

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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FOR FUTURE REFERENCE.**

December, 2012

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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, licensor, licensee, lessor, lessee or any other party):

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

any State approved sums due and owing for work done upon the project.

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

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

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

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

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

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

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

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

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

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

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

NYS OFFICE OF TEMPORARY & DISABILITY ASSISTANCE

APPENDIX A1

1. PERSONNEL

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

2. OFFICE SERVICES

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the APPENDICES.
- b. Title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies provided under this AGREEMENT shall be determined between the Contractor and OTDA, in Federally funded contracts, pursuant to Federal regulations 45 CFR Part 74, Subpart O, unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of OTDA. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to OTDA, unless OTDA has given direction for or approval of an alternative means of disposition in writing.
- c. Upon written direction by OTDA the contractor shall maintain an inventory of those properties which are subject to the provisions of paragraph b.

3. GENERAL TERMS AND CONDITIONS

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the APPENDICES. Any modifications to the tasks or work plan contained in Appendix D must be mutually agreed to by both parties in writing before the additional or modified tasks or work plan shall commence.
- b. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, (including where relevant, timely completion of milestones) the Contractor agrees to submit to OTDA within three days of occurrence (or perception) of such problem, a written description thereof together with a recommended solution thereto.
- c. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize Federal financial participation to OTDA under the Federal Social Security Act.
- d. OTDA will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated thereunder. The Contract Manager and those

individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.

- e. Except where OTDA otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts for the performance of the obligations contained herein until it has received the prior written approval of OTDA, which shall have the right to review and approve each and every subcontract prior to giving written approval to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by bona fide written contract. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, (2) that nothing contained in the subcontract shall impair the rights of OTDA under this AGREEMENT, and (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and OTDA. The Contractor specifically agrees that the Contractor shall be fully responsible to OTDA for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.
- f. If the Contractor intends to use materials, equipment or personnel paid for under this contract in a revenue generating activity, the Contractor shall report such intentions to OTDA forthwith and shall be subject to the direction of OTDA as to the disposition of such revenue.
- g. An initial advance, if determined to be payable to the contractor, shall be payable thirty days from the start date of services within the contract period or thirty days from the submission of a properly executed State of New York Standard Voucher in a form acceptable to OTDA and to the Comptroller of the State of New York, whichever is later.
- h. Any interest accrued on funds paid to the Contractor by OTDA shall be deemed to be the property of OTDA and shall either be credited to OTDA at the closeout of this Agreement or expended on additional services provided for under this Agreement.
- i. Non-Discrimination, Equal Employment Opportunity (EEO) and Minority and Women-Owned Business Enterprise (M/WBE) All work conducted under this contract must be in compliance with the specifications set forth in the applicable Request for Proposal and OTDA's policies and procedures set forth in Appendix A, Standard Clauses for NYS Contracts, and as may be amended from time to time. By submission of its bid/proposal, the successful Contractor agrees that it will not discriminate against any employee or applicant for employment 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, and as more fully set forth in paragraph five of Appendix A. By submission of its bid/proposal, the successful Contractor further agrees that it will comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for Minority and Women Business Enterprises, including but not limited to the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144), and as more fully set forth in paragraph twelve of Appendix A. The successful Contractor further agrees that it will comply with OTDA's Appendix Z, attached and incorporated herein, for the specific EEO/MWBE requirements and associated forms required for this procurement.

4. REPORTS AND DELIVERABLES

- a. The Contractor shall prepare and submit all reports, documents and projects required, and especially those reports, documents and products contained in the APPENDICES, to OTDA's Contract Manager for review and approval. These reports shall be in such substance, form and frequency as required by OTDA in order to meet State and Federal requirements.
- b. Should the Contractor fail to submit, to the extent required by the Office, any reports or documents as required in the above paragraph (a), the Office reserves the right to suspend any payments due until such time as the reports or documents are submitted by the Contractor to the Office.
- c. If the Contractor expends \$500,000 or more in Federal funds during any one fiscal year, the Contractor will be subject to the Audit Requirements and provisions of OMB Circulars: A-110; A-122, A-133; and, all other audit requirements determined applicable by the OTDA. The audit shall be completed on an annual basis and the audit report submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless

a longer period is agreed to in advance by the OTDA. The audit shall be conducted in accordance with generally accepted government auditing standards by an independent auditor and submitted in a form determined by the OTDA. The OTDA will report its findings and any recommendations to the Contractor and may impose any sanctions as determined appropriate. The cost of audits made in accordance with these provisions are allowable charges to the Contract, charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars.

5. CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

- a. The Contractor agrees to safeguard the confidentiality of information relating to individuals who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such information with regard to services authorized by the Social Services Law in conformity with the provisions of applicable State and Federal laws and regulations (e.g. Sections 136 and 372 of the Social Services Law, 18NYCRR 357). Recipients of services other than those which are authorized by Social Services Law shall have their confidentiality protected as directed by OTDA. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 889-aa; State Technology Law Section 208). In the event of an information security breach, the Contractor must immediately notify the Office's Information Security Officer, and adhere to State and Office procedures regarding information security incident reporting and management. The Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

6. PUBLICATIONS AND COPYRIGHTS

- a. The results of any activity supported under this AGREEMENT may not be published without prior written approval of OTDA, which results (1) shall acknowledge the support of OTDA and the State of New York 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 OTDA or the State of New York.
- b. OTDA 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 AGREEMENT shall expressly acknowledge OTDA's right to such license.
- c. All of the license rights so reserved to OTDA and the State of New York under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR Part 74, Subpart O.

7. PATENTS AND INVENTIONS

The Contractor agrees that any and all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to OTDA. 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 45 CFR Part 74.36 and any amendments thereto.

8. TERMINATION

- a. This AGREEMENT may be terminated by OTDA, if OTDA deems that termination would be in the best interest of the State, provided that OTDA shall give written notice to the Contractor not less than thirty (30) days prior to the date upon which termination shall become effective. Such notice is to be made via registered or certified mail return receipt requested or hand delivered with receipt granted by the Contractor. The date of such notice shall be deemed to be the date the notice is received by the Contractor established by the receipt returned, if delivered by registered or certified mail, or by

the receipt granted by the Contractor, if the notice is delivered by hand. OTDA agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith.

- b. If the Contractor fails to use any real property or equipment purchased pursuant to this AGREEMENT for the purposes set forth in this AGREEMENT, or if at any time during the term of this AGREEMENT the Contractor ceases to provide the services specified in the AGREEMENT for which the equipment was purchased, OTDA may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor, where the Contractor has failed to cure as set forth hereafter. Said notice of breach shall be sent via registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefor. Said notice shall specify the Contractor's breach and shall demand that such breach be cured. Upon failure of the Contractor to comply with such demand within thirty (30) days, or such longer period as may be specified therein, OTDA may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to OTDA. Upon such termination, OTDA may require a) the repayment to OTDA of any monies previously paid to the Contractor, or b) return of any real property or equipment purchased under the terms of this AGREEMENT or an appropriate combination of a) and b), at OTDA's option.
- c. To the extent permitted by law, this AGREEMENT shall be deemed in the sole discretion of OTDA 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 OTDA to the Contractor.
- d. Should OTDA determine that Federal or State funds are unavailable; OTDA shall deem this contract terminated immediately. OTDA agrees to give notice to the Contractor as soon as it becomes aware that funds are unavailable, in the event of termination under this paragraph. If the initial notice is oral notification, OTDA shall follow this up immediately with written notice. OTDA will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from OTDA. If State or federal funds become unavailable prior to completion of a performance-based contract, the contractor is entitled to receive reimbursement in an amount equal to the amount the contractor would otherwise have received for the payment points that have been completed at the time that the funds become unavailable.

9. ADDITIONAL ASSURANCES

- a. The Contractor agrees to observe all applicable Federal Regulations, including those contained in 45 CFR Part 84 and 28 CFR Part 41.
- b. OTDA and Contractor agree that Contractor is an independent Contractor, and not an employee of OTDA. Contractor agrees to indemnify the State of New York for any loss the State of New York may suffer when such losses result from claims of any person or organization (excepting only OTDA) injured by the negligent acts or omission of Contractor, its officers and/or employees or subcontractors. Furthermore, Contractor agrees to indemnify, defend, and save harmless the State of New York, and its officers, agents, and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of the contract, and from all claims and losses occurring or resulting to any person, firm, corporation who may be injured or damaged by Contractor in the performance of the contract, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under the contract or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this contract.
- c. The Contractor agrees to comply with all applicable Federal, State and local Civil Rights and Human Rights Laws with reference to equal employment opportunities and the provision of services.
- d. The Contractor agrees that Modifications and/or Budget Revisions which do not effect any change in the amount of consideration to be paid, or change the term, will be in accordance with Appendix C.
- e. Upon request by a local social services district or its designated purchasing agent, the contractor shall enter into an agreement with such district or agent for the purchase of the goods and services which are the subject of this agreement. Such new agreement shall provide that the cost of such goods and services to the district / agent entering into such agreement shall be the same as charged to OTDA under this agreement except that the contractor shall be permitted to negotiate an increase in price to the extent it can show an increase in the cost of providing goods and services which can

be attributed to the act that the municipality constituting the social services district requires contractor to be obligated to standard contractual provisions in lieu of Appendix A of this agreement, which standard contractual provisions are more onerous than those contained in Appendix A.

