



**Office of Temporary
and Disability Assistance**

CONSULTATIVE EXAMINATION CONTRACT

FOR THE

OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

WITH

CONTRACTOR'S NAME GOES HERE

Prepared by:

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Center for Employment and Economic Supports
40 North Pearl Street
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AGREEMENT

This Agreement, by and between the People of the State of New York acting by and through the Commissioner of the Office of Temporary and Disability Assistance of the State of New York, having its principal Office at 40 North Pearl Street, Albany, New York 12243 (hereinafter referred to as OTDA), and _____ (hereinafter referred to as the Contractor.)

WITNESSETH:

WHEREAS, OTDA has a need to have consultative examination services;

WHEREAS, OTDA prepared and released a notice in the Contract Reporter;

WHEREAS, the Contractor is willing and able to provide the services; and

WHEREAS, OTDA and the Contractor are willing to enter into this Agreement;

NOW, THEREFORE, it is mutually agreed between OTDA and the Contractor as follows:

I. DOCUMENT INCORPORATION & ORDER OF PRECEDENCE

In the event of any need to interpret this Agreement, the following documents shall be considered in the order in which they appear herein:

1. Appendix A
2. Body of this Agreement, Appendices and Attachments
3. Appendix Z

II. CONTRACTOR SERVICES

A. Introduction

The New York State Office of Temporary and Disability Assistance (OTDA) is responsible for supervising programs that provide assistance and support to eligible families and individuals. OTDA's functions include: supervising programs that provide temporary cash assistance, Supplemental Nutrition Assistance Program (SNAP) benefits and heating assistance to eligible families and individuals; overseeing New York State's child support enforcement program; determining certain aspects of eligibility for Social Security Disability benefits; supervising homeless housing and services programs; and providing assistance to certain immigrant populations. OTDA is also responsible for establishing State policy and monitoring local operations regarding employment services for public assistance applicants and recipients. These efforts include a requirement under federal Temporary Assistance for Needy Families (TANF) regulations and State Social Services Law to maintain participation rates for individuals in receipt of public assistance supported by federal TANF or State/local funds claimed as TANF Maintenance of Effort (MOE) funds. State Law also requires districts to meet a State participation rate for adult individuals without dependent children who are receiving Safety Net Assistance. Many applicants and recipients of TANF Assistance and Safety Net Assistance present with medical and/or psychological issues which may affect their ability to participate in these employment activities. In addition, applicants and recipients of Medicaid are required to meet disability standards to be eligible for federal reimbursement under Medicaid.

The Office of Temporary and Disability Assistance (OTDA) is seeking Contractor to perform Consultative Examinations (CE) for social service districts (Districts) to obtain independent medical, and/or psychiatric/psychological examinations and/or intellectual evaluations. The information provided from these examinations and any ancillary testing will be used to assist district staff in making a determination of an individual's employability under State guidelines. In addition, these examinations may assist Districts in determining if any of these individuals have disabilities severe enough to potentially qualify them for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits or in some cases, eligibility for Aid to Disabled reimbursement under Medicaid.

All examinations will be reimbursed at the Fee Schedule Rate (Attachment 1, Consultative Examination Fee Schedule) attached hereto.

The Contractor agrees to examine the client and perform or arrange for ancillary testing when authorized by the District.

The Contractor will complete and submit an examination report to the District, using forms provided by OTDA, within 10 business days of the examination. Reports submitted to Districts more than 10 business days after the examination may be subject to a late penalty of 5%. Forms used for Medicaid related examinations will differ from those used for employability evaluations. Districts may have specific requirements which will need to be addressed prior to referrals. The Contractor will be required to submit vouchers for payment to OTDA monthly, along with a verifiable accounting of the examinations and testing performed for each client. The reported results of the physical/mental/intellectual examination, ancillary test(s), pertinent laboratory findings, diagnosis and prognosis must conform to accepted professional standards and practices in the medical field to be considered a complete and competent examination.

B. Staffing

- B.1. All physicians, psychiatrists and psychologists performing examinations must be licensed and currently registered in New York State.
- B.2. Physicians and psychiatrists must be Board Certified or Board Eligible.
- B.3. Each consultative examination contractor must assure OTDA that all support staff (nurses, technicians, etc.) that assist in conducting a consultative examination are licensed or certified, when applicable, and have appropriate experience and training in performing specified services.
- B.4. Any contractor, subcontractor, physician, psychiatrist or psychologist or other health care provider currently disciplined, sanctioned, censured or suspended by any government regulatory agency will not be allowed to participate in this program.

