats);
  - iii. Operating System Software;
  - iv. Relational Database Management Software (RDBMS);
  - v. Documentation (e.g., user manuals, operations/systems documentation, policies/procedures);
  - vi. Program code (source, executable); and
  - vii. User libraries of reports, queries, etc.;
- c) Ensure all backup data is secured and managed in accordance with the data classification of information contained in the backups.

- d) Off-site backup copies must be stored in an ITS approved backup storage location for four (4) weeks with the oldest copy being rotated out weekly. The successful bidder will be responsible for the cost associated with the backup storage process and backup storage location. All backups must be transferred to *ITS* or the contract successor upon contract completion, at the direction of the Department;
- e) An on-site copy of backups must be maintained at the successful bidder's computer facilities for a period of seven (7) calendar days. These backup copies will be used to address non-disaster data recovery without the need to retrieve the backup copy from the backup storage facility;
- f) An automated scheduling system for running the backup processes for all environments must be developed and maintained;
- g) The process to verify that backup and restoration processes were run appropriately must be developed and maintained. This process must verify that:
  - i. All scheduled backup procedures have run successfully as scheduled;
  - ii. Backup copies are created in a useable (readable) form and can be used for successful restoration of objects; and
  - iii. Backup copies are stored in the correct location; and
  - iv. Backup copies are appropriately physically and logically secured
- h) In the case of source system- or application-dependent errors that result in invalid data being loaded into the NYSDLR, the successful bidder must be able to restore these tables utilizing the on-site backup copies to its state prior to the erroneous load. Restoration of the table/tables must be accomplished within twenty-four (24) hours of the discovery and notification of the error.

## 8. Failover Requirements

The successful bidder must:

- a) Provide a failover component designed in such a way as to eliminate to the maximum extent possible any business outages due to hardware or network malfunctions;
- b) Provide a failover component with immediate failover capability;
- c) Design the capability to switch operations from the production environment to the failover environment in the event technical problems incapacitate the production server within the Department's required RTOs/RPOs;

- d) Establish a hierarchy of critical services and infrastructure to determine the order that services must be restored; and
- e) Design the capability to switch operations from the production environment to a failover environment in the event server hardware/software upgrades need to be performed.

## 9. Disaster Recovery Requirements

Upon the Department's declaration that a business continuity event exists, the successful bidder must execute the Disaster Recovery Plan.

The successful bidder must:

- a) Have in place a Disaster Recovery Plan that addresses recovery of NYSDLR functions, human resources and the technology infrastructure that is acceptable to ITS;
- b) Develop and maintain the Disaster Recovery Plan (DRP). The DRP must be available and present at ITS.
- c) Maintain a DRP that provides for the recovery of critical data services within twenty-four (24) hours of the discovery of the service disruption, the declaration of a disaster or production site becoming unsafe or inoperable. Critical NYSDLR functionality must be restored within ten (10) calendar days of the disaster. Critical NYSDLR functions are defined as daily data feed refresh cycle, basic data access functions (query and reporting), Web portal and data backup capabilities;
- d) Maintain a DRP that details procedures to address (but not be limited to) the following potential events:
  - i. Natural disasters (e.g., earthquake, fire, flood, storms);
  - ii. Terrorist acts;
  - iii. Power disruptions or power failure;
  - iv. Computer software or hardware failures;
  - v. Computer shutdowns due to hackers, viruses, etc., as well as significant compromise/degradation of data warehouse performance;
  - vi. Processing shutdowns; and
  - vii. Labor strife (walkouts, shutdowns);

- e) Develop, maintain and submit to ITS, in advance, all proposed off-site procedures, locations and protocols for ITS review and approval prior to implementation. These items must be incorporated by the successful bidder as components of the DRP;
- f) Ensure that each aspect of the DRP is detailed as to the responsibilities of both the bidder and ITS;
- g) Ensure that the DRP is available to State auditors at all times;
- h) Modify the DRP, software installation procedures and operational procedures as needed to reflect the changes implemented with the new data sources, if the system changes or any enhancements will impact the disaster recovery capability. Modifications to the DRP must be submitted to ITS for review and approval;
- i) Execute the DRP test to demonstrate the capability of the DRP to restore processing capability for all critical system components at the DR site. The DRP test must be included as part of Acceptance Testing and be executed annually after the implementation of the NYSDLR;
- j) Take all steps necessary to fully recover the data and/or system from the effects of a disaster and to reasonably minimize the recovery period; and
- k) Provide an uninterruptible power source (UPS) at the primary site with the capacity to support operation of the system and its components for 30 minutes and to ensure an orderly shutdown after at least 30 minutes if necessary.

## **10. Software Asset Management Tools**

ITS has the following requirements regarding software asset management:

- a) ITS requires traceability from requirements through test reporting.
- b) ITS requires the successful bidder to assure the security of the application through the use of source code analysis and web application vulnerability scanning software prior to promotion to production such as IBM Rational AppScan.
- c) ITS requires that all software assets be turned over to ITS at the end of the contract in their entirety, regardless of what tools were used to create and manage them.
- d) Successful bidder will provide to ITS electronic copies of all project artifacts.
- e) The successful bidder will provide ITS a minimum of two (2) user licenses and whatever accompanying (processor-based, etc.) licenses required to gain full access to all system components.

---

## 11. Usability Requirements and User Input

The NYSDLR solution will be available to users with varying computer experience. It is critical that the NYSDLR solution provide users with an easy-to-use interface that is intuitive, does not cause confusion, and can be navigated with minimal or no opportunity for failure.

ITS does not have a formal style guide for interface design. While ITS has not explicitly required Bobby or 508 compliance, or other usability standards compliance, the successful bidder in conjunction with ITS will not be restricted from relying on such standards in establishing validation criteria for solution usability. Vendors are encouraged to anticipate working to achieve a high standard for system ease of use.

ITS suggests the following guidelines for ease of use and user interface design:

- a) The NYSDLR solution shall provide a graphical user interface—encompassing all solution capabilities—that is intuitive.

A user should not have to make extensive use of user or procedural documentation or online help; procedural steps and options should be obvious and include friendly and helpful prompts when appropriate. For example: When a record has been saved and then reopened, the solution could include a window listing the items that are incomplete, giving the opportunity for the user to go to any item in the list and enter data.

- b) The NYSDLR solution shall provide a user interface that does not confuse the user.

A user should be informed at all times of what the system is doing; a user should not be uncertain what the system is doing upon taking an action.

A user should not have to decipher cryptic system feedback (e.g., an error message that says “System Error in Core”). System feedback should be clear, polite, and provide correct steps or corrective actions for the user to take without compromising security.

- c) The NYSDLR solution shall provide a user interface that minimizes or eliminates opportunity for failure.

A user should not have options to provide information or take actions that are not valid under current conditions, or that would otherwise lead to errors (e.g., if a user does not have authority to enter certain data, then the user should not be given the opportunity to enter that data).

- d) The user interface must comply with NYS standards pertaining to accessibility to persons with disabilities.

Current NYS Policy and Standard on Accessibility of Web-Based Information and Applications are NYS-P08-005. See

<http://its.ny.gov/policy/2010FAQAccessibilityComplianceReportForm.pdf>

The successful bidder may be required, as appropriate, to develop and present user interface prototypes for ITS and user review and feedback. User feedback or input into interface design will be governed and prioritized (rejected as appropriate) by ITS.

## 12. System Performance

“System performance” shall be defined to include the following variables:

- **Throughput** - The number of transactions (request and response) per a defined period of time. A transaction is any activity that requires the system to respond. For example: refreshed data displayed on the screen, updated data posted to the database, etc.
- **User Load** - The number of concurrent system users. The system must maintain integrity of user session identification and database update record locking.
- **Stability Over Time** - A defined user load and throughput over an extended period of time showing no degradation in system performance, memory use, or other negative anomalies.