- f. The contractor understands that it must comply with federal Executive Order 11246, the Copeland "Anti-Kickback Act" (18 USC 874), Section 306 of the federal Clean Air Act, Section 306 of the federal Clean Water Act, and that it must certify that neither it nor its principals are debarred or suspended from federal financial assistance programs and activities and to complete and return in pursuit of such certification any appropriate form required by OTDA (see federal Executive Order 12549 and 7 CFR Part 3017).

Appendix A-2
Operational Support for AIDS Housing (OSAH)

The intent of OSAH is to help establish and maintain a viable continuum of residential opportunities for previously homeless persons with AIDS/HIV and their families living in supported housing created through the Homeless Housing and Assistance Program (HHAP). Many applicants for housing for persons with HIV/AIDS find it difficult to secure adequate funding both to maintain the physical plant and meet the support services needs of residents. OSAH funds help provide the necessary operational support to assist HHAP-funded AIDS housing programs in meeting the support services needs of their residents and covering maintenance and operating expenses.

OSAH funding is limited to sponsors of HHAP-funded projects that are specifically obligated in their HHAP contract to serve homeless persons with HIV/AIDS. Eligible HHAP applicants include not-for-profit agencies that either exclusively serve individuals and/or families with HIV/AIDS, or are contractually obligated to set aside a specific number of units for individuals and/or families living with HIV/AIDS. HHAP funds must have been used to construct the specific AIDS housing units for which OSAH funding is requested. To be eligible to apply for OSAH funds, the HHAP project must be in the operational phase of the project as defined by the HHAP agreement or scheduled to open during the five year term (September 1, 2013 – August 31, 2018).

A. Eligible Activities

To be eligible for funding under this RFP, activities must be in direct support of the operation of eligible projects. Eligible activities under this RFP are limited to the following:

- **Maintenance and Operation** - These are activities directly associated with the maintenance and operation of the eligible HHAP project and its grounds. Such activities include, but are not limited to:
 - maintenance, security, housekeeping, grounds keeping services or staff;
 - heating and utilities;
 - supplies, equipment, and furniture;
 - leased vehicles;
 - replacement costs;
 - service contracts;
 - food and/or clothing for residents; and
 - other related activities for which a need is clearly articulated.

- **Support Services** – Funds may be used to provide residents with necessary support services for which funding is not otherwise available. Eligible services include, but are not limited to:
 - admission and discharge planning;
 - case management, including benefits advocacy and health care advocacy;
 - assistance in accessing community-based services, including primary and chronic health care, mental health services, physical therapy and/or rehabilitation, substance abuse treatment and/or harm reduction services, etc.;
 - assistance with shopping, housekeeping, and other activities of daily living;
 - preparation and serving of food;
 - on-site educational and vocational training;
 - transportation services;
 - nutritional services;
 - child care;
 - crisis intervention services;
 - counseling, pastoral care, bereavement counseling; and
 - recreation and social activities.

The services listed above may be provided directly by the funded agency or through service agreements with other local organizations. If referral agencies are utilized, documentation of actual service provision

and outcomes is the responsibility of the funded agency.

- **Construction/Rehabilitation**– Funds may be used for minor construction and/or rehabilitation activities that will directly support and improve the operation of the eligible HHAP project. **Please note:** Funds available for construction/rehabilitation are limited and will be awarded strictly on a case-by-case basis. The applicant must clearly demonstrate that such funds are critical to the on-going viability of the project. The Bureau of Housing and Support Services will not consider activities deemed cosmetic in nature. A visit to the project site by BHSS staff or their representatives may be required before an award for construction/rehabilitation costs is made. The application must include a detailed cost estimate from at least one qualified contractor. Before funds are released for payment of actual costs, OTDA will require that the applicant provide at least three cost estimates from qualified contractors. OTDA may require that the applicant use the lowest responsible bid.

