STATE OF NEW YORK CONTRACT FOR GRANTS FACE PAGE

STATE AGENCY (Name & Address): ATTN: Department of Fiscal Management NYS Department of Economic Development 625 Broadway, 8th Floor Albany, NY 12245	BUSINESS UNIT/DEPT. ID: DED01 CONTRACT NUMBER: CONTRACT TYPE (select one): ☐ Multi-Year Agreement ☐ Simplified Renewal Agreement ☐ Fixed Term Agreement
CONTRACTOR NAME:	TRANSACTION TYPE: ☐ New ☐ Renewal (list periods): ☐ Amendment (list periods):
CONTRACTOR IDENTIFICATION NUMBERS: NYS Vendor ID Number: Federal Tax ID Number:	PROJECT NAME: ASSISTANCE LISTINGS (formerly CFDA) NUMBER (ALN) (Federally Funded Grants Only):
CONTRACTOR PRIMARY MAILING ADDRESS: CONTRACTOR PAYMENT ADDRESS: ☐ Check if same as primary mailing address CONTRACTOR MAILING ADDRESS: ☑ Check if same as primary mailing address CONTRACTOR PRIMARY E-MAIL ADDRESS:	CONTRACTOR STATUS: ☐ For Profit ☐ Municipality ☐ Tribal Nation ☐ Individual ☐ Not-for-Profit Charities Registration Number: Exemption Status/Code: ☐ Sectarian Entity

STATE OF NEW YORK CONTRACT FOR GRANTS FACE PAGE

CURRENT CONTRACT TERM: From: To: AMENDED TERM: From: To:	CONTRACT FUNDING AMOUNT (*Fixed Term* - enter current period amount; *Simplified Renewal* - enter cumulative amount to date; *Multi-year* - enter total projected amount of the contract): CURRENT: AMENDED: FUNDING SOURCE(S) ☐ State ☐ Federal ☐ Other

ATTACHMENTS INCLUDED AS PART OF THIS AGREEMENT (select all that apply):

☐ Appendix A

☐ Attachment A:
- ☐ A-l Agency Specific Terms and Conditions
- ☐ A-2 Program Specific Terms and Conditions
- ☐ A-3 Federally Funded Grants and Requirements Mandated by Federal Laws

☐ Attachment B:
- ☐ B-l Expenditure Based Budget
- ☐ B-2 Performance Based Budget
- ☐ B-3 Capital Budget
- ☐ B-4 Net Deficit Budget
- ☐ B-l(A) Expenditure Based Budget (Amendment)
- ☐ B-2(A) Performance Based Budget (Amendment)
- ☐ B-3(A) Capital Budget (Amendment)
- ☐ B-4(A) Net Deficit Budget (Amendment)

☐ Attachment C: Work Plan
☐ Attachment D: Payment and Reporting
☐ Other:

Contract Number: #_____

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

CONTRACTOR:	STATE AGENCY:
	NYS Department of Economic Development
By:_____	By:_____
_____ Printed Name	Ed J Hamilton Printed Name
Title:_____	Title: Sr. Deputy Commissioner, Finance & Administration
Date:_____	Date:_____

STATE OF NEW YORK

County of_____

On the ___ day of _____, ____, before me personally appeared_____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary)_____

ATTORNEY GENERAL'S SIGNATURE	STATE COMPTROLLER'S SIGNATURE
_____	_____
_____ Printed Name	_____ Printed Name
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, if this contract exceeds $50,000 (or $75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and $150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed $85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed $125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds $200,000.

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

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage

and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

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

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is

requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

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

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

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

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

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

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

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

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

calendar days after service hereunder is complete in which to respond.

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security

Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

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

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

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

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

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

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

STATE OF NEW YORK
CONTRACT FOR GRANTS

This State of New York Contract for Grants, including all attachments and appendices (hereinafter referred to as "Contract" or "Agreement"), is hereby made by and between the State of New York acting by and through the applicable State Agency (State or Agency) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the operation of a program or performance of a service; and desires to contract with a responsive and responsible Contractor possessing the necessary resources to provide such services or work; and

WHEREAS, the Contractor is ready, willing, and able to provide such services or work and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to and in compliance with the terms of the Contract, specifications outlined in the grant solicitation, resulting award, and other associated documents comprising the Agreement.

NOW THEREFORE, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree to as follows:

STANDARD TERMS AND CONDITIONS

I. GENERAL PROVISIONS

A. Order of Precedence: In the event of a conflict among (i) the terms of the Contract or (ii) between the terms of the Contract and the original request for proposal, solicitation document, the program application or other documentation that was completed and executed by the Contractor in connection with a grant award, the order of precedence is as follows:

1. Appendix A – Standard Clauses for New York State Contracts
2. Contract for Grants Standard Terms and Conditions
3. Modifications to the Face Page
4. Modifications to Attachment A-2:Program Specific Terms and Conditions; Attachment A-3: Federally Funded Grants and Requirements Mandated by Federal Laws (modifications not required by the Federal government)[1], Attachment B: Budget, Attachment C: Work Plan, and Attachment D: Payment and Reporting
5. The Face Page

[1] For modifications required by the Federal government see Section I(M).

6. Attachment A-2: Program Specific Terms and Conditions, Attachment A-3: Federally Funded Grants and Requirements Mandated by Federal Laws, Attachment B: Budget, Attachment C: Work Plan; and Attachment D: Payment and Reporting

7. Modifications to Attachment A-1: Agency Specific Terms and Conditions

8. Attachment A-1: Agency Specific Terms and Conditions

9. Other attachments, including, but not limited to, the request for proposal or program application, if incorporated by reference on the Face Page

The documents above, collectively, comprise the entire Agreement and govern the program for the entirety of the term of the Contract and any resulting renewals.

B. Funding: Funding for the term of the Contract shall not exceed the amount specified as "Contract Funding Amount" on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

C. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

D. Modifications: Any modifications to this Agreement, including any budgetary changes, must be mutually agreed to in writing by both parties and be reflected on the Face Page where such terms are modified. Modifications may be subject to the approval of the AG and OSC in accordance with Appendix A, Section 3, Comptroller's Approval. A modification that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such Contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a proportion of the total value of the Contract, equal to or greater than ten percent for contracts of five million dollars or less, or five percent for contracts of more than five million dollars. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Contract.

E. Severability: Any provision of the Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Contract shall attempt in good faith to reform the Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

F. Interpretation: The headings in the Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered gender neutral. The Contract has been made under the laws of the State of New York, and the venue for

resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

G. Notice: All Notices under this Contract, including termination notices, shall be made in writing and directed to the representatives identified herein, or their designees and shall be transmitted by: a) certified or registered United States mail, return receipt requested; b) facsimile transmission; c) personal delivery; d) expedited delivery service; and/or e) e-mail. 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 e-mail, upon receipt.

