

APPENDIX C

NEW YORK STATE DEPARTMENT OF LABOR

General Terms and Conditions

A. Scope and Statement of Work

The Contractor shall perform the work of this Agreement within the period indicated on its Face Page and within any more stringent timeframes that may be provided in Appendix B; in strict accordance with the RFP, its Proposal and the Addendum to Proposal or any Appendix X(s) that may have been negotiated, if applicable; and in compliance with New York State and federal laws, rules and regulations including any requirements established by the Department, and, with the provisions of Office of Management and Budget (OMB) Circulars A-87 or A-122, or A-21 and A-133 as applicable, and the accounting requirement thereunder even where federal funds are not involved.

B. Funding

Funding on this Agreement will be provided twelve months at a time unless expressly provided otherwise on the Face Page. Continuation of this Agreement at the end of each twelve month period will be contingent on the Department obtaining funds for the subsequent fiscal year, as well as, satisfactory performance by the Contractor as defined by the Department's performance standards.

For multiyear funding, to obtain an additional twelve months of funding, the Contractor must submit all documents stated in the Standard Agreement within 30 days of notification by the Department that the contract will be renewed for an additional twelve months. Such documents must reflect the amount of funding provided by the Department as indicated in the above mentioned notification from the Department. In addition, the Contractor must provide a complete budget summary with full details of all planned program expenditures and any other information required by the Department.

The Department shall not be liable for any obligation incurred by the Contractor which is in excess of the funding set forth on the Face Page of the Agreement or any subsequent Modification Agreement.

C. Contractor's General Responsibilities

The Contractor agrees to identify the person(s) who will be responsible for directing the work to be done under this Agreement. No change or substitution of such responsible person(s) will be made without prior approval in writing from the Department, to the degree that such change is within the reasonable control of the Contractor.

The Contractor agrees to strictly comply in all respects with the provisions of this Agreement and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the appendices. If any specific event or conjunction of circumstances threatens the successful completion of this project or the contractor's ability to meet strict compliance with all the terms of this Agreement, its appendices, and amendments, in whole or in part, including where relevant, timely completion of milestones, the Contractor agrees to submit to the Department within five days of occurrence or perception of such problem, a written description thereof together with a recommended solution thereto.

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

The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the Appendices.

The Contractor ensures that the grounds, structures, buildings and furnishings at the program site(s) used under this Agreement are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.

D. Initial Payment

1. Advance Payment

Not-for-Profit Organizations, Municipalities, School Districts or Boards of Cooperative Educational Services, and only these entities, may request an initial advance of funds for contract disbursements from the Department in an amount of up to twenty-five (25) percent of the **annual contract amount**, if deemed appropriate by the Department. The advance shall be offset by crediting the amount of the advance in the last quarter of the contract, or 33 1/3 percent of the advance in each of the last three months of the contract unless, in the Department's discretion, offset shall be recovered sooner. If the amount of the monthly voucher is not sufficient to cover the proportionate advance amount to be recovered, then subsequent vouchers will be reduced until the advance is fully recovered. Any unexpended advance balance at the end of the contract period will be refunded by the Contractor to the Department. In the event either party terminates the Agreement prior to its expiration, the Contractor agrees to refund to the Department immediately any advance balance then outstanding.

For performance based milestone contracts, if the reconciliation of the advance against payments earned by the Contractor indicates that the Contractor has not attained sufficient level of milestone targets to support the full amount of the advance, then the Contractor shall return the balance of the unearned advance to the Department.

In year one the advance will only be paid when a fully executed Planning Grant or Agreement is in place.

Subcontract agreements (if applicable) that have not been received, reviewed, and approved by the Department may reduce the amount of the advance.

In subsequent years, an additional optional advance of up to 25% may be made available to continue the program. This optional advance will be contingent on the Department obtaining funds for the subsequent fiscal year, as well as satisfactory performance by the Contractor as defined by the Department's performance standards. In the event an Agreement is not renewed, the Contractor must return any monies advanced under this mechanism within 30 days of the Agreement termination date.