It is the affirmative obligation of any contractor, subcontractor, physician, psychiatrist, psychologist, or other health care provider to report to the prime contractor and to OTDA any notification of investigation by a licensing authority. For example, any physician notified by the New York State Department of Health's Office of Professional Misconduct (OPMC) that an investigation has commenced regarding professional competence, conduct and/or related behavior must report that notification to the Contractor. The Contractor and physician understand that there exists, as a condition of service engagement, an affirmative responsibility by the physician to immediately report the notification of investigation to the Contractor. In turn, the Contractor is obligated to report immediately to OTDA any such notice of investigation.

- B.5. All physicians, psychiatrists and psychologists must have the proper training and experience to perform the type of examination or test requested. The Contractor must include proof of their Board Certification or Board Eligibility and appropriate New York State license/registration. Contractor must notify OTDA of any change in status of all physicians, psychiatrists and psychologists associated with this Contract that become excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs as set forth in contract terms B.3 and B.4 above.
- B.6. The Contractor's medical staff must be familiar with the Listing of Impairments used in evaluating disability in adults and children under the SSDI and SSI programs.
- B.7. The Contractor must have a contract liaison assigned to coordinate activities and be responsible to resolve day-to-day problems and questions from OTDA or District(s).

C. Examinations

- C.1. All consultative examinations must be performed by licensed and currently registered physicians, psychiatrists and psychologists.
- C.2. All consultative examinations and ancillary testing must be performed in accordance with sound medical practice, with the Contractor assuming full responsibility. This includes where the Contractor arranges for ancillary testing through a secondary source.
- C.3. The consultative examination must take into consideration any medical documentation provided at the time of the examination or provided within (4) four business days after the examination.
- C.4. The medical examination, including history, but excluding testing time (blood drawing, x-rays, etc.) must be no less than 20 minutes in duration. The psychiatric/psychological examination must be no less than 30 minutes in duration. The intelligence testing must be no less than 45 minutes in duration. These minimum times must be the actual time spent with a physician or psychologist. Appointments must be scheduled to accommodate the above duration requirements and to minimize waiting time.
- C.5. The Contractor shall not recommend treatment or a change in treatment directly to the client, but should include such suggestions in the report. However, in circumstances where the evidence shows a medical condition that is legally reportable or which could be injurious to the health or safety of the individual or others, or where the individual has made a threat against himself/herself or others, the Contractor should take immediate action consistent with sound and accepted medical practice including notification to the client, client's representative/family, client's treating source or emergency medical personnel, as appropriate and/or permitted by applicable laws. Any emergency treatment and/or information provided should be specified in the report to the District. OTDA is not liable for payment of expenses associated with emergency medical treatment.
- C.6. During the course of the examination, the client's privacy must be maintained. All clients can request to have someone present during their physical examination. Clients must be given the option of having a staff person present during their physical examinations. Clients must sign a form acknowledging that they were provided this option.
- C.7. The Contractor shall be required to repeat examinations and tests, without charge, which OTDA determines to be incomplete, conflicting, and/or in error.
- C.8. Clients or third party insurers, including governmental sources, shall not be charged for testing.
- C.9. If additional examinations or ancillary testing other than those ordered by the District become necessary during the course of the examination, approval for such testing must be obtained from the District. This approval should be obtained while the client is still at the examining site or within 5 days.

D. Ancillary Testing

- D.1. The Contractor must perform or arrange for the following ancillary testing (specified in Attachment 1) on the same day or within 5 days of the examination:
 - X-rays
 - EKG including Treadmill EKG
 - Doppler Testing including Exercise Doppler
 - Pulmonary Function Testing
 - Blood Tests

All ancillary testing must be authorized by the District. The Contractor shall draw blood/specimens when needed as part of the examination process. The Contractor must have arrangements with laboratories that will accept DDD rates to process all blood specimens.

- D.2. Ancillary testing must be performed according to sound medical practice by appropriate medical staff.

- D.3. Based on the background information received with the referral, history secured, and the medical examination, the Contractor will complete only those tests on the District's order that are not medically contraindicated. Contractor shall include reasons in the CE report why tests ordered by the District are medically contraindicated and/or are not performed.
- D.4. All equipment used in ancillary testing must be capable of providing required results.
- D.5. All equipment must meet all health, safety, and infection control requirements, be maintained in good working order and continue to meet these requirements.
- D.6. All equipment calibration and cleaning/sterilization must be done according to manufacturer's guidelines.