The parties may, on written notice, designate other individuals as their representatives. Such representatives shall request, oversee, supervise, and accept performance of services provided by the Contractor and shall receive any required submissions. Whenever an action is to be taken, or approval for services given by the Agency, such action or approval may be given only by the representatives designated pursuant to this Section.

H. Indemnification: The Contractor shall be solely responsible and answerable in damages for all accidents, incidents, 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 Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages, and cost of every nature arising out of the provision of services pursuant to the Contract.

I. Legal Action: No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining, or threatening to join as a party to ongoing litigation, or requesting any relief from the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding or requesting any regulatory relief from the State of New York, the State Agency, or any county, or other local government entity.

J. Partisan Political Activity and Lobbying: Funds provided pursuant to the Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

K. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste, and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections and will comply with requirements therein.

L. Reporting Risks to Performance: If any specific event, conjunction of circumstances, or any occurrence involving the staff, volunteers, directors, officers, subcontractors, or program participants of the Contractor threatens the successful completion of this project, in whole or in part, the Contractor agrees to notify the State Agency within three (3) calendar days of becoming aware of the occurrence describing the occurrence and the risk it poses to performance under the Contract. The Contractor's notice shall include a written description of the event and a recommended solution. Such events may include, but not be limited to, death or serious injury, an arrest or possible criminal activity.

M. Federally Funded Grants and Requirements Mandated by Federal Laws: All the Specific Federal

requirements that are applicable to the Contract are identified in Attachment A-3 (Federally Funded Grants and Requirements Mandated by Federal Laws), attached hereto. To the extent that the Contract is funded, in whole or part, with Federal funds or mandated by Federal laws: (i) the provisions of the Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) to the extent that the modifications to Attachment A-3 are required by Federal requirements and conflict with other provisions of the Contract, the modifications to Attachment A-3 shall supersede all other provisions of this Contract; and (iii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-3 (Federally Funded Grants and Requirements Mandated by Federal Laws), attached hereto.

N. Renewal:

1. **General Renewal:** The Contract may consist of successive periods on the same terms and conditions, as specified within the Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Contract.

2. **Renewal Notice to Not-for-Profit Contractors**: The Contract, as specified herein, may consist of successive periods on the same terms and condition referred to as a "Simplified Renewal Contract." Each additional or superseding period shall be on the forms specified by the State and shall be incorporated into the Contract. Pursuant to State Finance Law §179-t, if the Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Contract no later than ninety (90) calendar days prior to the end of the term of the Contract, unless funding for the renewal is contingent upon enactment of an appropriation, than thirty (30) calendar days after the appropriation becomes law, whichever is later. Notwithstanding the foregoing, in the event the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance. Notification to the Contractor of the State's intent to not renew the Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the Contractor of its intent not to renew the Contract as required in this Section and State Finance Law §179-t, the Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Contract.

II. TERMINATION AND SUSPENSION

A. Termination:

1. Grounds:

a) Mutual Consent: The Contract may be terminated at any time upon mutual written consent of the State and the Contractor.

b) Cause: The State may terminate the Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Contract and/or any applicable laws, rules, regulations, policies, or procedures. If the termination for cause results from unsatisfactory performance by the Contractor, the value of the work performed by the Contractor prior to termination shall be established by the State.

c) Non-Responsibility: Upon written notice to the Contractor, and a reasonable opportunity to be heard by the appropriate State officials or staff, this Contract may be terminated by the State at the Contractor's expense where the Contractor is determined by the State to be non-responsible. In such event, the State may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

d) Convenience: The State may terminate the Contract in its sole discretion upon thirty (30) calendar days prior written notice.

e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency or entity entering into the Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Contract, the Contract may be terminated or reduced at the State Agency's discretion. No reduction or termination shall apply to allowable costs already incurred by the Contractor whereby funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.

f) Force Majeure: Performance under the Contract may be terminated or suspended by the State immediately upon the occurrence of a "force majeure" event. For purposes of the Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, declared pandemics, insurrection, riot, strikes, lockout, and any unforeseen circumstances and acts beyond the control of the parties which render the performance of contractual obligations impossible.

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

Upon receipt of notice of termination provided pursuant to the notice requirements prescribed in this Agreement, the Contractor shall stop work immediately and complete only those specific assignments and/or obligations, if any, subsequently approved by the State. In the event of termination other than for cause, the Contractor shall be entitled to compensation for services performed through the date of termination that are accepted by the State, and for any subsequent services that are accepted by the State, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the State. The Contractor agrees to cooperate to the fullest respect with any successor consultants and contractors.

3. Effect of Termination Based on Misuse or Conversion of State or Federal Property:

Where the Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Contract for the purposes set forth herein, the State

may, at its option, require: a) repayment to the State of any monies previously paid to the Contractor; b) return of any real property or equipment purchased under the terms of the Contract; or c) an appropriate combination of clauses (a) and (b) herein.

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

4. Suspension:

The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given formal written notice outlining the specific details of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Contract.

III. ADDITIONAL OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

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

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Contract and/or any subcontract entered into under the Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of $100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of $100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Contract, and (3) that nothing contained in the subcontract, nor under the Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. When a subcontract equals or exceeds $100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting). Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use of Material, Equipment, Or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Contract for any activity other than those provided for under the Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Contract.

D. Property:

1. For the purposes of the Contract, "Property" is defined as real property, equipment, or tangible

personal property having a useful life of more than one year and an acquisition cost of $1,000 or more per unit. For Federally funded contracts, if there is any conflict in the definition of "Property" the federal awarding Agency definitions will apply.

a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property. Such Property shall be returned to the State at the Contractor's cost and expense upon the expiration of the Contract unless the State consents in writing to the Contractor retaining possession of the Property to use for similar purposes.

b) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

c) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft, or destruction of such equipment. The Contractor may not charge rental or use fees under this Contract for use or acquisition of Property to carry out its obligations under the Contract.

d) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work as specified in the Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

e) No member, officer, director, or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Contract:

a) For cost-reimbursable contracts, all right, title and interest in Property with a remaining useful life shall belong to the State unless otherwise agreed to, in writing, by the State and the Contractor. However, upon agreement by the State, title shall pass to Contractor upon the end of the Property's useful life (as the phrase "useful life" is defined in Internal Revenue Code § 1.169-2).

b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Contract shall be governed by the terms and conditions of Attachment A-3 (Federally Funded Grants and Requirements Mandated by Federal Laws).

4. The Contractor shall maintain an inventory of all Property that is owned by the State and obtained

by the Contractor under this Agreement.