In order to receive an advance payment, in both the first year and subsequent years, any not-for-profit Contractor other than municipalities requesting an advance of funds must submit the following document(s) to the Department:

- a) A statement from a certified public accountant certifying that the Contractor's bookkeeping practices have been reviewed within the past 12 months and meet generally accepted accounting principles. (This document is required for the original and renewal contract.)
- b) A copy of a fidelity bond covering all persons who will handle funds granted by the State. This bond shall be at least equal to or greater than the maximum amount of any advance, and shall include the Department as co-insured; (This document is required for the original contract. A copy of the paid invoice is required for the renewal contract and should include coverage dates applicable to the expenses.)

- c) A statement of program responsibility and tax certification as outlined under Section E below.
- d) A complete voucher ("Form AC 92" or "Standard Voucher") requesting the allowable advance payment. (This voucher is required for the original and renewal contract.)

Advance payment will be made within 30 days after the renewal period start date, as appropriate, or 30 days after the receipt of the advance request and required documentation from the Contractor, as outlined above, whichever is later.

2. Reimbursement Voucher

If the Contractor does not qualify for an advance payment or does not provide the appropriate documentation to support the receipt of an advance payment, then the initial payment under the contract shall be in the form of a reimbursement payment not less than quarterly. In this case, the initial reimbursement payment will be processed within 30 days of the submission of an acceptable reimbursement voucher, in accordance with the format and time frames specified under Section E, Program Responsibility and Tax Certification, Section F, Voucher Documents, and Section G, Voucher Submittal outlined below.

E. Program Responsibility and Tax Certification

All Contractors Other than Municipalities

Prior to any payments being made, a statement must be submitted signed by the Chairman of the Board of Directors, Chief Operating Officer or other appropriate Chief Executive Official, accepting responsibility for operation of this program and certifying that all Federal, State (including Unemployment Insurance taxes), Local taxes, and fringe benefit payments resulting from operation of this program will be paid and that no past taxes are due and owing. (This statement is required for the original and renewal contract).

F. Voucher Documents

For contract expenses, the Contractor will be paid only after submission of a detailed reimbursement request form (GA 92) in the format and detail established by the Department. This request may be subject to a 15 day audit and inspection period. Reimbursement will only be made for actual expenses that have been documented. Supporting documentation must be submitted along with the detailed reimbursement request form (GA 92). This supporting documentation should be arranged in a format consistent with the Contract's budgetary categories and summarized in a format provided by the Department.

The Contractor's payment requests shall include a statement of expenses and charges by major budget category for work actually performed or expenses incurred in accordance with the terms of this Agreement during the period covered by the request.

For performance based milestone contracts, the Contractor will be paid after submission of a voucher (Form AC 92 or Standard Voucher) and all necessary supporting documentation, as required by the Department to determine that Contractor has achieved the Milestones set forth in this Agreement.

When costs to be vouchered are not 100 percent attributable to the instant Agreement, such costs must be allocated, apportioned or assigned to the Agreement through some kind of distributing methodology, the methodology must be clearly identified and approved by the Department or otherwise consistent with OMB Circulars A-87, A-122, or A-21. This methodology must be consistent with generally accepted accounting principles and appropriate for monitoring and auditing the Agreement. Costs assigned to the Agreement using this methodology must be supported by appropriate documentation in the Contractor's files. Contractors who have not been subject to an audit relative to the assignment of such costs, or who are at all unsure of how to allocate such costs, should request assistance in allocating such costs as this is an area where Contractors often run afoul of contract requirements.

G. Voucher Submittal

Vouchers reporting all expenses and unpaid bills, or milestones achieved where payment is based on performance, should be submitted within 15 days after the end of the month for monthly reimbursement, or 15 days after the end of the last month of the quarter for quarterly reimbursement. Vouchers not received within 30 days may result in the issuance of a warning letter via registered mail, advising the Contractor of this deficiency. The Contractor will then have 30 days from the receipt of this letter to submit a voucher or the Department may unilaterally deobligate contract funds.

Upon examination of the Contractor's payment requests and supporting material, the Department may, in its sole discretion, modify or adjust the amount requested to reflect actual contract funds expended, or should actual milestones achieved where payment is based on performance, as of the date of the request.

H. Matching Requirement

If matching contributions are indicated on the budget summary of this Agreement, match must be reported in conjunction with requests for reimbursement and must be supported by a summary of costs by category of expense. All required match must be fully incurred and reported during the term of the Agreement. The appropriate support documentation must be maintained on the Contractor's premises for audit purposes in accordance with the record retention schedules provided herein. If Contractor fails to provide match required under the Agreement, payment of contract funds may be withheld and contract payments may be reduced accordingly.