ITS has identified the following performance goals to serve as requirements relating to NYSDLR solution capacity and performance:

- a) The NYSDLR solution must accommodate throughput of ten (10) user transactions per second with a response to user time of not more than 1 second per transaction, regardless of the number of logged-in users.

ITS understands a user transaction as any activity that requires the system to respond. This may include but not be limited to refreshed data displayed on the screen, updated data posted to the database, data requested from the database.

Data imports, exports and exchanges will be factored into the system performance evaluation separately from user transactions.

- b) The NYSDLR solution must accommodate a peak user load of 25 concurrent users, maintaining integrity of user session identification and database update record locking.
- c) The successful bidder will be required to supply performance testing results to ITS and/or its delegate, and support ITS performance testing efforts during technical solution evaluation.
- d) The specific system performance test plan will be written collaboratively with ITS and/or its delegate at the start of the project.

*Attachment 15 Proposed Solution Technology*

**Proposed Solution Technology**

(Please place on company letter head)

|                      |                               |
|----------------------|-------------------------------|
| Date:                | Vendor Phone No.:             |
| Vendor Contact Name: | Vendor Fax No.:               |
| Vendor Address:      | Vendor Contact Email Address: |

*Vendors are required to provide information pertaining to the solution technology.*

*Use as much space as necessary.*

*Provide, as additional, separate documents within this tab of the binder, any information necessary to adequately address the proposal submission requirements.*

**A.1 Solution Technical Design and Architecture**

*Describe in detail your proposed solution’s design and technical architecture, including hardware (servers, network bandwidth, backup components, failover components, security components, UPS components) and software (interoperable components, frameworks, security, modules used, location of business logic and processes). Describe in detail middleware technology, 3rd party technology or components, application layers and interfaces.*

|   |
|---|
| <i>1. Project Plan</i>  |
| Project Schedule (Attach MS Project or equivalent high level Gantt chart) |
| <i>Plan for requirements tracing:</i>                                     |
| <i>Proposed issue tracking and reporting plans:</i>                       |
| <i>Performance goals (describe plan for meeting requirements):</i>        |
| <i>Reliability (describe plan for tracking and meeting requirements):</i> |

|   |
|---|
| <i>2. Proposed infrastructure (include system architecture diagram and component details)</i> |
| Production Site:  |
| <i>Development and Test sites:</i>  |
| <i>DMV file transfer:</i>   |
| <i>Backup/Recovery, Failover, Disaster Recovery</i>   |

|   |
|---|
| <i>3. Application Platform</i>                  |
| Database:                                       |
| <i>Development Language(s):</i>                 |
| <i>Electronic Signature solution:</i>           |
| <i>Licensed products, open source/freeware:</i> |
| <i>Software tools:</i>                          |
| <i>System to implement document imaging:</i>    |
| <i>Accessibility compliance plan:</i>           |

*4. Disaster Recovery Plan*

*(Attach separate document if necessary)*

*5. Description of Registry Transition/Turnover*

*6. Experience by Bidder or proposed contractors in:*

*Computer system development:*

*References for computer system development work:*

*7. Proposed IT project team*

*Roles (i.e. Project Manager, Business Analyst, Application Developer)*

- 1)*
- 2)*
- 3)*

*8. Documentation Plan*

*Describe/list artifacts that will be created and supported:*

*Attachment 16 References/Client List*

**References/Client List**

**Reference 1**

Reference Name/Affiliation:

Address:

Phone:

Email:

Provide a brief description of a recent project (within the last 5 years) for which they are serving to reference.

**Reference 2**

Reference Name/Affiliation:

Address:

Phone:

Email:

Provide a brief description of a recent project (within the last 5 years) for which they are serving to reference.

**Reference 3**

Reference Name/Affiliation:

Address:

Phone:

Email:

Provide a brief description of a recent project (within the last 5 years) for which they are serving to reference.

**Reference 4**

Reference Name/Affiliation:

Address:

Phone:

Email:

Provide a brief description of a recent project (within the last 5 years) for which they are serving to reference.

**Reference 5**

Reference Name/Affiliation:

Address:

Phone:

Email:

Provide a brief description of a recent project (within the last 5 years) for which they are serving to reference.

*Attachment 17 Letter of Interest (Optional)*

**Letter of Interest**

**Please email this Letter of Interest to the email address below by the date noted on the RFP cover page.**

Email: [Kimberly.Valente@health.ny.gov](mailto:Kimberly.Valente@health.ny.gov)

Dear M \_\_\_\_\_:

\_\_\_\_\_ has received the New York State Department of Health Request for Proposal for the **New York State Donate Life**.

We intend to submit a proposal for the **New York State Donate Life** to the New York State Department of Health, Office of Primary Care and Health Systems Management, not later than the proposal due date and time as outlined on the cover page of the RFP.

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Official Representative if different from above

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Email Address

*Attachment 18 New York State Boilerplate Contract with Appendices*

**MISCELLANEOUS / CONSULTANT SERVICES**

STATE AGENCY (Name and Address):  
Department of Health  
Corning Tower  
Albany, NY 12237

NYS COMPTROLLER'S NUMBER: C#  
ORIGINATING AGENCY GLBU: DOH01  
DEPARTMENT ID: 345XXXX

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:  
TO:

CONTRACTOR HAS ( ) HAS NOT ( ) TIMELY  
FILED WITH THE ATTORNEY GENERAL'S  
CHARITIES BUREAU ALL REQUIRED  
PERIODIC OR ANNUAL WRITTEN REPORTS

FUNDING AMOUNT FOR CONTRACT  
TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

STATUS:  
CONTRACTOR IS ( ) IS NOT ( ) A  
SECTARIAN ENTITY

NYS VENDOR IDENTIFICATION NUMBER:

CONTRACTOR IS ( ) IS NOT ( ) A  
NOT-FOR-PROFIT ORGANIZATION

MUNICIPALITY NO. (if applicable)

CONTRACTOR IS ( ) IS NOT ( ) A  
N Y STATE BUSINESS ENTERPRISE

( ) IF MARKED HERE, THIS CONTRACT IS RENEWABLE FOR \_\_\_ ADDITIONAL ONE-YEAR  
PERIOD(S) AT THE SOLE OPTION OF THE STATE AND SUBJECT TO APPROVAL OF THE  
OFFICE OF THE STATE COMPTROLLER.

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

Precedence shall be given to these documents in the order listed below.

- X APPENDIX A Standard Clauses as required by the Attorney General for all State Contracts.
- X APPENDIX X Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
- X STATE OF NEW YORK AGREEMENT
- X APPENDIX J Additional Contract Clauses
- X APPENDIX D General Specifications
- X APPENDIX B Request For Proposal (RFP)
- X APPENDIX C Proposal
- X APPENDIX E-1 Proof of Workers' Compensation Coverage

X APPENDIX E-2 Proof of Disability Insurance Coverage

X APPENDIX G Notices

X APPENDIX M Participation by Minority Group Members and Women with respect to State Contracts: Requirements and Procedures

Contract No.: C#

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

CONTRACTOR

STATE AGENCY

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

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

Printed Name

Printed Name

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

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

STATE OF NEW YORK )  
 )SS.:  
County of \_\_\_\_\_)

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$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 is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 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.

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

**GLBU: DOH01  
APPENDIX X**

Contract Number: \_\_\_\_\_ Contractor: \_\_\_\_\_

Amendment Number X-\_\_\_\_\_ BSC Unit ID: 345<XXXX>\_\_\_\_\_

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through NYS Department of Health, having its principal office at Albany, New York, (hereinafter referred to as the STATE), and \_\_\_\_\_ (hereinafter referred to as the CONTRACTOR), for amendment of this contract.