5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. General:

a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Contract (collectively, Records).

b) The Contractor agrees to produce and retain for the balance of the term of the Contract, and for a period of six years from the later of the date of (i) the Contract and (ii) the most recent renewal of the Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

(i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), 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.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law 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 Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

F. Confidentiality:

1. Contractor agrees that it will not use confidential, personally identifiable information relating to individuals who may receive services, or proprietary information disclosed to Contractor in connection with the services or work ("Confidential Information") for any purpose other than in connection with the services or work and in compliance with all applicable provisions of State and federal law. The Contractor is fully responsible for its staff, its subcontractor(s), and any subcontractor's staff with regard to Confidential Information and shall ensure that they meet all obligations with respect to maintaining the confidentiality and security of any information deemed confidential.

2. Information which falls into any of the following categories shall not be considered Confidential Information: a) information that is previously rightfully known to the Contractor without restriction on disclosure; b) information that becomes, from no breach of the Contract on the part of the Contractor, generally known in the relevant industry, or is otherwise publicly available; and c) information that is independently developed by Contractor without use of the Confidential Information.

3. Except as specifically permitted in this Agreement, Contractor shall not, at any time, in any fashion, form or manner, divulge, disclose, communicate, or use, any Confidential Information other than in connection with the services or as otherwise provided herein.

4. Contractor may disclose Confidential Information if such information is required to be disclosed by Contractor by any law, rule, regulation, judicial or administrative process or applicable professional standards, provided that, to the extent permitted by applicable law or regulation, the Contractor notifies the State prior to any such required disclosure.

5. Contractor agrees that, as between the Parties, all Confidential Information in its possession obtained in connection with the services or work hereunder is at all times the sole property of the State.

6. Where allowable by law and agreed to by the State, Contractor may retain one copy of the Confidential Information and any summaries, analyses, notes, or extracts prepared by Contractor which are based on or contain portions of the Confidential Information evidencing its services or work for the State as required by law, regulation, professional standards, or reasonable business practice.

7. In protecting the Confidential Information, Contractor shall exercise the same standard of care used by Contractor to protect its own confidential and proprietary information, to prevent the disclosure of Confidential Information to any third party. Contractor shall not use Confidential Information for any purpose other than in furtherance of its services or work for the State.

G. Publicity:

1. Publicity regarding the work, services, performance, and/or project governed by this Agreement

may not be released without prior written approval from the State. For the purposes of this Agreement, "Publicity" includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name, or other such references to the State in any document or forum.

2. Any Publicity, publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Contract may not be published, presented or announced without prior written approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations, or policy of the State or if funded with Federal funds, the State and the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) calendar day period in which to review each manuscript for compliance with Confidential Information requirements prior to publication; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Contract (but are not deliverable under the Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section III(F)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility:

Any network-based information and applications development, or programming delivered to or by the State pursuant to this Contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified, or superseded (the "Accessibility Policy"). The Accessibility Policy requires that State Entity Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by (State Entity name, contractor or other) and any report on the results of such testing must be satisfactory to (State Entity name).

I. Unemployment Insurance Compliance:

The Contractor shall remain current in both its quarterly reporting and payment of contributions or

payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

1. The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following: a) any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency; b) any debts owed for UI contributions, interest, and/or penalties; c) the history and results of any audit or investigation; and d) copies of wage reporting information.

2. Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Contract.

J. Charities Registration:

If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Contract.

K. Vendor Responsibility:

The Contractor hereby acknowledges that the State Vendor Responsibility Questionnaire (Questionnaire) and certification are made part of this Contract and that any misrepresentation of fact in the Questionnaire and attachments, or in any Contractor responsibility information that may be requested by the State, may result in termination of this Contract.

The Contractor shall at all times during the contract term remain responsible. During the term of this Contract, any changes in the provided Questionnaire shall be disclosed to the State Agency, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of this Contract. Furthermore, the Contractor agrees, if requested by the State, it must present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

The State, in its sole discretion, reserves the right to make a final determination of non-responsibility at any time during the term of the Contract, based on any information provided in the Questionnaire and/or any updates, clarifications, or amendments thereof; and/or when it discovers information that calls into question the responsibility of the Contractor. Prior to making a final determination of non-responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non-responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

The State reserves the right to suspend any or all activities under this Contract, upon discovery of such information warranting review of responsibility. 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 State issues a written notice authorizing a resumption of performance under this Contract.

L. Workers' Compensation Benefits:

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

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

ATTACHMENT A-2

Program Specific Terms and Conditions

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

1. DEFINITIONS.
   a. "DED" shall mean the New York State Department of Economic Development.
   b. "Parties" shall mean DED, on behalf of the People of the State of New York, and Contractor.
   c. "Project" shall mean the work and/or services described in the Work Plan, set forth in Attachment C of this Agreement.
2. ELIGIBLE EXPENDITURES. Eligible expenditures are those actual, reasonable and necessary expenses incurred by the Contractor in the provision of contract services as delineated in the contractor's project proposal in accordance with and as limited by the amount set forth for these expenditures in the contract budget as contained in Attachment B, and as allowed under State law and if applicable the rules and regulations of the State Comptroller. No funds received from DED may be used for the purchase of alcoholic beverages.

   A. MATCHING FUNDS

   Pursuant with requirements of either the Request for Proposals (RFP); or governing legislation, funds provided to the Contractor pursuant to this Agreement shall be matched by funds acquired by the Contractor to be used for the purpose of carrying out the Project. In order to be eligible, the matching funds must meet all statutory and program requirements. Proportions of DED funds and matching funds are to be expended generally at comparable rates. Specific ratios for the contract period are described in Attachment B of this Agreement.

   i. There are two general categories of eligible Matching Funds.

   - Cash: Cash provided to the Contractor to support the DED-approved activities of the project where the Contractor's faculty member(s) are identified in the project; and,
   - Other Sources of Support:
     - Contractor support: Salaries and fringe benefit costs paid by the Contractor, unreimbursed by other New York State government sources, for the portion of time Contractor's research faculty, graduate or undergraduate students, and/or dedicated staff work on Project activities. *Dedicated staff* is defined as Contractor management, business outreach, and/or support staff who spend at least 25 percent of his or her time on Project activities. Dedicated staff does not include shared services of institutional staff that work on general contract activities and whose services are designed to be recovered under the institution's Indirect Cost rate; and,
     - Donated equipment: The fair market value of new or pre-owned equipment donated to the Contractor for unrestricted use in furtherance of its mission. Title must transfer to the Contractor and the equipment's value must be substantiated by the Chief Financial Officer (or equivalent) of the donating entity.

   ii. Limitations and Exceptions
   - No other New York State government funds are eligible for use as Matching Funds. This prohibition is not intended to restrict an individual campus of the State University of New York or City University of New York systems from providing a portion of its operating funds to the Contractor for use as Contractor support.