I. Deobligations/Sanctions

If the Department decides that the Contractor is not achieving the contract's goals, payments to the Contractor may be delayed or withheld. If this failure to meet goals is not corrected, the contract may be terminated or modified with 30 days notice from the Department to the Contractor. This decision to terminate or modify may be appealed in accordance with Provision Q (Disputes) of these Terms and Conditions.

J. Program Modification

The Contractor shall promptly request prior approval from the Department for modification of the Agreement whenever there is a change in the scope or objectives of the program, the funding level, and if it is deemed necessary, the length of the agreement to meet program objectives. Any such modification shall be subject to the approval of the State Comptroller. Modifications will be necessary for any of the following changes:

- 1) An increase or decrease in funding;
- 2) A transfer of funds among program activities or budget cost categories; with any proposed modification to the contract which results in a change of greater than 10 percent to any category must be submitted to OSC for approval.
- 3) Any change to any of the dates specified for any specific program activity which would take that program activity outside the contract time period;
- 4) A change in any of the participants specified to receive any specific program activity;
- 5) A change in any of the specific program activities which make up the program;
- 6) A decrease of 15 percent or more in the number of individuals to be served in planned enrollment for program activities, or in the number of individuals served within significant client groups; and

7) A change in the dates of the Agreement.

The Contractor shall prepare and submit modifications with complete justification in sufficient time to allow processing and approval prior to the effective date of the changes. Modifications to extend the term of the Agreement are to be submitted at least 60 days prior to the original termination date.

The Contractor shall prepare and submit modifications in accordance with the requirements established by the Department.

If the initial Agreement with the Department is a Planning Grant, the Contractor agrees to submit a fully completed contract within 30 days of submission of the Planning Grant. A fully completed Agreement shall include a Program Narrative and budget in the detail and format required by the Department.

Furthermore, while it will not require an Agreement modification, any changes to the dates specified in the Agreement for a program activity, where such dates remain within the contract time period, requires that notification be given to the appropriate Department grant manager.

K. Disclosure of Unemployment Insurance Records

The Contractor hereby authorizes the Department to disclose to appropriate Department staff all records of delinquencies by the Contractor in making unemployment insurance (UI) contributions required by the unemployment insurance law. Please be aware that ANY Unemployment Insurance delinquencies may significantly delay the execution of this Agreement

L. Contract Closeout

1) Closeout Payments

This Agreement's funds are only available during the period in which a valid New York State appropriation is in effect. To ensure reimbursement for valid Agreement costs, the Contractor must submit a closeout voucher one month prior to the lapse date of the appropriation or within 60 days after the end of the contract funding year, whichever comes first. The voucher must account for all contract expenses - all paid expenses plus all unpaid liabilities by cost category. For performance based milestone contracts, or for any portion of the contract paid on a performance basis, a closeout voucher must include all remaining milestones achieved by the Contractor, and must be submitted no later than 60 days following the end of the contract period. The Department will deobligate all funds not accounted for in this closeout voucher. The funds that are not deobligated will be reserved for up to six months after the contract end date or the lapse date of the appropriation, whichever comes first.

2) Contractors with Insufficient Cash

At the time the closeout voucher (see Section "L.1" above) is submitted, the Contractor may, When applicable, request maintenance of an advance payment sufficient to allow payment of unpaid bills. In order to maintain this advance, copies of all unpaid bills on hand, clearly labeled "unpaid" must be submitted with the closeout voucher. The Department will advance sufficient cash to pay those bills. The Contractor will have an additional forty-five (45) days from the submittal of this close-out voucher to submit a final voucher, with appropriate documentation, accounting for this advance.

3) Contractors with Excess Cash

If at the time the closeout voucher (see Section "L.1" above) is submitted, the Contractor has received cash exceeding the amount of vouchered expenses plus unpaid bills in hand, the Contractor will immediately refund such excess to the Department. For the portion of the contract

amount paid on a performance basis, if the Contractor has received cash in excess of the amount of the actual milestones achieved, the Contractor will immediately refund such excess to the Department.