Funds requested for this category should demonstrate how the construction or repair work will:

- address issues to protect the health and safety of residents;
 - correct code compliance issues or meet handicapped accessibility requirements, and/or
 - assure continued viability and operation of the HHAP project.
- **Administrative** – Not more than **10%** of the OSAH award for a given project will be available to fund administrative activities, provided that the costs of such activities are sufficiently documented and can be appropriately charged to the OSAH program. All funds requested in support of this category should be itemized. Administrative activities may include, but are not limited to the following:
 - supervisory salaries and fringe benefits,
 - audit/bookkeeping,
 - office telephone,
 - postage, and
 - administrative personnel salaries and fringe for general oversight.

Costs for non personal support services are subject to compliance with the overall OTDA goal for Equal Employment Opportunity/Minority and Women Business Enterprise (EEO/MWBE) Participation Requirements of 20% (10% Minority Owned Business and 10% Women Owned Business participation.)

B. Eligible Populations are as follows:

The eligible population to be served under the provisions of this RFP is formerly homeless families and/or individuals that reside in HHAP-funded housing units specifically constructed or set-aside to house persons living with HIV/AIDS. **OSAH funds may not be used to provide services to individuals or families residing in non-AIDS units within eligible projects.**

ADDITIONAL PROVISIONS

a. The Grantee shall be bound by the additional terms and conditions contained in the appendices which are attached hereto and made part hereof.

b. The parties recognize that under the law of the State of New York, this AGREEMENT is wholly executory until and unless approved by the comptroller of the State of New York.

c. The Grantee agrees that no part of any submitted claim will have been previously paid either by the State or by any other funding sources.

d. The Grantee agrees that funds received from other sources for specific services already paid for by the State under this AGREEMENT shall be reimbursed to the State.

e. The Grantee warrants that it is not in arrears to the State upon debt or contract, and is not a defaulter as surety, contractor or otherwise on any obligation to the State.

f. The Grantee warrants that all the statements, data and other information and material furnished by the Grantee are true, complete and correct.

g. This AGREEMENT is and shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.

h. The section headings of this AGREEMENT are for convenience of reference only and in no way define, limit or describe the scope or intent of this AGREEMENT.

i. The rights and remedies of the Office provided in this AGREEMENT shall not be exclusive and are in addition to all other rights and remedies provided at law or in equity.

j. It is hereby agreed that if there be any conflict between portions of this AGREEMENT, including the Appendices and plans thereof, the provisions which enlarge the rights and remedies of the Office shall control.

k. As specified on the face page, the initial term of this AGREEMENT is September 1, 2013- August 31, 2018. This AGREEMENT may be amended at the discretion of the OTDA and the availability of funds, as specified within the AGREEMENT or within any subsequent Modification Agreement(s) (Appendix X). Each modification shall be on the forms specified by the OTDA and which have been incorporated into this AGREEMENT.

l. OTDA reserves the right to adjust annual funding levels in subsequent contract years, should a project not attain an overall 90% occupancy rate, determined by averaging occupancy rates stated in the Quarterly Reports submitted for each 3 month period. Funding levels may be adjusted to the average occupancy rate. OTDA reserves the right to withhold funding during the contract term should beds become unavailable for greater than a 90 day period.

m. OTDA reserves the right to adjust the funding levels (higher or lower) based on the availability of funds. Should additional funding become available in subsequent years, OTDA may consider escalation costs of up to five percent per annum by adjusting the per unit compensation to reflect the cost of living adjustments.

n. Grantees are expected to collect, and may be required to submit relevant Medicaid patient data to the State Department of Health or other designated state agency to track Medicaid cost savings. Since this Medicaid patient specific data is classified as confidential it must be transmitted in a secure format.

o. This AGREEMENT may be terminated upon the termination for any reason of the agreement between the Grantee and the New York State Homeless Housing and Assistance Corporation.

NOTICES TO WRITTEN

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

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

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

Notices to be sent to the Office shall, unless stated otherwise, be sent to the Program Manager, New York State

Office of Temporary and Disability Assistance, Bureau of Housing and Support Services, 40 North Pearl Street, 10-B, Albany, New York 12243.

NO WAIVER

Any failure by the Office to declare a breach or to insist upon the strict performance by the Grantee of any covenant, term or provision hereof shall not be deemed to be a waiver of any of the covenants, terms and provisions hereof, and the Office, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Grantee of any and all of the covenants, terms and provisions of this AGREEMENT to be performed by the Grantee.