- No funds used as Matching Funds in any other DED program are eligible for use as Matching Funds.
- Matching Funds contributions must be provided in return for; and traceable to, DED-approved activities of the project.
- Contractors are not permitted to deliver credit-bearing college courses nor include such tuition as Matching Funds.

B. DED FUNDS

Pursuant with requirements of either the Request for Proposals (RFP); or governing legislation, DED funds provided to the Contractor pursuant to this Agreement shall be used for the purpose of carrying out the Project. Proportions of DED funds are to be expended for the contract period as described in Attachment B of this Agreement.

i. DED funds may be used for the following items in direct support of Contractor activities:

- Employment of faculty and support staff;
- Employment of graduate and undergraduate students, including fellowships;
- Purchase of equipment and/or fixtures;
- Purchase of materials and supplies;
- Travel to a company location for project-related activities; travel by the Business Development Staff or CAT Director for outreach activities; or travel to a DED meeting or CAT-hosted event;
- Services subcontracted to not-for-profit Partner Organizations to assist the CAT in conducting the activities outlined in its Proposal; and,
- Other purposes explicitly approved by DED prior to being incurred.

ii. Limitations and Exceptions:

- Aside from providing for general allowable operating needs of the Contractor; such as equipment and supply purchases, travel, etc., DED funds cannot be provided to any for-profit organization.
- DED funds cannot be used for rent or capital construction; rehabilitation, renovation, or upgrading of existing space or infrastructure; or for telecommunications or utility costs. The Contractor is required to provide space, facilities, telecommunications, utilities, and other infrastructure.
- No DED funds may be expended on basic research.

3. AUTHORITY OF CONTRACTOR. The Contractor warrants that it has the legal, managerial, contractual and financial authority and capability to accept payments made pursuant to this Agreement, to fulfill its obligations under this Agreement, and to ensure the adequate development, operation, maintenance and completion of the Project.

4. PROPOSALS AND REQUEST FOR PROPOSALS. In the event Contractor responded to a Request for Proposal (RFP) issued by DED, the RFP along with the DED approved proposal submitted by contractor are incorporated by this reference in this Agreement.

5. ACTIONS. As of the date of this Agreement, Contractor warrants that there are no actions, suits, liens or other proceedings pending, or, to its knowledge, threatened against the Contractor or any of its representatives or properties before any court, or by or before any governmental authority which have not been disclosed to DED, and which, if adversely determined, would have a material adverse impact on the financial condition or operation of the Contractor, and/or would adversely affect its ability to perform any of its obligations under this Agreement.

6. OTHER OBLIGATIONS. Contractor represents that the performance of this Agreement, and any of the transactions contemplated thereunder (i) will not result in any breach of, or constitute a default under, any indenture, mortgage, deed, lease, loan or credit agreement, or any other agreement, corporate charter, by-laws

or other instrument to which the Contractor, is a party or by which it may be bound or affected and (ii) will not result in or require the creation or imposition of any mortgage, deed, pledge, lien, security interest or other charge or encumbrance of any nature upon or with respect to any of the properties now owned or hereafter acquired by the Contractor.

7. LIMITATIONS OF STATE. The Contractor acknowledges that it and the State makes no warranty, express or implied, as to the Project or its condition, or that it will be suitable for the Contractor's purposes or needs, or that the proceeds of this Agreement will be sufficient to pay the costs of the Project.

8. SUPERVISION. The Contractor acknowledges that it is responsible for furnishing the adequate supervision, labor, materials, supplies, and equipment necessary to ensure the performance of all the work and/or services contemplated for the Project pursuant to this Agreement in an orderly, timely, and efficient manner.

9. STATE ACCESS. DED has the right to review all subcontracts funded pursuant to this Agreement in order to determine their eligibility for financing and compliance with the terms of this Agreement. The Contractor shall permit representatives of DED to have access to the Project at all reasonable times, and all contracts of the Contractor for all or a portion of the Project shall contain provisions that permit such access to the Project or work relating to the Project, wherever it is in preparation or progress, and that the Contractor shall provide proper facilities for such access and inspection and shall permit extracts and copies of Project records to be made by the foregoing entities.

10. LIMITS OF ACCEPTANCE. Acceptance by DED of a statement, representation or certification by the Contractor that a requirement of this Agreement has been met shall not prevent DED from performing any actions necessary to ensure the accuracy thereof.

11. DISBURSEMENT. A disbursement of funds under this Agreement does not and shall not constitute an acceptance or approval of the Contractor's work by DED, or a waiver of any of the terms and conditions of this Agreement.

12. PERSONAL PROPERTY. Any equipment, furniture or other property purchased pursuant to this Agreement is deemed to be the property of the Contractor except that during the term of this Agreement (a) the rights, title or interest thereto shall not be assigned, transferred, conveyed, sublet or in any other way disposed of without the prior written consent of DED and (b) in the event the Agreement is terminated or the Project ceases operating prior to the end of its term, DED reserves the right to determine whether such property should be transferred to the State. The Contractor shall maintain a separate detailed inventory of all the equipment, furnishings, and non-consumable property purchased with funds provided pursuant to this Agreement and shall provide, upon DED's request, a true copy of such inventory which is apart from, and independent of, the information required in Contractor's reports.

13. ADDITIONAL COSTS. The Contractor acknowledges that it is responsible to complete the Project and pay such portion of the Project related costs, including, but not limited to, those costs associated with the continuing maintenance, repair and general upkeep of the Project, which are in excess of funds available pursuant to this Agreement, or determined by DED to be ineligible for reimbursement pursuant to this Agreement.

14. FINAL PAYMENT/RELEASE. The Contractor acknowledges that its acceptance of the disbursement, certified by DED as the final payment under this Agreement, shall constitute a release of the State and DED from any and all claims, causes of action and liability to the Contractor, or their legal representatives, arising out of or related to this Agreement.

15. COMMERCIAL APPLICATION IN NEW YORK STATE.

    A. It is DED's purpose and objective upon entering into this Agreement, to have the results generated under this Agreement be directed toward commercial application in New York State as expeditiously as is feasible, and that any commercial application resulting from the Project should promote economic development in New York State. Therefore, the Contractor agrees that granting licenses to New York companies or employing other suitable means to achieve expeditious commercial application should be

pursued, and the Contractor agrees to pursue as a priority the objective of furthering economic development in New York State.