4) Contractors with Outstanding Liabilities

Contractor may, when applicable, request an advance to pay for certain categories of allowable expenses for which the Contractor has not yet received bills at the time a closeout voucher is submitted. To receive an advance, the Contractor must submit a request for cash along with copies of the bills clearly marked unpaid in accordance with paragraph 2 above.

M. Income/Refunds

1) Program/Interest Income

The Contractor shall report in the manner prescribed by the Department all gross interest income or program income earned by activities supported under this Agreement. Such income earned during the grant period shall be transmitted at the termination of this Agreement to the Department, unless the Department directs otherwise in writing.

2) Refunds and Rebates

When applicable, if the Contractor receives a refund or rebate on an item of expense paid for with contract funds, the amount of the refund or rebate must be promptly refunded to the Department. This can be done either by a check to the Department or by a credit against contract expenses.

N. Offset Provision

All monies due or owed to the Department under this Agreement as a result of unspent advances, credits, returns, rebates, refunds or expenditure disallowances shall be returned to the Department within 60 days of the Agreement termination date. Any funds not returned by this date (as well as any unpaid unemployment insurance tax liabilities) may, upon written notification be recovered by offsetting the amount due against any other reimbursement request under any contract entered into with the Department to the extent provided for by law.

O. Records and Accounts

The Contractor shall provide for the maintenance of such documents, records and accounts as required by the Department to assure a proper accounting for program activities and funds. The proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. For performance based milestone contracts or for the portion of the contract amount paid on a performance basis, among other things, the Contractor must maintain documentation to prove that milestones were in fact achieved. 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 Comptroller of the State of New York. The Contractor shall retain and make available any and all grant records to representatives of the Labor Department, the State Comptroller, the U.S. Department of Labor, and the Office of the Inspector General of the United States as appropriate, for inspection, audit, transcription or reproduction at all reasonable times during the course of the Agreement and for the period set forth as follows:

a) For the period of six years after the submission of the final expenditure report, or for contracts paid on a performance basis, the final voucher by the Contractor. If the Agreement is terminated

during the course of the operating period, for a period of six years from the date of the final settlement agreement.

b) If, prior to the expiration of the six year retention period, any litigation or audit is begun or a claim is instituted involving the Agreement covered by the records beyond the six year period until one year after the litigation, audit findings, or claim involving the records has been resolved.

c) When records subject to retention requirements are transferred to the Department, the U.S. Department of Labor, as appropriate, the six year retention period shall not apply. The Contractor need not retain duplicates of records transferred to or maintained by the Department or the U.S. Department of Labor.

d) Notwithstanding paragraphs a, b, and c, the Contractor shall maintain a record of each participant's participation in the program, including dates of entry and termination in each activity and shall retain such records for each participant for a period of five years from the date of enrollment into the program.

The Contractor is authorized to substitute microfilm or electronic copies in lieu of original records in accordance with the regulations of the Department.

P. Reporting

The Contractor will report participant and financial information to the Department on the forms designated and at the intervals specified by the Department. These reports must be submitted by the deadlines established by the Department. Failure to comply with these reporting requirements may be cause for termination of the contract, or for the delay or withholding of payment. For participant data, the Contractor will use the formats provided by the Department to report services to individuals as these services are provided. For fiscal data, the Contractor will use the formats provided by the Department to report contract cash and accrued expenditures, and match expenditures. This information is to be provided no less than quarterly unless the Department, in its sole discretion, requires monthly or bi-monthly reporting with reports submitted to the Contractor's Department account executive by the fifteenth of the month following the period of the report.

Q. Disputes

Except as otherwise provided in this Agreement, any dispute concerning a question of fact which is not disposed by agreement shall be decided by the Commissioner of Labor, who shall furnish a copy thereof to the Contractor. Appeal shall be handled in accordance with the Department's procedural rules for hearings (12 NYCRR Part 701). A request for hearing must be submitted to Commissioner of Labor within 30 days of receipt. The decision of the Commissioner of Labor, shall be final and conclusive unless determined by a court or competent jurisdiction to have been fraudulent, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

R. Termination or Suspension of Grant

The Department may suspend or terminate this Agreement in whole, or in part, at any time before the completion date:

- 1) Whenever it has been determined that the Contractor has failed to comply with provisions of Federal and State Law, rules and regulations, the requirements of the Department, or the terms and conditions of the Agreement.
- 2) Whenever the Department determines that the Contractor is failing to achieve program goals and the Contractor fails to take corrective action prescribed by the Department.