This amendment makes the following changes to the contract (check all that apply):

- \_\_\_\_\_ Modifies the contract period at no additional cost
- \_\_\_\_\_ Modifies the contract period at additional cost
- \_\_\_\_\_ Modifies the budget or payment terms
- \_\_\_\_\_ Modifies the work plan or deliverables
- \_\_\_\_\_ Replaces appendix(es) \_\_\_\_\_ with the attached appendix(es)\_\_\_\_\_
- \_\_\_\_\_ Adds the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Other: (describe) \_\_\_\_\_

This amendment is is is not a contract renewal as allowed for in the existing contract.

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

Additionally, Contractor certifies that it is not included on the prohibited entities list published at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> as a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Contractor (or any assignee) also certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Prior to this amendment, the contract value and period were:

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(Value before amendment) (Initial start date)

This amendment provides the following modification (complete only items being modified):

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.

This will result in new contract terms of:

\$ \_\_\_\_\_  
(All years thus far combined)

From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(Initial start date) (Amendment end date)

Signature Page for:

Contract Number: \_\_\_\_\_ Contractor: \_\_\_\_\_

Amendment Number: X- BSC Unit ID: 345<XXXX>

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

**CONTRACTOR SIGNATURE:**

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

(signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW YORK )  
) SS:  
County of \_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
(Signature and office of the individual taking acknowledgement)

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**STATE AGENCY SIGNATURE**

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

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

(signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**ATTORNEY GENERAL'S SIGNATURE**

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

**STATE COMPTROLLER'S SIGNATURE**

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

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

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STATE OF NEW YORK  
AGREEMENT

This AGREEMENT is hereby made by and between the State of New York Department of Health (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has formally requested contractors to submit bid proposals for the project described in Appendix B for which bids were opened on the date noted on the face pages of this AGREEMENT; and

WHEREAS, the STATE has determined that the CONTRACTOR is the successful bidder, and the CONTRACTOR covenants that it is willing and able to undertake the services and provide the necessary materials, labor and equipment in connection therewith;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations moving to each party hereto from the other, the parties hereto do hereby agree as follows:

I. Conditions of Agreement

- A. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- B. The maximum compensation for the contract term of this AGREEMENT shall not exceed the amount specified on the face page hereof.
- C. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- D. To exercise any renewal option of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT. The modification agreement is subject to the approval of the Office of the State Comptroller.
- E. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- F. For the purposes of this AGREEMENT, the terms "Request For Proposal" and "RFP" include all Appendix B documents as marked on the face page hereof.
- G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of

the following addresses:

- h. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [DOHaccounts payable@ogs.ny.gov](mailto:DOHaccounts payable@ogs.ny.gov) with a subject field as follows:  
Subject: <<Unit ID: 345XXXX>> <<Contract #>>

(Note: **do not** send a paper copy in addition to your emailed voucher.)

- i. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health**  
**Unit ID 345<<xxxx>>**  
**PO Box 2093**  
**Albany, NY 12220-0093**

- B. Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

Payment for invoices and/or vouchers 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 email at [helpdesk@sfs.ny.gov](mailto:helpdesk@sfs.ny.gov) or by telephone at 1-855-233-8363. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract 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.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9, must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/vendors/vendorsguide/guide.htm>.

### III. Term of Contract

- A. Upon approval of the Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department

- upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

#### IV. Proof of Coverage

Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
  3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.
- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  2. DB-120.1 – Certificate of Disability Benefits Insurance OR
  3. DB-155 – Certificate of Disability Benefits Self-Insurance

#### V. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status.

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## **Appendix J Additional Contract Clauses**

### **1. SUFFICIENCY OF PERSONNEL AND EQUIPMENT**

- 1) All employees, subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the RFP or Proposal, whichever is more restrictive, and must comply with all security and administrative requirements of the State, as well as those of the Department. The Department reserves the right to conduct a security background check or otherwise approve any employee, subcontractor or agent furnished by the Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with the State's and the Department's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Department reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.
- 2) The Department has the right to approve or reject original and replacement project team members assigned by the Contractor to this project. The Contractor will not be allowed extra time or money to replace personnel. The replacement project team member must possess the same or a higher level of technical expertise and/or experience than the original staff person leaving the project. The Contractor must notify the Department Project Manager or designee of personnel vacancies and provide résumés of replacement staff as support for the Contractor's compliance with this provision.
- 3) The Department also reserves the right to require the Contractor to discharge specified employees from performance of any or all duties associated with the performance of this Contract. The Department will not exercise this right unreasonably. The Contractor agrees to replace any employees so discharged with an employee of equal or better qualifications and acceptable to the Department. The Contractor will not be allowed extra time or money to replace personnel. The Department's exercise of this right shall be upon written notice to the Contractor setting forth the reasons for the requested action.

### **2. CONTRACTOR ROLE/INTERACTION WITH THIRD PARTIES**

- 1) The Contractor will be responsible for compliance with requirements under the Contract, even if requirements are delegated to subcontractors. All Department policies, guidelines, and requirements apply to subcontractors. The Contractor and subcontractors must not in any way purport to represent the Department or of the State of New York without the Department's prior written approval.

- 2) The Contractor must agree that all requirements of this Contract, including performance requirements set out in the RFP, will be adhered to and that requirements will apply to subcontractors even if subcontractor concurrence is not specifically defined. All subcontracts shall contain provisions specifying:
  - a. That the work performed by the subcontractor must be in accordance with the terms of the Contract, and
  - b. That the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the Contract between the Department and the Contractor.
- 3) The Department will consider the Contractor to be the sole point of contact with regard to contractual matters, payment of any and all charges resulting from the outsource or purchase of the equipment and maintenance of the equipment for the term of the Contract.
- 4) The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other contractors or subcontractors of the Department, as necessary to ensure delivery of product or coordination of performance of services.

### **3. SUBCONTRACTORS**

- 1) The Contractor shall make accessible to the Department documentation and records of the subcontractor, relevant to the performance of this Contract, consistent with §10 of Appendix A attached hereto.

### **4. CONTRACTOR RESPONSIBILITIES/CONFLICTS**

- 1) Specifically, during the term of this Contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the Contractor fully performing its obligations under this Contract. The Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Accordingly, the Contractor agrees to refrain from any practices, activities, or relationships that could reasonably be considered to be in conflict with the Contractor's fully performing its obligations to the Department under the terms of this Contract, without the prior written approval of the Department. In the event the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the Department a full disclosure statement setting forth the relevant details for the Department's consideration and direction. Failure to promptly submit a disclosure statement or to follow the Department's direction in regard to the apparent conflict shall be grounds for termination of the Contract. Failure to comply with those provisions may result in termination of the Contract, and/or other civil or criminal proceedings as required by law.
- 2) The Contractor shall be responsible for the proper custody and care of any State-owned property furnished by the Department for use in connection with the performance of the Contract and will reimburse the Department for any loss or damage. Likewise, the

Department shall be responsible for the proper custody and care of any Contractor-owned property furnished by the Contractor to the State agency for use in connection with the performance of the Contract and will reimburse the Contractor for any loss or damage. Such property will be inventoried annually, designating specific location.

- 3) Deliverables submitted by the Contractor must a) meet the form and content requirements specified by the Department and must b) be approved by the Department.

## **5. DEPARTMENT OVERSIGHT**

- 1) The Department shall designate a Contract Administrator or designee who shall be responsible for all matters related to this Contract.
- 2) Whenever, by any provision of the Contract, any right, power, or duty is imposed or conferred on the State or the State agency, said right, power, or duty so imposed shall be possessed and exercised by the Contract Administrator. The Contract Administrator is authorized to delegate certain rights, powers, or duties. Notice of such delegation of authority will be conveyed to the Contractor in writing.
- 3) The Contract Administrator will issue, from time to time, such written specifications and instructions as may be necessary to clarify to the Contractor its scope of work and performance obligations. The Contract Administrator may periodically conduct evaluations, or request independent evaluations be conducted, of the Contractor's performance and deliverables. The Contractor shall promptly undertake such improvements and corrections as may be reasonably necessary to correct the problems or deficiencies identified in the periodic evaluations.
- 4) The Contract Administrator will designate a Project Manager who will be the Contractor's primary contact for working with other Department staff, or may also assume the functions of the Project Manager. The Project Manager will initially receive all Contractor progress reports and deliverables, oversee scheduling of meetings with Department staff, and maintain first-line administrative responsibility for the Contract.
- 5) The Project Manager or designee shall determine successful completion of all Implementation Phase milestones. The Project Manager will also track overall progress, formally review and approve all deliverables, authorize Contractor reimbursement, and confirm final readiness for start of operations and acceptance of the system.
- 6) The Project Manager or designee will chair weekly status meetings during the Implementation Phase and attend all formal project walk-throughs.
- 7) The Project Manager shall have direct oversight of the entire project and may request periodic presentations by the Contractor that demonstrate progress achieved during the project.