SEVERABILITY

In the event that any provision of this AGREEMENT is held to be invalid, such invalidity shall not affect other provisions, which can be given effect without the invalid provisions, and to this end provisions of this AGREEMENT are declared severable.

ENTIRETY OF THE AGREEMENT

This AGREEMENT contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are to be attached. No other understanding, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the parties hereto.

APPENDIX - C
PAYMENT AND REPORTING SCHEDULE

- a. In consideration of the services to be performed by the Contractor pursuant to this AGREEMENT, the Office of Temporary & Disability Assistance (OTDA) agrees to pay and the Contractor agrees to accept a sum not to exceed the dollar amount as stated and in accordance with the budget contained in Appendix B, which is attached hereto.

- b. To the extent permitted by Federal law and regulation, OTDA may, at its own discretion, make advance payments to the Contractor, up to 25%, upon the submission of sufficient justification therefore. Said advance may be eligible for payment only upon approval of this AGREEMENT by the Attorney General and by the Comptroller of the State of New York and upon the submission to OTDA by the Contractor of a properly executed State of New York Standard Voucher in a form acceptable to OTDA and to the Comptroller of the State of New York. Any unexpended advance balance at the end of the contract period will be refunded by the Contractor to OTDA. In the event either party terminates the contract prior to its expiration, the Contractor agrees to refund to OTDA immediately any advance balance then outstanding.

- c. OTDA agrees to pay the Contractor for expenses incurred in behalf of fulfilling this AGREEMENT, according to the budget contained in Appendix B and upon the submission of a properly executed State of New York Standard Voucher in a form acceptable to OTDA and to the Comptroller of the State of New York. These vouchers shall be submitted at least quarterly. OTDA agrees to submit each approved voucher to the Comptroller for payment, unless it shall have notified the Contractor of its disapproval of payment, in writing and together with a justification therefor. The Contractor agrees to submit all vouchers to OTDA no later than thirty days following the completion or termination of this AGREEMENT. For purposes of Article XI-B of the State Finance Law, vouchers other than those for payment of advances are payable on the 45th day after the end of the vouchering period (monthly, quarterly or as defined in the payment schedule) if deemed acceptable by OTDA and Office of the State Comptroller, and if the contractor's voucher is received within 15 days after the end of said period. If the Contractor's voucher is received later than 15 days after the end of said period, then the voucher will be payable 30 days after receipt if deemed acceptable by OTDA and the Office of the State Comptroller.

- d. OTDA reserves the right to withhold up to 10% of any payment otherwise due under this AGREEMENT as security or the faithful completion of services under this AGREEMENT. Said amount is to be paid to the Contractor upon the receipt of all required reports, including the final programmatic and fiscal reports, all products of the project as provided in the AGREEMENT and the attachment thereto, a final voucher, the accounting for the advance payment made pursuant to this AGREEMENT, and upon certification, by the Contractor that it has completed its obligations and duties this AGREEMENT.

BUDGET REVISIONS

- a. The Contractor may make revisions to the budget contained in Appendix B Up to the amount of ten percent (10%) of any direct cost category item without prior approval of OTDA except that any budget decisions that affect changes in the work plan or staffing plan as contained in Appendices B and D shall require prior written approval of OTDA. The Contractor agrees, to submit any and all revisions made pursuant to this to OTDA's Contract Manager for informational purposes.
- b. Budget revisions in excess of ten percent (10%) of any budget item or which affect changes in the work plan or staffing plan shall be submitted in writing to OTDA's designated Contract Manager for approval accompanied by justification therefor. Any submission under this section shall contain as an attachment thereto, all prior budget revision submissions made to OTDA under this Section since the last approved revision under this section. OTDA's Contract Manager shall notify the Contractor in writing, of OTDA's approval of such budget revisions, or shall, also in writing, notify the Contractor of OTDA's disapproval and particularize the reasons for such disapproval.

DESIGNATED PAYMENT OFFICE

Program Office: NYS OTDA

Program Area: 40 North Pearl Street, 10-B

Address: Albany, NY 12243

Attn: NYSSHP Program Manager

APPENDIX X

Agency Code: 27000

Contract Number: _____

Period: _____

Funding Amt. for Contract: _____

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the **New York State Office of Temporary & Disability Assistance**, having its principle office at 40 N. Pearl Street, Albany, New York 12243 (hereinafter referred to as the STATE), and _____ (hereinafter referred to as the CONTRACTOR).