- 3) When the Contractor fails to comply with the participant and fiscal reporting requirements established by the Department.
- 4) When the Department determines that the Contract was secured by the Contractor as the result of gratuities.
- 5) When Federal or State funds become unavailable as provided below.
- 6) Whenever, for any reason, the Commissioner of Labor shall determine that such termination is in the best interest of the State.
- 7) For grant contracts with Not-for-Profit Contractors only which provide for renewals: Pursuant to State Finance Law 179-t, the Department is required to notify Not-for-Profit Contractors of its intent not to renew a grant contract no later than 90 days prior to the end of the contract term. If the Department does not provide notice to the Not-for-Profit Contractor of its intent not to renew a grant contract as required under State Finance Law §179-t, the grant contract shall be deemed continued until the date the Department provides such 90-day notice to the Not-for-Profit Contractor in accordance with State Finance Law §179-t. Expenses incurred during such extension shall be reimbursable under the terms of the grant contract.

The Department shall send notice of suspension or termination to the Contractor which will specify the extent of suspension or termination, the reason for suspension or termination, and date such suspension or termination becomes effective. In lieu of suspension or termination, the Department may specify a cure (probationary) period during which time the Contractor will be required to correct any program deficiencies or contract breach.

Upon receipt of notice of suspension, the Contractor shall discontinue further commitments of grant funds to the extent that they relate to the suspended portion of the Agreement .

Upon receipt of notice of termination, the Contractor shall (1) discontinue further commitments of grant funds to the extent that they relate to the terminated portion of the Agreement; (2) promptly cancel all subcontracts utilizing funds under this Agreement to the extent that they related to the termination portion of the Agreement; (3) settle, with the approval of the Department, all outstanding liabilities and claims arising from such terminations; (4) submit within a reasonable time period but not to exceed three (3) months after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the Agreement, but such final statement will not include the cost of preparing a settlement proposal.

If the total amount of reimbursable costs for the terminated portion of the Agreement is less than the total payment theretofore made to the Contractor, the Contractor shall promptly repay the Department the excess amount.

To the extent permitted by law, this Agreement shall be deemed in the sole discretion of the Department terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligation by the Department to the Contractor.

Should the Department determine that Federal or State funds are limited or become unavailable for any reason, the Department may reduce the total amount of funds payable to the Contractor, reduce the contract period, suspend the Agreement or deem this Agreement terminated immediately. The Department agrees to give notice to the Contractor as soon as practicable, in the event of termination under this paragraph. If the initial notice is oral notification, the Department shall follow this up immediately with written notice.

S. Recoupment of Funds/ Program Audits

The Department shall have the right to audit or review the Contractor's performance and operations as related

to this Agreement and/or to retain the services of qualified independent auditors or investigators to perform such audit and review on the Department's behalf. If the review indicates that the Contractor has violated or has not complied with the material terms of the Agreement or any other Agreement with the Department, or has abused or misused the funds paid to the Contractor, the Contractor agrees to pay to the Department any costs associated with the review. In addition, the rights of the Department shall include, but not be limited to:

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

The Contractor will assist the Department in transferring the operation of the contracted services to any other entity selected by the Department in a manner that will enable the Department or clients to continue to receive services in an on-going basis, including, but not limited to, notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' records and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this Agreement.

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

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

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

At the termination of any program grant, the Department may recoup funds provided to Contractor if it is determined pursuant to an audit that the Contractor failed to meet its performance goals, failed to provide match, received payments for expenses that cannot be verified with the appropriate documentation, abused or misused funds or otherwise failed to comply with federal or State statutory requirements of the grant.

T. Subrecipient Audits (Only applies to Agreements containing federal monies.)

All Contractors and subcontractors who are determined to be subrecipients pursuant to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and 29 CFR Part 99 are subject to the following:

All states, local governments and non-profit organizations that expend \$500,000 or more in Federal funds under more than one Federal program in any fiscal year must obtain an independent, organization-wide, single audit conducted in accordance with OMB Circular A-133.