- 8) In no instance shall Contractor staff refer any matter to the Contract Administrator or any other official in New York State unless initial contact, both verbal and in writing, regarding the matter has been first presented to the Project Manager.

## 6. OWNERSHIP RIGHTS

- 1) Any materials, articles, papers, etc., developed by the Contractor under or in the course of performing this Contract shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the Department for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the Contractor shall be free to publish in scholarly journals along with a disclaimer that the views within the article or the policies reflected are not necessarily those of the New York State Department of Health, the Department reserves the right to disallow funding for any educational materials not approved through its review process.
- 2) The Contractor shall not release any information regarding the registry without the Department's prior written approval. Prior to the release of any such information, the Contractor must complete a detailed review of any information, promotional materials, media releases, or advertising proposed to be released by it or any subcontractor. The Contractor's review must ensure the accuracy of terminology, numerical totals, statistical conclusions, and the like. The Contractor or any subcontractor shall make no media, news, or press release without the prior written approval of the Department.
- 3) The Department will have exclusive ownership of all registry or registry-related data gathered or developed pursuant to the Contract resulting from this RFP, including all data produced by the Department, Contractor or on the Contractor's behalf through any subcontractor in the course of the performance of this contract, whether such data be of original, derivative, summarized, extrapolated or similar form. The Contractor will have no rights to any such data gathered or developed pursuant to the Contract resulting from this RFP. All such data, except approved reports, education, marketing, and outreach materials must be designated "confidential," and must be protected as specified within the Contract or as otherwise required by law. At the end of the Contract term, unless directed otherwise by the state in writing and in contemplation of contract renewal or extension, any right of Contractor to use any such Department owned data for purposes of this agreement shall cease immediately. The Department will own such data and will have a license to use, and to allow others to use, all database and data storage design documents, schema, documentation, licensing, and end-user documentation developed to support the system.
- 4) Any publishable or otherwise reproducible material developed under or in the course of performing this Contract, dealing with any aspect of performance under this Contract, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the State, and shall not be published or otherwise disseminated by the Contractor to any other party unless prior written approval is secured from the State

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or under circumstances as indicated in Section 6, paragraph 1 above. Any and all net proceeds obtained by the Contractor resulting from any such publication shall belong to and be paid over to the State. The State shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.

- 5) No report, document or other data produced in whole or in part with the funds provided under this Contract may be copyrighted by the Contractor or any of its employees, nor shall any notice of copyright be registered by the Contractor or any of its employees in connection with any report, document or other data developed pursuant to this Contract.
- 6) All reports, data sheets, documents, etc., generated under this Contract shall be the sole and exclusive property of the Department. Upon completion or termination of this Contract the Contractor shall deliver to the Department upon its demand all copies of materials relating to or pertaining to this Contract. In the event that such data cannot reasonably be returned to the Department, the Department may, at its sole discretion, allow Contractor to destroy such data and certify the destruction of such in writing to the Department. The Contractor shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department or its authorized agents.
- 7) If any invention, improvement, or discovery of the Contractor or any of its subcontractors is conceived or first actually reduced to practice in the performance of work under this Contract, and if such is or may be patentable, the Contractor shall notify the Department immediately and provide a detailed written report. All Contractor inventions, improvements and discoveries shall be jointly owned by the Contractor and the State and each party may exercise all rights therein, including the right to grant non-exclusive licenses to third parties, without accounting to and without the consent of the other party. If applicable, the rights and responsibilities of the Contractor, third party contractors, and the State with respect to such invention, improvement, or discovery will be determined in accordance with Federal laws and regulations in existence on the date of execution of this Contract which define Contractor title, right to elect title, Federal government "march in" rights, and the scope of the Federal government's right to a non-exclusive, royalty-free, irrevocable license to practice or have practiced a subject invention on behalf of the United States throughout the world. The Contractor shall include the requirements of this paragraph in its third party contracts for the performance of the work under this Contract.
- 8) Additional Department rights relating to software are set forth in Section "7" *Software Licenses*.
- 9) The provisions of this section shall survive termination or expiration of this Contract.

## 7. SOFTWARE LICENSES

Where software and/or documentation is acquired on a licensed basis:

- 1) The Contractor must pay all associated license, maintenance, and support fees throughout the Contract term for software (also referred to below as “product” or included in “Materials”) proposed by the Contractor. All proprietary software used in the design, development, programming, testing, installation, operation, administration, use, security, and maintenance of the system must be licensed in the name of the Department. The obligation to pay maintenance and support fees, as applicable, applies even where software or documentation is not acquired on a licensed basis.
- 2) The proprietary software of the Contractor and all subcontractors and suppliers proposed for installation must be available to the Department for its use for the entire Contract period, for any extensions the Department may choose to exercise and for any extended license terms the Department may choose to exercise after termination of the Contract. The Contractor must provide an escrow account to assure the Department of its ability to continue to use the proprietary software should the original Contractor and/or copyright holder no longer be in a position to guarantee such access.
- 3) The Department must have a non-exclusive, perpetual, royalty-free, and irrevocable license to use, execute, reproduce, display, perform, merge, or otherwise use the software within its business enterprise and as applicable, for government purposes, and to otherwise use, and authorize others to do the same, with regard to all software, procedures, files, and other documentation (the Materials) that is designed, developed, installed or enhanced as part of this project.
- 4) As the Department’s business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies (“permitted license transfers”). The Department does not have to obtain the approval of the Contractor for permitted license transfers, but must give thirty (30) calendar days prior written notice to the Contractor of such move(s).
- 5) Outsourcers, facilities management or service bureaus retained by the Department shall have the right to use the product to maintain the Department’s business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) the Department gives notice to the Contractor of such party, site of intended use of the product, and means of access; and (ii) such party has executed, or agrees to execute, the product manufacturer’s standard non-disclosure or restricted use agreement which executed agreement shall be accepted by the Contractor (“Non-Disclosure Agreement”); and (iii) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for the Department. In no event shall the Department assume any liability for third party’s compliance with the

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terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the Department.