Whereas, the State and the Contractor wish to amend said agreement(C0 _____); and the purpose of which is to modify the contract term and/or contract amount as referenced above and as amended in the attached Appendix(ices) - All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, The parties hereto have executed this AGREEMENT on the dates below their signatures.

CONTRACTOR SIGNATURE

STATE AGENCY SIGNATURE

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

State Agency Certification

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

STATE OF NEW YORK)

SS:

County of _____)

On the ____ day of _____, _____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the corporation described herein which executed the forgoing instrument, and that he/she signed his/her name thereto by order of the board of directors of said corporation.

(Notary)

Attorney General's Signature

Approved:

Thomas P. DiNapoli, State Comptroller

By: _____

By: _____

Date: _____

Date: _____

APPENDIX Z

Minority and Women-Owned Business Enterprise (MWBE) and Equal Employment Opportunity (EEO) Participation Requirements For All NYS Office of Temporary and Disability Assistance Contracts and Grants

Authority: Article 15-A of the Executive Law, 5 NYCRR parts 140-144, Appendix A: Standard Clauses for All New York State Contracts and requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuate the purposes of Article 15-A

I. General Provisions

- A. New York State Executive Law § 310–318, (Article 15-A: Participation by Minority Group Members and Women with Respect To State Contracts -- hereinafter “the Statute”), was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" (“Disparity Study”). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprise program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the New York State Office of Temporary and Disability Assistance (OTDA) establish goals for maximum feasible participation of New York State Certified minority and women – owned business enterprises (“MWBE”) and the employment of minority group members and women in the performance of New York State contracts. OTDA fully supports the efforts of the State of New York to promote Equal Employment Opportunity (EEO) for all persons, and to promote equality of economic opportunity for minority group members and women who own business enterprises.
- B. OTDA 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. Where deemed appropriate, OTDA will implement the provisions of New York State

Executive Law Article 15-A and the MWBE Regulations for all other OTDA contracts. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws. Contractors participating in and/or selected for procurement opportunities with OTDA shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for MWBEs, including but not limited to the Statute and its implementing regulations as promulgated by New York State's Empire State Development (ESD) Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144).

- C. Copies of the required OTDA Forms are identified in this Appendix and available on OTDA's Internet site at <http://www.otda.ny.gov>. The Contractor agrees to complete and submit these forms without change in response to goals specified in the RFP or contract. An electronic link to the current list of certified minority- and women-owned business enterprises also is available on OTDA's Internet site.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or 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 allowed by the Contract.
- E. Further information regarding Article 15-A of the New York State Executive Law and the New York State Minority and Women's Business Enterprise Program is available on the DMWBD Internet site at <http://www.nylovesmwbe.ny.gov>.

II. Contract Goals

- A. For purposes of this procurement, the OTDA hereby establishes an overall goal of [0%] for Minority and Women-Owned Business Enterprises ("MWBE") participation, [0%] for Minority-Owned Business Enterprises ("MBE") participation and [0%] for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). Additionally, an overall goal of 10-20% is established for Equal Employment Opportunity ("EEO") participation.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor

should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>

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

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the OTDA for liquidated or other appropriate damages, as set forth herein.
- D. As a condition of the Contract, the Contractor and OTDA agree to be bound by the provisions of §316 of Article 15-A of the New York State Executive Law regarding enforcement.
- E. OTDA reserves the right to establish separate and different goals on any State Contract, as identified in the specified procurement. For guidance on what factors OTDA will consider in determining what goals are appropriate in relation to a specific State Contract, refer to 5 NYCRR § 142.2(a)(1) - (6).

III. EEO Requirements

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the DMWBD. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
 - 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to the OTDA within seventy two (72) hours after the date of the notice by OTDA to award the Contract to the Contractor.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, the OTDA may provide the Contractor or Subcontractor a model statement (see OTDA 4970 – Minority/Women Business Enterprise (MWBE)/Equal Employment Opportunity (EEO) Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. OTDA Form 4934.1 Equal Employment Opportunity (EEO) Staffing Plan

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

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

D. OTDA Form 4971 Equal Employment Opportunity (EEO) Workforce Employment Utilization/Compliance Report ("Workforce Report")

1. Once a contract has been awarded and during the term of the Contract, Contractor is responsible for updating and providing notice to the OTDA of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
4. In the case where the Contractor's and/or subcontractor's work force does not change within the quarterly period, the Contractor shall so notify OTDA in writing.
5. All forms and reports will be submitted to the OTDA program manager for this contract and forwarded to NYS OTDA, MWBE Program Management Unit, Harlem Center, 317 Lenox Avenue, NYC, NY 10027; (212) 961-8214; e-mail to: otda.sm.co.quarterly.compliance.eeo.staffing.reports@otda.ny.gov.