In the alternative, any state, local government or non-profit organization, that expends \$500,000 or more under only one Federal program, and that Federal program's laws, regulations or grant agreements do not require a financial statement audit of the auditee, may elect to have a program-specific financial and compliance audit.

For-profit organizations that expend \$500,000 or more in Federal funds in any fiscal year must have either an independent, organization-wide, single audit conducted in accordance with OMB Circular A-133 or a program-specific financial and compliance audit.

The audits for Contractors are to be submitted within one month after receipt of the auditor's report or no later than nine months after the end of the Contractor's fiscal year to the following address:

New York State Department of Labor
Division of Employment & Workforce Solutions
Office of Contract Review and Expenditure Control
Room 425
Albany, New York 12240

Contractors are responsible for collecting audits from subcontractors determined to be subrecipients pursuant to OMB Circular A-133 and 29 CFR Part 99 and must make the audits available for review or inspection.

Any Contractor that expends less than \$500,000 in Federal funds are exempt from Federal audit requirements for that fiscal year, but records must be made available for review or audit by appropriate officials of the U.S. Department of Labor, New York State Department of Labor, and U.S. General Accountability Office (GAO).

To determine when a Federal award has been expended, the Contractor should refer to OMB Circular A-133 and 29 CFR Part 99.205.

The Office of Contract Review and Expenditure Control shall evaluate any findings and recommendations in the Contractor's final audit report along with the related correspondence and Corrective Action Plan (CAP), which may include the expected auditee action to repay disallowed costs, make financial adjustments or to take other action, submitted by the auditee as part of the Department's audit resolution procedures. If the Office of Contract Review and Expenditure Control is in agreement with all aspects of the CAP, they will issue a management determination indicating the acceptance of the CAP. If the Contractor disputes the management determination of any finding, it has thirty (30) days from the date of this letter to request an independent hearing.

U. Publicity/Publications/Copyrights/Patents

Publicity includes, but is not limited to, news conferences, news releases, advertising, brochures, reports, discussions and/or presentations at conferences or meetings. The inclusion of the Department's materials, the Department's agency name, or other such reference to New York State and/or The Department of Labor in any document or forum is considered publicity. News releases, publicity or any other public announcements regarding this project may not be released without prior approval from the Department.

Any publication, training announcement, meeting or training session which is funded in whole or in part through any activity supported under this Agreement may not be published without prior approval of the Department, which results (1) shall acknowledge the support of the Department and the State of New York and, if funded with federal funds, the applicable federal funding agency, and (2) shall 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, interpretation or policy of the Department or the State of New York.

All materials developed and created by Contractor for the Department under this Agreement will be owned by the Department, will be considered to be "works made for hire" as defined in the U.S. Copyright Act, and are hereby assigned to the Department. Contractor agrees to execute all papers and perform all other acts reasonably necessary to assist the other to obtain and register copyrights and to effectuate the intention of this Agreement.

For all other pre-existing works, the Department and the State of New York expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this Agreement or activity supported by this Agreement. All publications by the Contractor covered by this Department shall expressly acknowledge the Department's right to such license.

All of the license rights so reserved to the Department and the State of New York under this paragraph are equally reserved to the U.S. Department of Labor, as applicable, and subject to the provisions on copyrights contained in such federal agencies' regulations if the Agreement is federally funded.

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

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

V. Specific Prohibitions

Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, or breach or violation of this warranty. The Department shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the award, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

Non-Sectarian

The funds provided to the Contractor are for secular purposes and will be used to provide employment and/or training services as described in the Agreement to persons regardless of religious affiliation and shall be performed in a manner that does not discriminate on the bases of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs. No funds will be used for the advancement of a particular religion.

Political Activities

Funds provided pursuant to the Agreement shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.

W. Equipment/ Space

This section W. does not apply to performance based milestone contracts, which will be reimbursed in accordance with the milestone payment schedule as set forth in Appendix B.

In non-performance based milestone contracts, unless the cost is totally ascribable to the grant, these costs must be allocated according to an allocation plan which meets the requirements of OMB Circulars A-87 or A-122, or A-21.

Example 1: Contractor A uses its copier for both grant and non-grant business. In month 2 it makes 1000 copies, 100 of which are for the grant. Its total cost for the copier and supplies for that month is \$200.00. The cost allocation plan allocates copier costs according to the number of copies produced in a given month. Contractor A reports copier costs of \$20.00 for that month.