- 6) Any third party with whom the Department has a relationship for a state function or business operation, shall have the temporary right to use the product (e.g., JAVA applets), provided that such use shall be limited to the time period during which the third party is using the product for the function or business activity.
- 7) If commercially available, the Department shall have the option to require the Contractor to deliver, at the Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the software documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet; and (iii) hard copies of the software documentation by type of license in the following amounts, unless otherwise mutually agreed:
  - a. Individual/Named User License - one (1) copy per License;
  - b. Concurrent Users - 10 copies per site; and
  - c. Processing Capacity - 10 copies per site.
- 8) Software media must be in a format specified by the Department, without requiring any type of conversion.
- 9) If the Contractor is other than the entity holding the copyright for any Commercial Off-the-Shelf (COTS) product(s) used in the performance of this contract, the Contractor must include written verification from the entity holding the copyright authorizing the Contractor to supply or sell the software proposed on the license terms required by this Contract.
- 10) In addition to, and without limiting, the rights granted elsewhere in this Contract:
  - a. The Department shall have a perpetual license right to make, reproduce (including downloading electronic copies of the documentation) and distribute, either electronically or otherwise, copies of the documentation as necessary to enjoy future use of the software in accordance with the terms of license;
  - b. The Department may, in perpetuity, use and copy the software and related documentation (collectively "product") in connection with: (i) reproducing a reasonable number of copies of the product for archival back-up and disaster recovery procedures in the event of destruction or corruption of the product or disasters or emergencies which require the Department to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; (ii) reproducing a reasonable number of copies of the product and related documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the product not to be installed until and after the declaration by the Department of a disaster; and (iii) reproducing a back-up copy of the product to run for a reasonable

- period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of the product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.
- c. The Department shall have the right, in perpetuity, to use and distribute modifications or customizations of the software or documentation (the Materials) to and for use by the Department, or any entity otherwise authorized to use the Materials, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No right or interest in any trademark, trade name, or service mark is granted hereunder.
- 11) Except as expressly authorized by the terms of license, or otherwise authorized by the terms of this Contract or other expanded license rights granted to the State, the Department shall not:
- a. Copy the Product;
  - b. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or
  - c. Export the licensed software in violation of any U.S. Department of Commerce export administration regulations.
- 12) For commercial software, licensed from a third party or otherwise, that is incorporated into a deliverable, and for which the Department has not signed a separate license agreement governing that commercial software's warranties, the Contractor represents and warrants that it has done one of the following:
- a. Obtained the right from the third party licensor to commit to the warranties and maintenance obligations incorporated in this Contract; or
  - b. Obtained a binding commitment from the licensor to make those warranties and maintenance obligations directly to the Department.

## **8. ESCROW**

- 1) The Contractor shall either: (i) provide the Department with the source code for the product; or (ii) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to, and acceptable to, the Department, and who shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to the Department. That agreement must, at minimum, provide for release of the source code to the Department a) when the owner of the software notifies the Department that support or maintenance of the Product are no longer available or b) if the Contractor fails to provide services pursuant to this Contract for a continuous period. The escrow agent must be paid by the Contractor; or (iii) will certify to the Department that the product manufacturer/developer has named the

Department as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the Department and who shall be directed to release the deposited source code in accordance with the terms of escrow. source code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the product in the same manner as provided above and such updating of escrow shall be certified to the Department in writing. The Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

- 2) The Department may release the source code to those who have a) licensed the product or obtained services or b) who are otherwise authorized to use the product or related Materials, pursuant to this Contract or otherwise. Such individuals or entities may use such copy of the source code to maintain the product.
- 3) Throughout the term of this Contract, the Contractor will deliver all software, including updates to the software, to the escrow agent within five (5) business days of implementing the use of such software so that all software in the custody of the escrow agent will be the then current version reflecting all changes and upgrades, but in any event, no less frequently than every six (6) months.
- 4) The Contractor also must place in escrow one (1) paper copy and one (1) electronic copy of maintenance manuals and additional documentation that are required for the proper maintenance of the data warehouse and the software used to develop, test, and implement the system. Revised copies of manuals and documentation must be placed in the escrow account in the event they are changed. Such documentation must consist of logic diagrams, installation instructions, operation and maintenance manuals, and must be the same as that which the Contractor supplies to its maintenance personnel to maintain its software. All such materials must be provided to the escrow agent within five (5) business days of its use or applicability to the use of the Data Warehouse.
- 5) Except as otherwise provided in this Contract, the Contractor will not be obligated to provide source code (the un-compiled operating instructions for the software) for commercial software unless it is readily available from the licensor. When source code is provided, it must be provided in the language in which it was written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code. If the source code of such third party is not otherwise provided or freely available, the Contractor will be obliged to ensure that the source code and associated documentation is subject to an escrow agreement meeting the requirements of Section 8, Paragraph 1.
- 6) In the event that this Contract expires and is not renewed or extended, the escrow agreement must remain in place and be paid for by the Contractor until such time that the Department is no longer using the software or documentation covered by this escrow agreement.

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## 9. WARRANTIES

### 9.1 General Warranties

- 1) The Contractor warrants, covenants and represents that it will comply fully with all security procedures of the State, as well as those of the Department in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.
- 2) The Contractor warrants and represents that its work and the deliverables resulting from that work will be merchantable and fit for the particular purposes described in the RFP. The Contractor further warrants and represents that all deliverables, materials, products or services delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using such deliverables, materials, products or services.
- 3) The Contractor warrants that all components or deliverables specified and furnished by or through the Contractor under the Contract meet the completion criteria set forth in the Contract, including all work specifications under the RFP and the Proposal, as well as any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
- 4) The Contractor represents and warrants that all services performed pursuant to the Contract, including all work specifications under the RFP and the Proposal, as well as any subsequent statement(s) of work, shall be performed in a professional, competent and workmanlike manner by knowledgeable, trained and qualified personnel, in accordance with the terms of the RFP and the standards of performance considered generally acceptable in the industry for similar services.
- 5) The Contractor represents and warrants that it shall, at its sole expense, secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract, including those of the Department with regard to conduct on any premises under the Department's control and/or security for the Department's data, systems and networks.
- 6) Prior to award and during the Contract term and any renewals thereof, the Contractor must establish to the satisfaction of the Department that it meets or exceeds all requirements of the RFP, the Proposal, the Contract, and any related specifications associated with those documents or subsequently established, and with any applicable laws, including but not limited to those related to permit and licensing requirements, and shall provide such proof as required by the Department. Failure to comply or failure to provide proof may constitute grounds for the Department to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Department. The Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

- 7) The warranties regarding material defects, merchantability and fitness are for a period encompassing the Contract term plus one year. All other warranties will be continuing warranties, unless otherwise specified in this Contract. If any portion of the project fails to comply with these warranties, the Department will notify the Contractor in writing. The Contractor must correct such failure with all due speed or must refund the amount of the compensation paid for such portion of the project.
- 8) All warranties contained in this Contract shall survive the termination of this Contract, unless otherwise provided herein.
- 9) The Contractor must notify the Department in writing immediately upon the discovery of any breach of any of the warranties provided under this Contract.
- 10) The Contractor agrees to correct errors discovered in the design and installation of the system at no additional cost or expense to the Department.
- 11) Notwithstanding prior acceptance of deliverables by the Department, the Contractor will expressly warrant all delivered programs and documentation as properly functioning and compliant with the terms of the Contract. The Contractor must correct, at no additional cost or expense to the Department, errors and design deficiencies in the system and replace incorrect or defective programs and documentation within one (1) week of notification from the Department of such deficiencies, or within such period as may be necessary to make correction(s) using due diligence and dispatch as agreed upon between the Department and the Contractor.
- 12) If the Contractor fails to repair an identified error, deficiency or defect within such period, the Department may, at its sole discretion, act to repair, and the Contractor expressly agrees to reimburse the Department for incurred costs. This warranty will be in effect throughout the term of the Contract and for one (1) year thereafter. Deficiencies properly noted before expiration of the warranty will be covered regardless of such expiration. System modifications and other changes made during the Contract period also will be covered by this warranty. This provision shall not be construed as limiting rights or remedies provided for elsewhere in this Contract.
- 13) All warranties set forth in this Contract shall be expressly incorporated into all subsequent statements of work, deliverable specifications and change orders unless otherwise expressly disclaimed by the parties therein or such warranty is clearly inapplicable given the type of product or service provided.

## **9.2 Intellectual Property Warranties**

- 1) 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 products transferred to the Department under this Contract. The Contractor shall be solely liable for any costs of acquisition associated therewith. The Contractor fully indemnifies the

Department for any loss, damages or actions arising from a breach of said warranty without limitation.