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

IV. MWBE Requirements

A. The Contractor acknowledges that it is the policy of the State of New York and of OTDA that MWBEs shall be given the opportunity for meaningful participation in the performance of State Contracts. Therefore, Contractors agree to make good faith efforts to solicit active participation to meet established goals under this procurement by MWBEs identified in the ESD directory of certified businesses¹, which can be viewed at:
http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp.

- 1.** For the purposes of this Appendix Z, the question of whether a Contractor has engaged in and documented "Good Faith Efforts" to solicit active participation to meet established goals under this procurement by MWBEs in the performance of State Contracts shall be determined by the OTDA Commissioner or his/her designee, after a thorough consideration of the factors listed in 5 NYCRR § 142.8.
- 2.** The separate MBE and WBE participation goals established by OTDA for this procurement are based on the overall availability of MWBEs that have been certified to perform the specific scope of work identified under this procurement. For compliance purposes, these goals should not be construed as rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire Minority and Women-owned Business Program work.

B. The Contractor represents and warrants that Contractor has submitted the following OTDA forms either prior to, or at the time of, the execution of the contract:

1. MWBE Utilization Plan (OTDA Form 4937)

- a.** Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Appendix.

¹ All MWBE firms are required to be certified by Empire State Development (ESD) or must be in the process of obtaining certification from ESD. Should the Contractor identify a minority-owned or woman-owned firm that is not currently certified as an MWBE, the Contractor should request that the firm submit a certification application to ESD for an eligibility determination, with a copy to the OTDA MWBE Program Management Unit. OTDA's MWBE Program Management Unit will work with ESD to expedite the application; however, it is the responsibility of the Contractor to ensure that a sufficient number of certified MWBE firms have been identified in response to this procurement, in order to facilitate full MWBE participation.

- b. If a Contractor seeks modification to its previously approved MWBE Subcontractor Utilization Plan, the Contractor shall first notify OTDA in writing of such change and obtain approval from OTDA.
 - c. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the OTDA shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.
2. Certification of Good Faith Efforts (OTDA Form 4976) to achieve the overall prescribed MWBE participation percentage (0%) goals set forth in the procurement.
 3. A MWBE Subcontractor's and/or Suppliers' Letter of Intent to Participate (OTDA Form 4938), which should document the names and signatures of certified MBEs and/or WBEs which have agreed to participate as subcontractors on the Contract.

V. Waivers

- A. For Waiver Requests Contractor should use OTDA Form 4969 Minority/Women Business Enterprise (MWBE) Subcontractor Request for Waiver Form.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a request for waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the OTDA shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the OTDA, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports, determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the OTDA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Reports

- A. Contractor is required to submit the Minority/Women Business Enterprise (MWBE) Subcontractor Quarterly Compliance Report (OTDA Form 4968) to the OTDA by the 10th day following each end of quarter over the term of the

Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

- B. All reports will be submitted to the OTDA program manager for this contract and forwarded to NYS OTDA, MWBE Program Management Unit, Harlem Center, 317 Lenox Avenue, NYC, NY 10027; (212) 961-8214; e-mail to: otda.sm.co.quarterly.compliance.eeo.staffing.reports@otda.ny.gov
- C. Failure to timely submit a Contractor's MWBE Subcontractor Quarterly Compliance Report and/or other reports or information as requested by OTDA may result in payments under the contract being delayed until such reports or other information have been received by OTDA.² OTDA may also deem other noncompliance with requirements under the Statute as a breach of contract and commence any other means of enforcement permitted under the contract and/or by law.

VII. Liquidated Damages – MWBE Participation

- A. Where OTDA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the OTDA liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between: (a) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (b) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. Determinations of compliance or non-compliance with the Contract's MWBE participation requirements shall be based upon the Contractor's Utilization Plan, MWBE Sub-Contractor Quarterly Reports, and any relevant documentation related thereto. The determination of what constitutes the willful and intentional failure to comply with the MWBE participation requirements will be based upon the evaluation of the same criteria considered in evaluating an MWBE subcontractor waiver request.
- D. Upon a determination that a willful and intentional failure to comply with the MWBE participation requirements has occurred, the OTDA shall withhold the amount established in paragraph B from any future payments otherwise required by this Contract. All funds being withheld pursuant to this provision shall be offset as liquidated damages upon the expiration or termination of the contract, unless the Contractor comes into compliance with the MWBE

² Contractors may be requested to provide additional Compliance Reports and information (i) to verify payments made to MWBEs, (ii) to verify MWBE utilization and/or, (iii) as needed to evaluate any other aspect of Contractor compliance with the requirements set forth herein.

requirements at any time during the term of the Contract but prior to the submission of a request for final payment on the contract. All payments withheld pursuant to this provision shall be released upon OTDA's determination that the Contractor has come into compliance.