B. Consistent with the paragraph above, the Contractor shall focus its efforts, including without limitation any collaborative efforts, under this Agreement on New York companies. For purposes of this Agreement, a "New York State company" is a for-profit or not-for-profit enterprise with a fixed place of business in New York State employing regular full-time employees that either: a) has its worldwide corporate headquarters in New York State; or b) has a business unit with which Contractor is collaborating with a fixed place of business in New York State housing its business unit headquarters, research, development, or manufacturing facilities. In addition, the Contractor shall not use State funds to support work the results of which are intended to be primarily available and/or useful only to a non-New York company or companies. Any exception to this prohibition shall require the prior written approval of DED, which approval shall be based on an expectation that benefits will accrue to New York's economy as a result of the work.

15. LOCAL HIRING. While performing the work and/or services required pursuant to this Agreement, the Contractor shall make every effort practicable, as allowed by law, to hire, use and contract with firms, manufacturers and businesses whose principal place of business is located in the State of New York.

16. ACCOUNTING PROCEDURES.

A. The Contractor shall maintain records for this Agreement in accordance with Generally Accepted Accounting Principles (GAAP) that will permit preparation of the required fiscal reports and make possible the determination that State funds made available pursuant to this agreement were used for the purpose for which this Agreement was made.

B. State funds shall be accounted for in a separately designated project account. Detailed records are required for all expenditures charged to the Agreement and should include, but not be limited to: time cards or another generally accepted auditable system to record time allocated by individuals; payroll information including salaries; actual invoices for all purchases; and all cancelled checks (if applicable) or other appropriate documentation which substantiates disbursement.

17. INDIRECT COSTS. Indirect costs, or overhead charges, paid from State funds shall be limited to fifteen percent (15%) of the sum of salaries plus fringe benefits charged to the State funds.

18. ACKNOWLEDGEMENTS AND PUBLICATION.

A. An acknowledgement of DED support shall be conspicuously displayed in any communication to the public regarding the Project receiving support under this Agreement. Communication to the public shall include, but not be limited to, printed publications, press releases and events, speeches, electronic media, conferences, exhibits, and announcements and invitations. All such materials, except scientific articles and papers published in scientific journals, must also contain the following disclaimer: "Any opinions, findings, conclusions or recommendations expressed are those of the author(s) and do not necessarily reflect the views of the DED," unless otherwise directed by DED.

B. Any Project related materials that are copyrighted in the name of the Contractor shall be subject to a royalty-free, irrevocable, worldwide, non-exclusive license to the State to reproduce, perform, translate, and otherwise use and to authorize others to use such materials.

C. In order that proper recognition be given for the sponsorship of DED, it is required that the Contractor notify DED at least three (3) working days prior to issuance of any press release or at least five (5) working days prior to committing to sponsor any event relating to this agreement, and DED shall approve that portion of the press release which relates to DED-related sponsorship and the right to participate in the public issuance of such press releases and events relating to the Project.

19. LICENSE FOR USE OF DED SERVICE MARKS LICENSE FOR USE OF DED SERVICE MARKS

A. DED is the exclusive owner of the service mark

and variations thereof (collectively "the Marks"). DED grants to Contractor the non-exclusive right to use the Marks during performance of the agreement. DED reserves to itself all rights. It shall provide the logo for Contractor to use.

B. In addition to the other terms and conditions in this Agreement, Contractor's non-exclusive right to use the Marks shall be subject to the following terms and conditions:
   i. License rights commence following the execution of this Agreement by both parties and continue through and including the end date of this Agreement, unless the Agreement is terminated earlier, at which time Contractor's rights with respect to the Marks shall terminate immediately. In the event the parties intend to extend this Agreement or to enter into a new Agreement for similar services and the parties desire to extend this grant of license with respect to the Marks prior to the execution and approval of such amendment or agreement (the "Interim Period"), then DED may, in its sole discretion, grant written approval to Contractor to continue to use the Marks during the Interim Period.
   ii. Contractor's license is limited to those activities identified in the Agreement.
   iii. Contractor cannot assign its rights. It may authorize use of the Marks to any person or entity who is part of this Agreement.
   iv. All rights that might be acquired by Contractor's use of the Marks inure to the sole benefit of DED.
   v. Contractor cannot use or register in any country the Marks or any service marks, trademarks, trade names, or other designations resembling or confusingly similar to the Marks. Contractor agrees never to challenge or contest DED's exclusive and proprietary rights in the Marks or the validity thereof as DED's distinctive Marks for the Program or do any act or thing in derogation thereof or of the goodwill symbolized thereby.
   vi. DED has continuing control over the manner in which the Marks are used, including, without limitation, advertising and other promotional materials. Contractor will submit representative specimens of promotional materials, or any materials bearing the Marks. At any time during the term of this Agreement and all extensions hereof, if, in the sole opinion of DED, Contractor's use of the Marks are inconsistent with the image or reputation of DED or DED's Marks and goodwill, DED shall terminate the licensing agreement it has with Contractor. Contractor shall cease to use DED's Marks.

20. FREEDOM OF INFORMATION LAW. DED is subject to the New York State Freedom of Information Law, which generally governs the requirements for the disclosure of government records to a requesting party. (See Article 6 of the Public Officers Law and related regulations). Certain information may be exempt from disclosure under Section 87(2) of the Public Officer's Law. The Contractor is well advised to request that DED except certain information from public disclosure pursuant to Section 87 (2), including, trade secrets or information which, if disclosed, would cause substantial injury to the competitive position of a firm. Such exception may extend to information contained in the request for exception itself, if public disclosure would defeat the purpose for which the exception is sought. The request for such an exception must be in writing and must be made in a cover letter to the report or document. The request must state the reasons for the requested exception and it must clearly specify the portions of the report or document for which the exception is requested. In the event that information is found to be exempt from FOIL disclosure, DED will act so as to not disclose the exempted information. Information provided to DED by the Contractor that is not explicitly identified and exempt from public disclosure may be available for public inspection under the terms of the Freedom of Information Law.

21. SITE VISITS. DED, or its designees, has the right to conduct site visits as necessary throughout the term of the Agreement in order to, without limitation, monitor compliance, Work Plan progress, fiscal accountability, and provide technical assistance.

22. NOTICES. Each Notice, demand, request or other communication required or otherwise permitted hereunder shall be in writing, given or directed by hand, overnight service, or by certified mail return receipt requested, to the respective party at an address set forth on this document's front page, or at such other addresses as either party may designate by written notice to the other.

23. SUBCONTRACTS AND OTHER AGREEMENTS.

A. With regard to completing any of its obligations under this Agreement, the Contractor shall not enter into a subcontract with an entity, which is, pursuant to Labor Law Section 220-b (3)(b), debarred, suspended, or proposed for debarment.

B. In the event of the Contractor entering into any additional contracts or agreements in order to complete its obligations under this Agreement, it shall notify those subcontractors that they will be subject to the applicable terms and conditions of this Agreement as they relate to the subcontractor's scope of work, including, without limitation, DED's right to conduct site visits and inspect records. Contractor shall provide any such entities with a copy of this Agreement. Any subcontract entered into between Contractor and any other entity shall incorporate by reference this Agreement.

C. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by any subcontractor under this Agreement.

D. The Contractor's use of subcontractors does not in any way diminish its own obligations under this Agreement.

24. KEY PERSONNEL. Contractor agrees to notify DED within fourteen (14) business days in the event that any Key Personnel identified in Appendix B in this Agreement fail to continue to work on the Project or fails to adhere to the scope of work identified in the Agreement. DED and Contractor will work together to identify successor Key Personnel; however, DED reserves the right to approve the assignment of a successor or replacement for such Key Personnel. In addition, DED reserves the right to terminate this Agreement in the event any Key Personnel fail to continue to work on the Project or fail to adhere to the scope of work including, but not limited to, the level of effort (if identified in the Agreement) intended to be dedicated to the Project.

25. COMPLIANCE WITH LAWS. Prior to the commencement of any work under this Agreement, the Contractor is required to meet all legal requirements necessary in the performance of the Agreement. This includes, but is not limited to, compliance with all applicable federal, state and local laws and regulations promulgated thereunder. It is the Contractor's responsibility to obtain any necessary permits, or other authorizations.

26. GOVERNMENT INVESTIGATION. In the event the Office of the State Comptroller, the New York Office of the Inspector General, the New York State Ethics Commission, or any governmental investigatory body undertakes an investigation of Contractor due to allegations of wrongdoing, DED reserves the right, in its sole discretion, to withhold payments otherwise due and owing the Contractor pursuant to this Agreement.

27. NONCOMPLIANCE, TERMINATION AND OTHER REMEDIES.

A. This Agreement may be terminated at any time upon mutual written consent of the Parties.

B. DED reserves the right to terminate this Agreement upon thirty (30) days prior written notice whenever, for any reason, it shall determine that such termination is in the best interests of the State.

C. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.

D. Upon receipt of notice of termination following a notice of default, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice of termination without approval by the State.

E. The State shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of this Agreement. In no event shall the State be liable for expenses and obligations arising from this Agreement after the termination date.

F. Subject to the provisions of paragraph 27(H), upon the occurrence of any of the following events (each of which is a "Default"), then DED, in addition and without prejudice to any rights or remedies it may have in this Agreement, at law, in equity, or otherwise, following notice of default shall have the right, following notice of default, to terminate this Agreement as follows:

i. Contractor fails to comply with the terms and conditions of this Agreement, including all of its Appendices, and/or with any laws, rules, regulations, policies or procedures affecting this Agreement;
ii. Upon ten (10) days prior written notice, if at any time any representation or warranty made by the Contractor proves to be incorrect when made or has been breached;
iii. Upon ten (10) days prior written notice, if the Contractor has received three (3) or more Notices of Default pursuant to this Agreement;
iv. Contractor ceases to do business, files a petition for dissolution, files a petition in bankruptcy, is adjudicated a bankrupt, makes an assignment for the benefit of creditors, or has a receiver appointed for it which remains unstayed for a period of sixty (60) days;
v. Contractor fails to diligently proceed with or complete the Project;
vi. Key personnel, whether employed by Contractor or others, are no longer working on the Project funded by this Agreement or fail to adhere to the scope of work, including, but not limited to, the level of effort intended to be dedicated to the Project as identified in this Agreement;
vii. Contractor unilaterally changes the scope of the Project funded by this Agreement or the subcontractors identified in this Agreement;
viii. Contractor fails to comply with any request for information reasonably made by DED to determine compliance with the terms of this Agreement or otherwise reasonably requested by DED in connection with this Agreement; or
ix. A Government Investigation, as described in Paragraph 29, concludes in an adverse finding against Contractor; or their employees with respect to Project related activities;

G. DED reserves the right to withhold any or all available funding under this Agreement until the defaulting event has been corrected to DED's reasonable satisfaction.

H. In the event of a Default, except for the Default described in subparagraph F(ii) and (iii) of this Paragraph 27, Contractor shall have thirty (30) days to remedy such Default following the date of the Contractor's receipt of the State's notice of Default which shall state the grounds for the Default, provided, however, that if such Default cannot reasonably be remedied within thirty (30) days but is subject to being remedied, then the Contractor shall be deemed to have cured the Default if it undertakes to remedy the same within the thirty (30) day period and then diligently pursues such remedy to completion.

I. In the event this Agreement is terminated prior to the end of its term, and, in addition and without prejudice to any other rights or remedies it may have in this Agreement, at law, in equity, or otherwise, the State reserves the right to demand that all monies paid to the Contractor by the State, or a portion thereof, be repaid to the State upon demand to the extent the State determines: (1) such monies were not expended in accordance with the terms of this Agreement or (2) Contractor's failure to complete the Project, including, without limitation, due to its failure to remedy a Default in response to a notice of Default, frustrated the intent of this Agreement. If such monies are not repaid, the Office of the State Comptroller may cause to be withheld from any State assistance to which Contractor would otherwise be entitled an amount equal to the monies demanded.

J. If the unremedied Default occurred after the expiration or termination of this Agreement and if it pertains to a provision or provisions that survive expiration or termination of this Agreement, the State reserves the right to demand that monies paid to Contractor by the State, or a portion thereof, be repaid upon demand to the extent the State reasonably determines that: (1) such monies were not expended in

accordance with the terms of this Agreement or (2) Contractor failed to satisfy and complete the Project, for whatever reason including without Contractor's failure to remedy the Default. If such monies are not repaid, DED may withhold from any State assistance to which the Contractor may otherwise be entitled an amount equal to the monies demanded.

K. Nothing in this Agreement shall in any way abrogate or limit any other rights or remedies, including, but not limited to, actions for breach of contract, rights of set-off or collection, available to the State or the Office of State Comptroller as set forth in the State Constitution, statute, common law, or equity.

28. FORCE MAJEURE. Should either Party be delayed or prevented from performing an act(s) required by this Agreement because of an act of God, strike, lockout or labor trouble, fire, flood, act of war, riot or other similar event, without fault and beyond the party's reasonable control, the performance of such act(s) shall be excused for the period of the delay and the period for performance of such act(s) shall be extended for a period of time equivalent to the period of such delay.

29. WAIVER. A waiver of enforcement of any provision of this Agreement by DED shall not constitute a waiver of any other provision of this Agreement, nor shall it preclude DED from subsequently enforcing such provision thereafter. The remedies provided herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise. A specific remedy identified in a provision of this Agreement does not preclude the imposition of any other allowable remedy.

30. SEVERABILITY. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

31. MISCELLANEOUS.

A. Section headings contained herein are solely for the purpose of aiding in the location of general subject matter and are not intended to be used in the construction of the Agreement.