- 2) The Contractor represents and warrants that it is the owner and has secured all applicable interests, rights, licenses, permits or other intellectual property rights in all concepts, materials, work products, systems and software, and any other intellectual property right developed and delivered under the Contract. The Contractor further represents and warrants that all concepts, materials, work products, systems and software, and any other intellectual property right developed and delivered under the Contract shall not misappropriate a trade secret or infringe any copyright, patent, trademark, trade dress or other intellectual property right of any third party. This warranty shall survive termination or expiration of the Contract. The State may require the Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The State's request or failure to request such documentation shall not relieve the Contractor of liability under this warranty.
- 3) The Contractor warrants that it has the right and ability to grant the license(s) required by the Contract with regard to any deliverable in which title does not pass to the Department.
- 4) The Contractor warrants that all deliverables provided by the Contractor do not and will not infringe or misappropriate any right of any third party based on copyright, patent, trade secret or other intellectual property rights, and that the exercise of license rights pursuant to this Contract will not infringe or invalidate any subsisting intellectual property right owned by persons other than the Department. The State may require the Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The State's request or failure to request such documentation shall not relieve the Contractor of liability under this warranty. In case the deliverables or any one or part thereof is held or alleged to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to the Contractor to be likely to be brought, the Contractor will, at its own expense, either:
  - a. Procure for the Department the right to continue using the deliverables; or
  - b. Modify or replace the deliverables to comply with the specifications so that no violation of any intellectual property rights occurs.

### **9.3 Hardware and Software Warranties**

- 1) If provided, hardware and other equipment offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.
- 2) If any computer hardware or telecommunications hardware (equipment) will be a part of any deliverable, the Contractor warrants that the equipment fully complies with all government environmental and safety standards applicable to the equipment. The Contractor

also warrants for the Contract term that the equipment will perform substantially in accordance with specifications described in the RFP, the Proposal, the user manuals, technical materials and related writings published by the manufacturer for the equipment.

- 3) The Contractor further warrants and represents that hardware and software components or deliverables specified and furnished by or through the Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, the remaining term of the Contract, or for a minimum of one (1) year from the date of acceptance, whichever is longer (“project warranty period”). During the project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through the Contractor shall be repaired or replaced by the Contractor at no cost or expense to the Department. The Contractor shall extend the project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, subcontractors, distributors, resellers or employees (“extended warranty”).
- 4) Repaired, replaced or substituted products shall be subject to all terms and conditions for new parts and components set forth in the Contract. Replaced or repaired product or parts and components of such product shall be new and shall, if available, be replaced by the original manufacturer’s component or part. Remanufactured parts or components meeting new product standards may be permitted by the Department. Before installation, all proposed substitutes for the original manufacturer-installed parts or components must be approved by the Department. The part or component shall be equal to or of better quality than the original part or component being replaced.
- 5) If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected so as to cause the equipment to perform as required. If such measures are not commercially practicable, then the Contractor shall grant the Department a refund equal to the amount the Department paid for the equipment, or, if such has not been individually priced, the manufacturer's suggested retail price for the equipment. All costs for labor and material and transportation incurred to repair or replace defective product during the warranty period shall be borne solely by the Contractor, and the State or the Department shall in no event be liable or responsible.
- 6) Except where the Contractor's breach of a warranty makes it impossible for the Department to do so, the Department will return the affected equipment to the Contractor in the case of a refund under the previous paragraph. The Contractor will be responsible for the cost of obtaining replacement equipment where such equipment is essential to the operation of the data warehouse.
- 7) Any part or component replaced by the Contractor under the Contract warranty shall be guaranteed for the greater of:
  - a. One (1) year from the date the Department accepts the part or component;

- b. If a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component; or
  - c. The warranty period applicable to the original part or component.
- 8) Where the Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth herein, the Contractor shall offer or pass through any such warranties to the Department.

## **9.4 Additional Software Warranties**

### **9.4.1 General Additional Software Warranties**

- 1) The Contractor warrants that the software will be merchantable and fit for the particular purpose for which the Department acquired it. The Contractor agrees this warranty shall survive termination of the Contract.
- 2) The Contractor hereby warrants and represents that the software and all upgrades do not and will not contain any computer code that would disable the software or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit the Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). The Contractor agrees that in the event of a breach or alleged breach of this provision that the Department shall not have an adequate remedy at law, including monetary damages, and that the Department shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which the Department shall be entitled. The Contractor agrees this warranty shall survive termination of the Contract.
- 3) The Contractor represents and warrants that no anti-use devices have been or will be installed in the software supplied pursuant to this Contract. The Contractor agrees this warranty shall survive termination of the Contract.
- 4) The Contractor warrants that the software will, at the time of its delivery under this Contract, be free of viruses, worms or other devices (collectively “Device”) capable of halting or inappropriately altering operations or erasing or altering data or programs. Further, the Contractor shall employ industry standard measures to prevent incorporation of such Devices. If it is discovered that such a Deliverable does contain such a Device, then the Contractor shall take appropriate measures to remove such Device, assist the Department with restoration of data and replace such program with a Device-free version of the same program. The Contractor is not responsible for Devices introduced at the Department’s site by the Department or its employees, agents or contractors not associated with the Contractor, or the Department’s failure to employ industry standard

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measures to prevent incorporation of known Devices. The Contractor agrees this warranty shall survive termination of the Contract.

- 5) The Contractor warrants that all media on which the software is delivered to the Department will be free from defects. The Contractor agrees this warranty shall survive termination of the Contract.
- 6) During the warranty period, as well as any optional maintenance periods that the Department exercises, the Contractor must correct any material programming or other errors that are attributable to the Contractor within a reasonable period of time. However, when the Department becomes aware of a defect, the Department must notify the Contractor, either orally or in writing, of such defect and provide sufficient information for the Contractor to identify the problem.
- 7) Without lessening any warranty rights granted elsewhere in this Contract, with regard to any deliverable that includes or consists of software, the Contractor warrants as to all such software that on acceptance, and for the software manufacturer's warranty period, the software distributor's warranty period, the remaining term of the Contract, or for a minimum of one (1) year, whichever is greater, that:
  - a. The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation, the Contractor's proposal, and the RFP;
  - b. The Contractor will deliver and maintain relevant and complete software documentation, commentary and source code;
  - c. The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and
  - d. The software and all maintenance will be provided in a professional, timely and efficient manner.
- 8) Where the Contractor, the independent software vendor (ISV), or other third party manufacturer provides any project deliverable delivered by or through the Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the project warranty or extended warranty period(s), the Contractor shall be responsible for the coordination during the project warranty or extended warranty period(s) with the ISV or other third party manufacturer(s) for warranty repair or replacement of the ISV's or other third party manufacturer's such product.

#### **9.4.2 Warranty Exclusions**

- 1) The Contractor's warranties with respect to the software's performance in accordance with its documentation, fitness and merchantability do not cover any error caused by any change to the software made by any party other than the Contractor and not at the Contractor's request, or otherwise in accordance with this Contract.
- 2) The warranties set forth in this Contract do not cover damage to the software caused by accident, neglect or misuse of the software by any party other than the Contractor or other than anyone else acting on the Contractor's behalf, at the Contractor's direction, or in accordance with this Contract.

## **10. AUDIT AND ACCESS TO PREMISES AND RECORDS**

- 1) The Contractor must cooperate and provide access, at no cost, to the system and records associated with this Contract when requested by the Department or other Federal and/or State oversight entities. This obligation shall extend beyond termination of the Contract. During the term of the Contract, such materials shall be provided in Albany, New York.
- 2) The Contractor must provide assistance, at no cost, to the Department, and other Federal and/or State oversight entities, and third parties acting on the behalf of such entities, to evaluate, through inspection or other means, the quality, appropriateness and timeliness of services performed under this Contract. This obligation shall extend beyond termination of the Contract. During the term of the Contract, such materials shall be provided in Albany, New York.
- 3) In the event access to the Contractor's premises or records is requested under this subsection, the Contractor agrees to make staff available to assist in the audit or inspection effort at no cost.
- 4) The Contractor agrees to provide adequate space on the premises to reasonably accommodate the State or Federal representatives conducting an audit or inspection.
- 5) The Contractor shall maintain accounting books, accounting records, documents, and other evidence pertaining to the administrative costs and expenses of this Contract to the extent and in such detail as shall properly reflect all revenues; all net costs, direct and apportioned; and other costs and expenses, of whatever nature, that relate to performance of contractual duties under the provisions of this Contract. The Contractor's accounting procedures and practices shall conform to generally accepted accounting principles, and the costs properly applicable to this Contract shall be readily ascertainable therefrom.
- 6) The Contractor must ensure the cooperation of any subcontractor with the requirements of this subsection.