- E. 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 OTDA, Contractor shall pay such liquidated damages to the OTDA within sixty (60) days after they are assessed by the OTDA unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the OTDA.

VIII. Sanctions

OTDA reserves the right to impose sanctions following a determination of non-compliance by a Contractor. Sanctions may be imposed upon the Contractor whenever EEO and/or MWBE program requirements have not been met in a timely and effective manner. Any/all of the following sanctions may be imposed:

- Disallowance of costs associated with such noncompliance;
- Initiation of procedures to suspend or terminate the grant or contract;
- Withholding of progress payments until such time as corrective actions have been undertaken by the Contractor to the satisfaction of OTDA;
- Deleting Contractor's name from bid lists for a specified period of time to be determined in the sole discretion of OTDA;
- Report Contractor as non-responsible to NYS OSC Vendor Responsibility System; and
- Other sanctions of which a Contractor has notice in writing prior to or during the performance of a contract.

Notices

Attachment Q

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

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

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

NYS Office of Temporary and Disability Assistance

Name: Jason Cole
Title: Program Manager
Address: 40 North Pearl Street, 10th Floor, Albany, NY 12243
Telephone Number: (518) 486-5161
Facsimile Number: (518) 486-7068
E-Mail Address: Jason.cole@otda.ny.gov

[Contractor Name]

Name:
Title:
Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

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

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

STATE OF NEW YORK
MULTI YEAR AGREEMENT

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

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

I. Conditions of Agreement

- A. The period of this AGREEMENT shall be as specified on the face page hereof. Should funding become unavailable, this AGREEMENT may be suspended until funding becomes available. In such event the STATE shall notify the CONTRACTOR immediately of learning of such unavailability of funds, however, any such suspension shall not be deemed to extend the term of this AGREEMENT beyond the end date specified on the face page hereof.
- B. Funding for the entire contract period shall not exceed the amount specified as "Funding Amount for Initial Period" on the face page hereof.
- C. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- D. To modify the AGREEMENT, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, including any proposed budget modification which results in a change of greater than 10% to any budget item, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines as stated in Appendix A1.
- E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Workplan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations,

administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

- F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, 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 this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.
- G. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.

II. Payment and Reporting

- A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.
- B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services, a sum not to exceed the amount noted on the face page hereof. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.
- C. The CONTRACTOR shall meet the audit requirements specified by the STATE.
- D. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at 518-474-4032. CONTRACTOR acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the OTDA has expressly authorized payment by paper check as set forth herein.
- E. The CONTRACTOR acknowledges that payment for invoices submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the OTDA, in the OTDA's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices as established by the State Comptroller.
- F. The CONTRACTOR shall also comply with the State Comptroller's requirement to file a Substitute Form W-9. The form and the instructions for completing the

form, as well as the Electronic Payment Authorization Form are located at Electronic Payment and Substitute W-9.

III. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.
- C. The STATE may terminate this AGREEMENT without cause by ninety (90) days prior written notice.
- D. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.
- E. 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.
- F. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.
- G. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

IV. Indemnification

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

V. Property

- A. Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

VI. Safeguards for Services and Confidentiality

- A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
- B. Funds provided pursuant to this 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.
- C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.

VII. Public Officers' Law

- A. The Contractor agrees not to engage in any conduct which the Contractor knows would violate or would assist an employee of OTDA in violating Section 73 or 74 of the Public Officers Law.
- B. The Contractor further recognizes that an administrative or judicial finding that a Contractor has violated any of the statutes specified in the Contractor/Subcontractor Background Questionnaire completed prior to the award of this contract may entitle OTDA to terminate the contract, at its discretion, within thirty (30) days after the Contractor notifies OTDA of such findings or OTDA notifies the Contractor that it has become aware of such finding.
- C. Any termination of the contract by OTDA under this subdivision (Article VII) shall be deemed to be a termination of the contract for cause. The remedies set forth in this section shall be in addition to any other remedy available to OTDA under this contract or under any other provisions of law.