B. Nothing contained in this Agreement shall constitute or be construed to create or constitute a partnership or joint venture or an agency relationship between the Parties. The Contractor shall have the status of an independent contractor. Accordingly, the Contractor agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer or employee of the State or DED by reason of this Agreement. It further agrees that it will not make any claim, demand or application to the State for any right or privilege applicable to an officer or employee of the State, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

C. Nothing contained in this Agreement shall create or give to third parties any claim or right of action against the State of New York, DED, Contractor, or any of their officials or employees beyond that as may legally exist without regard to this Agreement.

32. INTEGRATION. The Parties to this Agreement intend the foregoing writing, including its Appendices and any documents incorporated by reference, to be the final, complete and exclusive expression of all the terms of their agreement. This Agreement supersedes any and all prior agreements and understandings, whether written or oral, between the Parties in connection with the subject matter of this Agreement. Unless otherwise provided in statutes, rules, regulations, or policies governing DED's authority, no covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Agreement.

33. PAYMENT.

A. All payments shall be made on a cost reimbursed basis in the ordinary course of State business, upon approval by DED of duly authenticated financial and progress reports, including any supporting documentation, submitted by the Contractor.

Both financial **and** progress reports required for payment shall be submitted in accordance with the due dates set forth in Table I Reporting Schedule in Attachment D. DED reserves the right to review invoices and supporting documentation which evidence actual expenditures prior to approving payment.

B. As a condition precedent to any and all disbursements under this Agreement, the Contractor shall provide DED with the appropriate financial and progress reports, including invoices, vouchers, and any supporting documentation illustrating the exact nature of the cost, and the achievement of applicable performance objectives and milestones, in accordance with the schedule and requirements detailed herein. Formats for these reports will be provided under separate cover by DED. If any expenditure is not properly documented, DED reserves the right, in its sole discretion, to require reimbursement, reduce the amount payable to the Contractor, modify or terminate this Agreement, or take any other action deemed necessary.

C. If the Contractor is found to have misrepresented any expenditures, activities, results, or outcomes pursuant to this Agreement, DED reserves the right to disallow the associated expenditures, reduce the amount payable to the Contractor, modify or terminate this Agreement, or take any other action deemed necessary.

34. REPORTS.

A. The Contractor shall submit financial and progress reports in accordance with the schedule and requirements detailed in Attachment D. DED shall not reimburse Contractor until DED receives financial and progress reports prepared in accordance with the terms of this Agreement and to the reasonable satisfaction of DED. If the Contractor fails to submit the required reports in a timely manner, DED reserves the right to reduce the amount payable to the Contractor, modify or terminate this Agreement, or take any other action deemed necessary.

B. An extension of the due date for any report will be considered only in unusual circumstances and only upon written request of the Contractor received by DED at least 15 days prior to the due date. Any such extension must be specifically justified and approved in writing by DED.

C. One copy of all required reports shall be sent to the following address:

NYSTAR - Contract Reports
NYS Dept. of Economic Development
Albany, NY 12245

** In addition, a PDF version **and** an electronic copy of all required reports shall be sent to contractreports@DED.state.ny.us.

D. On the first anniversary of the termination date of the contract the Contractor may be required to provide up-to-date information on outcomes attributable in whole or part to work performed under this Agreement, as required by DED.

E. For the term of the contract and for one year following the contract termination, the Contractor must provide reasonable additional information requested in writing by DED concerning accountability and the impact of the funding at issue with reasonable notice and opportunity to respond, including, but not limited to, requests for documentation supporting the information and conclusion set forth in reports or information provided by Contract.

F. If Contractor fails to comply with reporting requirements, the Contractor's eligibility for payment on any other existing contracts with DED as well as eligibility for future DED contracts may be negatively impacted.

35. INTELLECTUAL PROPERTY

Decisions about the disposition of intellectual property created with DED funding shall, to the maximum extent possible, promote the exploitation of such intellectual property in ways that will contribute to the growth and profitability of New York companies.

It is DED's intent to promote investment in the Contractor when the fruits of its efforts result in financial return to the Contractor or to any subcontractor who receives DED funds. Contractor shall make available its distribution policy to DED upon request. In the event Contractor deviates from its intellectual property policy with respect to funds administered under this Agreement, Contractor must so notify DED and provide DED with the relevant intellectual property agreement.

36. CONTRACTOR MEETINGS AND JOINT DED-CONTRACTOR ACTIVITIES

Contractor shall provide DED timely prior notice of any meetings and activities, including but not limited to meetings of advisory bodies, project review and selection meetings, Contractor-sponsored seminars, conferences, and workshops. DED reserves the right to attend such meetings and activities to observe first-hand the operation of the Contractor without charge. DED may request that key staff attend periodic meetings and workshops organized by DED. Costs for attending such meetings will be borne by the Contractor.

37. CONTRACT MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES GOALS.

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business in the performance of ESD contracts. For purposes of this Contract, however, goals will not be established due to the unavailability of minority and women-owned businesses for performance of this Contract, and/or the funds are for salaries and operating expenses.

ATTACHMENT B-1 EXPENDITURE BASED BUDGET

SUMMARY

PROJECT NAME:

CONTRACTOR SFS PAYEE NAME:

CONTRACT PERIOD: From:

To:

CATEGORY OF EXPENSE	GRANT FUNDS	MATCH FUNDS	MATCH %	OTHER FUNDS	TOTAL
1. Personal services					
a) Salary	$0		$0	$0	$0
b) Fringe	$0		$0	$0	$0
Subtotal	$0	$0	$0	$0	$0
2. Non Personal services					
a) Contractual Services	$0		$0	$0	$0
b) Travel	$0		$0	$0	$0
c) Equipment	$0		$0	$0	$0
d) Space/Property & Utilities	$0		$0	$0	$0
e) Operating Expenses	$0		$0	$0	$0
f) Other (Undefined)	$0		$0	$0	$0
Subtotal	$0	$0	$0	$0	$0
Total	**$0**	**$0**	**$0**	**$0**	**$0**

ATTACHMENT B-1 EXPENDITURE BASED BUDGET
PERSONAL SERVICES DETAIL

PROJECT NAME: ***0***

CONTRACTOR SFS PAYEE NAME: ***0***

CONTRACT PERIOD: From: ***0***

To: ***0***

SALARY					
POSITION TITLE	ANNUALIZED SALARY PER POSITION	STANDARD WORK WEEK (HOURS)	PERCENT OF EFFORT FUNDED	NUMBER OF MONTHS FUNDED	TOTAL
4.					$0
5.					$0
6.					$0
7.					$0
8.					$0
9.					$0
10.					$0
11.					$0
12.					$0
13.					$0
14.					$0
15.					$0
				Subtotal	$0
FRINGE - TYPE/DESCRIPTION					
				Subtotal	$0
				PERSONAL SERVICES TOTAL	**$0**