Example 2: Contractor B makes space in its office for work on the grant. Contractor B has one employee working on the grant for 50% of his/her time. The space used by the employee is 1/10th of the square footage of the office space. Contractor B pays \$2,000.00 a month in rent on the entire office. Contractor B's cost allocation plan allocates its lease payments according to the space used in a given month and the percentage of time that that space is used for grant purposes. Contractor B reports rent expense of \$100.00 for that month.

Equipment Procurement/Rental/Leases Equipment is tangible personal property having a useful life of more than one year and an acquisition cost of \$500 or more per unit.

If an item of equipment listed by the Contractor is available as surplus to the Department, the Department shall arrange to provide such equipment to the Contractor in lieu of purchase of such equipment. Title to all equipment purchased with funds under this Agreement shall be vested in the Department and disposition of all such equipment shall be part of the Contractor's final accounting under this Agreement. If the Department consents in writing, the contractor may retain possession of purchased equipment after the termination of this Agreement to use for similar purposes. The Contractor will return such equipment to the Department at the Contractor's cost and expense when it is no longer used for those purposes or upon the written request of the Department, whichever event happens first.

In addition, the Contractor agrees to permit Department representatives to inspect the equipment and to monitor its use at reasonable intervals during the Contractor's regular business hours. The Contractor shall be responsible for maintaining and repairing equipment purchased or procured under this 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 Department, naming the Department as an additional insured, covering the loss, theft or destruction of such equipment. The Contractor will be required to sign a certification form available from the Department, requesting custody of such equipment for continued use after termination of the contract.

As such, rental of equipment is encouraged where the total expenditure for rental will be significantly less than the purchase price. A rental charge to this Agreement for a piece of equipment owned by the Contractor will not be allowed.

Space

In situations where the Contractor is receiving reimbursement for Space Rental, it must be clearly indicated in the Budget Narrative section. In addition, the Budget Narrative must also indicate whether the Contractor rents or owns the space for which they are receiving reimbursement and the basis used in developing the rental charge.

X. State Travel Expenses

This section X. does not apply to performance based milestone contracts, which will be reimbursed in accordance with the milestone payment schedule as set forth in Appendix B.

Travel expenses may be reimbursed at [the lesser of] rates in line with the written standard travel policy of the entity or the NYS Comptroller's guidelines for Management Confidential employees. Such expenses must conform to the budget approved by the Department and be necessary for the performance of the work under this Agreement. In addition, no out-of-state travel costs are allowed unless specifically detailed and pre-approved by the Department.

Y. Provisions Governing Subcontracting

The Contractor may not assign, transfer, convey, sub-let or otherwise dispose of its right, title and interest in this Agreement, or its power to execute this Agreement to any other person, company or corporation without the previous written consent of the Department. In all cases where a Contractor with the Department subcontracts any portion of that agreement, the Contractor retains full liability and responsibility for assuring that all funds under that agreement, including those to any subcontractor(s) are expended in compliance with:

- The State and Federal laws, rules and regulations governing the expenditure of such funds; and
- The provisions of this contract including but not limited to budget specificity and reasonable cost allocation to line item.

The Contractor will be responsible for identifying in the Agreement its plan for subcontracting. When actual subcontracting details are not known, subcontract information - including a brief, but definitive, narrative description of each program or service to be subcontracted, with whom subcontracting will be implemented (if known), the anticipated outcomes and the projected budget - will be incorporated into the Agreement. The Agreement may then be conditionally approved.

When the actual subcontract is executed, the Contractor must provide detailed subcontract information (copy of subcontract will suffice) to the Department within 15 days after execution. If a copy of the subcontract is not provided, the details required will include:

- a) name of subcontractor;
- b) services to be performed;
- c) program design;
- d) anticipated outcomes; and
- e) line item budget - - with cost category explanations.

Failure to comply with the above may result in the withholding of funds, suspension and/or termination of the Agreement. Failure to resolve within 30 days any non-compliance issues identified by the Department's review of the subcontract information may result in the withholding of further funds until such time as the non-compliance issues are resolved.

Z. Training

All contracts and/or subcontracts must be approved by the Department and licensed or registered by the NYS Education Department where applicable.