## **11. LITIGATION/CLAIMS**

- 1) The Contractor shall promptly notify the Department in the event that the Contractor learns of any actual litigation in which it is a party defendant in a case which involves or

impacts services provided under this Contract. The Contractor, within fifteen (15) calendar days after being served with a summons, complaint, or other pleading which has been filed in any Federal or State court or administrative agency, shall deliver copies of such document(s) to the Contract Administrator. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.

- 2) 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 the service or product under the Contract infringes any patent, copyright or proprietary right, and the Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, the Contractor shall immediately notify the Department and the New York State Attorney General in writing and shall specify to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. The Contractor shall in such event protect the interests of the Department and secure a continuance to permit the Department to appear and defend its interests in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses the Department may have.
- 3) If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement or similar claim that is pending actually may succeed, the Contractor will do one of the following four (4) things as soon as reasonably possible to avoid or minimize any interruption of the Department's business:
  - a. Lawfully modify the offending software, source code or documentation so that it is no longer infringing;
  - b. Replace the offending software, source code or documentation with an equivalent or better item;
  - c. Acquire the right for the Department to use the infringing software, source code or documentation as it was intended for the Department to use under this Contract; or
  - d. Upon the Department's agreement that none of the above courses of action are preferable, remove the infringing software, source code or documentation and refund the amount the Department paid for the software and the amount of any other software or item that requires the availability of the infringing software, source code or documentation for it to be useful to the Department.
  - e. Nothing herein will preclude the Department from pursuing any other remedies available under the Contract or otherwise available under law.
- 4) The Department agrees to give the Contractor notice of any such claim as described in the preceding paragraphs as soon as reasonably practicable and to allow the Contractor to control the defense of any such claim, upon consultation with and upon the approval of the New York State Attorney General.

- 5) The Contractor shall, at the Department's expense so long as such expense is reasonable, provide such litigation support as the Department may reasonably request during the term of the Agreement, where factual issues regarding the subject matter of the Contract are implicated. This may include, but shall not be limited to, making appropriate personnel available to provide affidavits and/or testify in administrative or judicial proceedings. This does not contemplate the mandatory provision of expert testimony by the Contractor. Such testimony may be provided by the Contractor in its discretion and shall be subject to a separate agreement.

## **12. INDEMNIFICATION**

- 1) The Contractor will release, protect, indemnify, defend and hold the Department harmless from and against any claims of infringement by any third party based on the software, source code or documentation licensed or otherwise provided under this Contract. Any defense of the Department requires and is subject to the approval and consent of the New York State Attorney General and will be at the Contractor's sole cost and expense.
- 2) The Contractor will indemnify the Department for all direct damages to the Department caused by the negligence or willful misconduct of the Contractor. The Contractor also agrees to indemnify, defend and hold the Department harmless from and against all claims, liabilities, demands, losses, expenses (including by way of example only, court costs and experts' and attorneys' fees), and causes of action of every kind and character in favor of any third party caused or arising out the activities or performance of the Contractor or the Contractor's personnel. The foregoing obligations do not apply to the extent such claims or damages are caused by the Department's actual negligence or willful misconduct, and are in addition to remedies otherwise available to the Department under this Contract. Any defense of the Department requires and is subject to the approval and consent of the New York State Attorney General and, except to the extent due to a claim arising from the Department's negligence or willful misconduct, will be at the Contractor's sole cost and expense.
- 3) Except as otherwise expressly provided in this Contract, neither Party will be liable for any damages other than direct damages. This exclusion of damages includes, by way of example only, indirect, incidental, exemplary, and consequential damages, including loss of profits, even if the Party knew or should have known of the possibility of such damages. Additionally, neither Party will be liable for damages in excess of two (2) times the total value of this Contract or three million dollars (\$3,000,000), whichever is greater, except that liability shall not be limited in the case of claims under infringement or other violation of intellectual property, or claims involving personal injury or death, regardless of the nature of the damages sought for any such claim. This limitation of liability will survive termination of this Contract.

## **13. PROVISIONS RELATED TO NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT AND THE DRIVER'S PRIVACY PROTECTION ACT**

- 1) The Contractor acknowledges that all records containing personal information, as well as DMV-related processing information, is confidential and is the property of DMV or the Department, as applicable, and the State of New York, and should such information be used improperly, or become compromised the Contractor may be held liable for violating the federal Driver's Privacy Protection Act of 1994 (DPPA) (18 U.S.C. §2721, et seq.), and the New York State Information Security Breach and Notification Act (ISBNA) (General Business Law, §899-aa; State Technology Law, §208), and may be required to indemnify the State for any such violation.

The Contractor must report suspected or confirmed violations of ISBNA to the Department, and of the DPPA to the Department and DMV, within one (1) business day of discovering any such violation:

Where the information was obtained from or through DMV, DMV must also be notified at the following address:

DMV Audit Services  
6 Empire State Plaza, Room 321  
Albany, NY 12228  
Tele: (518) 474-0881  
Fax: (518) 474-8358 NYS DMV SELF-SERVICE TERMINALS RFP #C000755 24

(a) DPPA. A person who knowingly violates the DPPA shall be subject to criminal fines and liability for civil remedies. Contractor shall indemnify and hold harmless New York State, its employees and agents, from and against any claims, demands, loss, damage or expense related solely to a knowing violation of the DPPA committed by Contractor, its employees, officers, agents or sub-contractors. Contractor shall indemnify the Department, DMV and the State of New York even if Contractor did not have knowledge of such violation of the DPPA by its officers, employees, agents, or sub-contractors at the time such violation occurred.

(b) ISBNA. Contractor shall be responsible for complying with the provisions of the ISBNA with respect to any private information (as defined in the ISBNA) received by Contractor its officers, employees, agents, or sub-contractors. In the event of a breach of security, Contractor shall immediately commence an investigation, in cooperation with the Department and, as applicable, DMV, to determine the scope of the breach, and Contractor shall assist the Department and, as applicable, DMV in restoring the security of the related system in order to prevent any further breaches. Contractor shall notify the Department and, as applicable, DMV of any breach of security immediately following discovery of such breach.

Under the ISBNA, a state agency is required to notify any individuals whose records have been accessed for unauthorized purposes from a system maintained by such state agency.

In furtherance of the investigation of any breach of the ISBNA, the Contractor must receive written authorization from the Department and, as applicable, DMV prior to

providing notice of such breach to any other entity. Contractor shall be responsible for all costs associated with providing notices required under the ISBNA. The Contract shall not impair the authority of the New York State Office of the Attorney General (OAG) to bring an action against Contractor to enforce the provisions of the ISBNA, or limit Contractor's liability for any violations of the ISBNA. Additional information concerning the ISBNA and the notification process is available at:  
<http://www.cscic.state.ny.us/security/securitybreach>.