ATTACHMENT B-1 EXPENDITURE BASED BUDGET
NON-PERSONAL SERVICES DETAIL

PROJECT NAME: ***0***

CONTRACTOR SFS PAYEE NAME: ***0***

CONTRACT PERIOD: From: ***0***

To: ***0***

CONTRACTUAL SERVICES - TYPE/DESCRIPTION	
10.	
CONTRACTUAL SERVICES TOTAL	

TRAVEL - TYPE/DESCRIPTION	
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
TRAVEL TOTAL	**$0**

ATTACHMENT B-1 EXPENDITURE BASED BUDGET
NON-PERSONAL SERVICES DETAIL

EQUIPMENT - TYPE/DESCRIPTION	
6.	
7.	
8.	
9.	
10.	
EQUIPMENT TOTAL	**$0**

SPACE/PROPERTY EXPENSES: RENT - TYPE/DESCRIPTION	
1.	
2.	
3.	
4.	
5.	
SPACE/PROPERTY EXPENSES: OWN - TYPE/DESCRIPTION	
9.	
10.	
TYPE/DESCRIPTION OF UTILITY EXPENSES	
SPACE/PROPERTY & UTILITIES TOTAL	**$0**

ATTACHMENT B-1 EXPENDITURE BASED BUDGET

NON-PERSONAL SERVICES DETAIL

OPERATING EXPENSES - TYPE/DESCRIPTION	
1. Indirect Costs (≤ 15% of Salary & Fringe Costs)	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
OPERATING EXPENSES TOTAL	**$0**

OTHER EXPENSES - TYPE/DESCRIPTION	
6.	
7.	
8.	
9.	
10.	
OTHER EXPENSES TOTAL	**$0**

Attachment C - Work Plan

Overview

Strategy

ATTACHMENT D
PAYMENT AND REPORTING

A. General Terms and Conditions:

1. In full consideration of contract performance, the State Agency agrees to pay, and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.

2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained and the contract is fully executed. Contractor obligations or expenditures that precede the start date of the Contract shall not be reimbursed.

3. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Contract shall be governed by Article 11-B of the State Finance Law.

4. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. However, the State may, in its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. The State may require the Contractor to submit billing invoices electronically.

5. The Contractor shall submit documentation to support its claims for payment pursuant to this Contract. All supporting documentation must be completed and provided in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

6. Payment for invoices submitted by the Contractor shall be rendered electronically in accordance with OSC's procedures and practices governing electronic payment unless payment by paper check is expressly authorized by the head of the State Agency, in his or her sole discretion after the Contractor establishes extenuating circumstances requiring payment by paper check.

7. If travel expenses are an approved expenditure under the Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out- of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.

8. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Contract as security for the faithful completion of services or work, as applicable, under the Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.

9. All vouchers must be submitted by the Contractor no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.

10. All obligations must be incurred prior to the end date of the contract. The final claim of the contract term shall be submitted to the State Agency up to ninety (90) calendar days after the contract end date to make final expenditures if this contract is State Funded. However, if this contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures and submit the claim to the State Agency.

11. The State shall not be liable for payments on the Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.

12. The Contractor may be required to submit a Consolidated Fiscal Reporting System ("CFR"). The CFR is a standardized electronic reporting method accepted by State agencies, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

B. Advance Payments and Claiming Requirements:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179-u for both multiyear and renewal contracts and the provisions of this contract. Federally funded contract advances will be made as set forth by the Federal grant award requirements and applicable Federal regulations and this contract.

2. For simplified renewals, the payment schedule will be modified as part of the renewal process. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year.

3. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.

4. All Claim Submissions including Advance Payments, Initial Payments, and Reimbursements shall be made in accordance with the State Agency approved Schedule A: Claiming Requirements below.

Schedule A: Claiming Requirements

Period :			
Claim Number	Claim Type	Claim Period	Due Date

5. Milestone/Performance Reimbursement is based upon the Contractor satisfactorily meeting specified and meaningful events or milestones in performance of duties under this Contract. Requests for such payments be severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

- For non-performance based contracts, the Contractor's costs must be allocated pursuant to a plan that meets the requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) at 2 CFR Part 200. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.
- For performance-based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

6. Fee for Service Reimbursement is based upon a rate established by the Contractor for a service or services rendered. Payment shall be limited to only those fees specifically agreed upon in the Contract and shall be payable in accordance with the State Agency approved Schedule A: Claiming Requirements.

7. Rate Based Reimbursement is based upon an established rate per unit at defined intervals to be paid to the Contractor in accordance with the State Agency approved Schedule A: Claiming Requirements. Payment shall be limited to rate(s) established in the Contract and may be requested no more frequently than monthly.

8. Fifth Quarter Payments occur when there are scheduled payments and an expectation that services will be continued through renewals or subsequent contracts. Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

9. If the Expenditure Based Budget is used in Attachment B-1 and the Expenditure Report is selected below, the Contractor shall submit, not later than the time period listed in the State Agency approved Schedule A: Claiming Requirements above, a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.

☐ Expenditure Report Required

C. Refunds:

1. In the event that the Contractor must refund the State for Contract-related activities, including repayment of an advance or an audit disallowance, the refund must be made payable as set forth by the State Agency, must reference the contract number with its payment, and include a brief explanation of why the refund is being made.

2. If at the end or termination of the Contract there remains any unexpended balance of the monies advanced under the Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

D. Progress Reporting Requirements:

If the State Agency determines that Work Plan Based Reporting is required to summarize the progress made on the performance measures established in the Contract, such reporting shall be made online as directed by the State Agency.

If Work Plan Based Reporting is not required, the Contractor shall comply with the following applicable provisions and the Contractor shall provide the State Agency with one or more of the following reports as required by the State Agency:

1. *Narrative/Qualitative Report:* The Contractor shall submit no later than the time period identified in Schedule B: Progress Reporting Requirements, below, a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in the Work Plan. This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.

2. *Statistical/Quantitative Report:* The Contractor shall submit, on a quarterly basis, no later than the time period listed in Schedule B: Progress Reporting Requirements, below, a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.).

3. *Final Report:* The Contractor shall submit a final report as required by the Contract, not later than the time period listed in Schedule B: Progress Reporting Requirements, below, which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).

4. *Consolidated Fiscal Report:* The Contractor shall submit a consolidated fiscal report, which includes a year-end cost report and final claim not later than the time period listed in Schedule B: Progress Reporting Requirements below.

Schedule B: Progress Reporting Requirements

Period 1:			
Progress Report	Report Type	Report Period	Due Date

E. Special Payment and Reporting Provisions