AA. Non-Duplicative Reimbursement

Signature of this Agreement constitutes certification by the contractor that payment requests will not duplicate reimbursement of costs and services received from other sources.

AB. Minority and Women-Owned Business Enterprise and Equal Employment Opportunity Participation

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The New York State Department of Labor is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other non-discrimination provision of the Contract and at no additional cost to the New York State Department of Labor (“NYS Department of Labor”), to fully comply and cooperate with the Department of Labor in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”), and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the non-discrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, the NYS Department of Labor hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 11% for Minority-Owned Business Enterprises (“MBE”) participation and 9% for Women-Owned Business Enterprises (“WBE”) participation.
- B. For purposes of providing meaningful participation by MWBEs on this Contract, and achieving the Contract Goals established in section III-A (above), Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/MWBE.html>. Additionally, Contractor is encouraged to contact the Division of Minority and Women Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of this Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of Contract and the Contractor shall be liable to the NYS Department of Labor for liquidated or other appropriate damages, as set forth herein. A copy of the applicable regulations, 5 NYCRR Parts 140 through 145, is available at the following website: <http://www.esd.ny.gov/MWBE.html>.

III. Form MWBE 100 - MWBE Utilization Plan

- A. Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of this Contract.

- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on this Contract pursuant to the prescribed MWBE goals set forth in section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of this Contract. Upon the occurrence of such a material breach, NYS Department of Labor shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

IV. Waivers

- A. For Waiver Requests, Contractor should use Form MWBE 101 – Waiver Request.
- B. If Contractor, after making good faith efforts, is unable to comply with MWBE goals, Contractor may submit a Request for Waiver documenting the good faith efforts of the Contractor to meet such goals. If the documentation included with the waiver request is complete, the NYS Department of Labor shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Department, upon review of the Utilization Plan and updated Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals, and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to Contractor. Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the MWBE Contract Goals.

V. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form EEO 101) to the Department by the 10th day following the end of each quarter during the term of the Contract, documenting the progress made towards achievement of the MWBE goals of the Contract.

All reports must be submitted to the following address by the quarterly due dates outlined in the “M/WBE and Work Force Utilization Reporting Schedule” provided to the Contractor by the Department.

Division of Equal Opportunity Development
MWBE Administrator
NYS Dept. of Labor
State Office Campus
Building 12, Room 540
Albany, NY 12240
Phone: 518-457-1984 Fax: 518-485-2575
NYC: 212-352-6603

VI. Liquidated Damages - MWBE Participation

- A. If the Department determines that Contractor is not in compliance with the requirements of this Contract, and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals;
 - and,

2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages, and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director pursuant to subdivision 8 of section 313 of the Executive Law, in which event the liquidated damages shall only be payable if Director renders a decision in favor of the Department.

VII. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. Contractor shall submit an EEO policy statement to the NYS Department of Labor within seventy two (72) hours after the date of the notice by NYS Department of Labor to award the Contract to the Contractor.
 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the NYS Department of Labor may provide the Contractor or Subcontractor with a model statement (see Minority and Women-Owned Business Enterprises Equal Employment opportunity Policy Statement).
 4. Contractor's EEO policy statement shall include the following language:
 - a. Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.
 - c. Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. Contractor shall include the provisions of sections (a) through (c) of this subsection and paragraph "E" of this section, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this Contract.

C. Form EEO 100 - Staffing Plan

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

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

D. Form EEO 101 - Workforce Employment Utilization Report (“Workforce Report”)

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the NYS Department of Labor of any changes to the previously submitted Staffing Plan. This information is to be submitted quarterly during the term of the contract in the Workforce Report. The Report shall detail the actual workforce utilized in the performance of the contract under the specified categories listed, including: ethnic background, gender, and Federal occupational categories.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the subject contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions, and applicable case law. Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor)_____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

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

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

EEO (c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that such union or representative will affirmatively cooperate in the implementation of this organizations' obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) Contractor will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

- (a) Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) 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 disability, or marital status.

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

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

M/WBE Contract Goals

_____ 20% Minority and Women’s Business Enterprise Participation

_____ 11% Minority Business Enterprise Participation

_____ 9% Women’s Business Enterprise Participation

EEO Contract Goals

_____ % Minority Labor Force Participation

_____ % Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____