#### **14. TERMINATION**

- 1) The Department reserves the right to immediately terminate the Contract in the best interests of the State, without providing prior notice of termination to Contractor, in the event the State determines that a breach of security occurred or that a breach is imminent. In such event, the Department shall provide Contractor with written notice of cancellation within a reasonable time.
- 2) Any such termination, other than for convenience, shall be at the Contractor's expense. In such event, the Department may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
- 3) Upon termination of the Contract, the following shall occur:
  - a. The Contractor shall make available to the State for examination all data, records and reports relating to this Contract; and
  - b. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

#### **15. REMEDIES**

- 1) It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law. (OGS-AppB65)
- 2) In the event of a breach of the media warranty provided for elsewhere in this Contract, the Contractor must replace the defective media expeditiously and without charge to the Department.
- 3) In the event that a warranty provided for under this Contract is breached and such breach results in the corruption or loss of data, the Contractor shall at its sole expense correct the defect(s) and reload and reprocess the data through the registry. The Contractor shall be responsible for maintaining up to date back-up copies of all data. The Contractor's project personnel will also provide reasonable assistance to the Department, at the Contractor's expense, to recollect any data not contained in the Contractor's back-up copy because it was submitted to the registry after the last correct back-up run and before the occurrence of the Defect(s).

- 4) At the Department's discretion, in the event of the Contractor's material breach, in lieu of the above the Department may, with or without formally bidding: (i) Purchase from other sources; or (ii) When the Department is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement product of equal or comparable quality, the Department may acquire acceptable replacement product of lesser or greater quality. Such purchases may, at the discretion of the Department, be deducted from the Contract quantity and payments due the Contractor.
- 5) In any case where a question of non-performance by the Contractor arises, payment may be withheld in whole or in part at the discretion of the Department. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.
- 6) The Department may, at its sole discretion, return all or a portion of collected damages as an incentive payment to the Contractor for prompt and lasting correction of performance deficiencies.
- 7) In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Contract, the Department may, at its discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Department the amounts owed by the Contractor arising out of the same transactions.
- 8) The Contractor agrees to reimburse the Department promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the State in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.
- 9) Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Department may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Department promptly by the Contractor or deducted by the Department from payments due or to become due the Contractor on the same or another transaction.
- 10) Sums due as a result of these remedies may be deducted or offset by the Department from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Department the amount of such claim or portion of the claim still outstanding, on demand. The Department reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

## **16. NO WAIVER**

- 1) No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent to breach 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 Contract shall constitute a consent to, a waiver of, or excuse for any other, different or subsequent breach. The rights, duties and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law.

## **17. SEVERABILITY**

- 1) If any provision of the Contract is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the validity or enforceability of any other part or provision of the Contract.

## **18. FORCE MAJEURE**

- 1) A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled by the State or the Contractor, its subcontractors, or others under the Contractor or its subcontractor's control. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Department in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. The Contractor shall provide the Department with written notice of any force majeure occurrence as soon as the delay is known.
- 2) Neither the Contractor nor the Department shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Department to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.
- 3) Notwithstanding the above, at the discretion of the Department where the delay or failure will significantly impair the value of the Contract to the Department, the Department may:
  - a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to the Department with respect to product, Materials, or services; and/or
  - b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the product, Materials, or services which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the Department; or

- c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relevant part thereof.
  
- 4) In addition, the Department reserves the right, at its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of the Contractor; (ii) the volatility affects the marketplace or industry, not just the particular source of supply utilized for performance of this Contract (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects the Contractor's performance that continued performance of the Contract would result in a substantial loss.

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**APPENDIX D            GENERAL SPECIFICATIONS**

- A. By signing the “Bid Form” each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that all specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specifications, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.
- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, email, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department, and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable, and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety shall be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowance or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful bidder will be required to complete the entire work or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. CONTRACTOR will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- I. Non-Collusive Bidding By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

- a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every bid made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the bidder and affirmed by such bidder as true under penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

Any bid made to the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods, sold or to be sold, where competitive bidding is required by statute, rule or regulation and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

- J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed for use in the application software provided to the Department as a part of this contract.
- M. Technology Purchases Notification --The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"

1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, **PRIOR TO AWARD SELECTION**, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.

N. Date/Time Warranty

1. Definitions: For the purposes of this warranty, the following definitions apply:
  - a. "Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.
  - b. "Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. "Third Party Product" does not include product where vendor is : (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

2. Date/Time Warranty Statement

CONTRACTOR warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, 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 must perform as a package or system, this warranty shall apply to the Products as a system.

Where 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), CONTRACTOR warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of 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. CONTRACTOR shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract 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 this Contract for breach of warranty.

O. No Subcontracting Subcontracting by the CONTRACTOR shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

P. Superintendence by Contractor The CONTRACTOR shall have a representative to provide supervision of the work which CONTRACTOR employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the CONTRACTOR.

Q. Sufficiency of Personnel and Equipment If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the CONTRACTOR to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.

R. Experience Requirements The CONTRACTOR shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The CONTRACTOR shall submit at least two references to substantiate these qualifications.

S. Contract Amendments This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

The CONTRACTOR shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.

T. Provisions Upon Default

1. In the event that the CONTRACTOR, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the CONTRACTOR.

2. If, in the judgment of the Department of Health, the CONTRACTOR acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the CONTRACTOR. In such case the CONTRACTOR shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the CONTRACTOR up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the CONTRACTOR was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. Upon termination of this agreement, the following shall occur:

1. CONTRACTOR shall make available to the State for examination all data, records and reports relating to this Contract; and
2. Except as otherwise provided in the Contract, the liability of the State for payments to the CONTRACTOR and the liability of the CONTRACTOR for services hereunder shall cease.

V. Conflicts If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the CONTRACTOR shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the CONTRACTOR supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. Contract Insurance Requirements

1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:
  - a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
  - b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom

sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.

- i. CONTRACTOR's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
- ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
- iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

- X. Certification Regarding Debarment and Suspension Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1. APPENDIX B TO PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier

- participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
  - e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
  - f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions.
  - g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
  - h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  - i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
    - a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
    - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### Y. Confidentiality Clauses

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment:

- "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
  3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
  4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
  5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

Z. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
  - a. The NYS Department of Health, at the following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237 ; and

- b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting -or via fax at (518) 474-8030 or (518) 473-8808; and
- c. The NYS Department of Civil Service, Albany NY 12239, ATTN: Consultant Reporting.

AA. Provisions Related to New York State Procurement Lobbying Law The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

BB. Provisions Related to 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). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.

CC. Lead Guidelines All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of Health 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.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
3. Termination (for Non-Responsibility) : Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the CONTRACTOR's expense where the CONTRACTOR is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

EE. Provisions Related to Iran Divestment Act As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment

activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract. During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default. New York State Department of Health reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

**Appendix G  
Notices**

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by email.

Such notices shall be addressed as follows or to such different addresses as the parties may from time to time designate:

**State of New York Department of Health**

Name:  
Title:  
Address:  
Telephone Number:  
Facsimile Number:  
Email Address:

**[Insert Contractor Name]**

Name:  
Title:  
Address:  
Telephone Number:  
Facsimile Number:  
Email Address:

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this AGREEMENT by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representative for the purposes of receiving notices under this AGREEMENT. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

*Appendix M***Appendix M****Participation by Minority Group Members and Women with Respect to State Contracts:  
Requirements and Procedures****I. General Provisions**

- A. The New York State Department of Health is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) 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 New York State New York State Department of Health (the “New York State Department of Health”), to fully comply and cooperate with the New York State Department of Health in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). 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”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

**II. Contract Goals**

- A. For purposes of this procurement, the New York State Department of Health hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>

*Appendix M (cont.)*

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the New York State Department of Health for liquidated or other appropriate damages, as set forth herein.

**III. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
  3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).

*Appendix M (cont.)*

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 #4 - 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. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

*Appendix M (cont.)*

- D. Form #6 - Workforce Employment Utilization Report (“Workforce Report”)
1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State Department of Health of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
  2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
  3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

*Appendix M (cont.)***IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

**V. Waivers**

- A. For Waiver Requests Contractor should use Form #2 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Department of Health shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the New York State Department of Health 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.

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*Appendix M (cont.)***VI. Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

**VII. Liquidated Damages - MWBE Participation**

- A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.