E. Reporting Requirements

- E.1. The history and physical/mental examination report must be completed on the forms provided by OTDA. The report must include all requested test results and interpretations as specified by the District.
- E.2. The reported results of the history, physical/mental examination, ancillary test(s), pertinent requested laboratory findings, diagnosis and prognosis must conform to accepted professional standards and practices in the medical field to be considered a complete and competent examination.
- E.3. No examination or test should be initiated or conducted on clients who are under the influence of alcohol or drugs, if such conditions could affect the validity or reliability of the examination/test in the professional judgment of the consultative examiner.
- E.4. In addition to the actual medical facts, the report must include a statement which describes the individual's ability to do work related activities based on the findings of the examination. For individuals less than 18 years of age, there should be a statement describing the individual's ability to perform age appropriate activities and behave in an age appropriate manner. Opinions such as "client is unable to work" or "client is disabled" must only be included when requested by the District.
- E.5. The Contractor must address all items on any of the consultative examination reporting requirement forms provided by OTDA for specific examinations. Original tracings, x-ray interpretations, laboratory findings, charts and graphs must be attached to the report. Include with the report copies of any medical reports or test results brought by the client.
- E.6. If the client requires a psychiatric examination, and the Contractor is able to provide such examination, then the examination should take place that day or as soon as possible after the physical examination.
- E.7. Client name, Client Identification Number (CIN), case number and date of report must appear on the first page of the report. All subsequent pages, tracings and any other material must have client name, Client Identification Number (CIN) and case number.
- E.8. All reports must be personally reviewed and signed by the consultant who actually performed the examination. A rubber stamp signature or a signature entered by another physician, nurse, or any other person is not acceptable. The consultant's name and specialty must be printed at the end of the report.
- E.9. The Contractor's physicians, psychiatrists and/or psychologists performing the examinations must be made available during the District's normal working hours for telephone discussions to clarify or to answer any questions regarding the report. Responses must be received within 48 hours from the District's request. A copy of all examination and testing reports, including tracings, lab results and x-ray films, must be kept by the Contractor for a minimum period of one year and supplied to the District or OTDA upon request at no charge.
- E.10. Complete confidentiality of client information must be maintained. Examination/test results must not be divulged to anyone including the client, their representative, or treating source or used in any study or publication without the express written approval of the District or OTDA, except as specified in C.5. If the client requests a copy of the examination/test report sent to his or her treating source, the client may sign an "Authorization to Release" Form LDSS-4863 (Attachment 2) [previously mailed or given to the client] and return it to the District. It is the responsibility of the District to release reports, where appropriate and

consistent with applicable law. Third party service providers (transcription, messenger, etc.) must be made aware that client confidentiality must be maintained and that disclosure of client information is prohibited.

- E.11. Should the Contractor receive a request for disclosure or release of a report or a subpoena, the Contractor should immediately call the District for further instructions.
- E.12. One hundred percent (100%) report quality must be maintained; i.e., all items in this Reporting Requirements section must be strictly adhered to on all reports. Reports must be redone without charge if the District or OTDA determines that they are incomplete, conflicting and/or in error.
- E.13. Each Contractor must return completed CE reports, as specified, directly to the District no later than 10 business days of the examination. Reports provided more than 10 after the examination may be subject to a 5% penalty.
- E.14. The Contractor will be required to submit a completed Claim For Payment (AC-3253-S - See Attachment 3) to OTDA for payment of the examinations and ancillary testing. The Contractor will be required to include a list detailing the name of the district, names of the clients examined, their CIN, their case number and the type of examination they received and any testing authorized by the District. Districts must verify examinations, tests and receipt of reports before OTDA will authorize payment of vouchers submitted. The Contractor will submit no more than one voucher per month, per district.

F. Appointment Process

- F.1. All appointments shall be scheduled by the Contractor so that adequate time is spent by the consultant to provide a complete examination according to standard medical practices. Appointments must be scheduled to minimize waiting time for clients.
- F.2. The Contractor shall refer clients to the District when necessary in making appropriate travel arrangements to and from the facility.
- F.3. The Contractor must verify the client's identity; e.g. drivers' license, State ID or any other method for verifying an individual's identity deemed acceptable by law or regulation.
- F.4. Ancillary testing must be scheduled to be performed on the same day as the examination and at the same site, except where otherwise specifically approved by OTDA or the District. In situations where two different specialist examinations are ordered, the Contractor must attempt to schedule the examinations on the same day.
- F.5. Any necessary instructions or notices sent to the client in advance of the examination must be provided by the Contractor, subject to approval by the District and OTDA, unless other arrangements are made by the District.
- F.6. If the client fails to appear for an examination, the Contractor must schedule a second appointment unless otherwise instructed by the District. Although additional appointments must be made if requested by the District, the updated appointment information must be immediately reported to the District after the second appointment is missed. There will be no payment for missed or cancelled appointments, lateness for appointment or discontinued examinations.
- F.7. Processing time from the date an examination request is received from the Contractor to the delivery of the report to the District must not exceed 20 days, unless the District requests that a third appointment be made. Reports must be received by the District no later than (10) ten business days after the examination. If the client provides medical documentation after the consultative examination, the report must be received by the District no later than (10) ten business days after receipt of the additional medical documentation.
- F.8. The Contractor may be required to accept telephone orders for scheduling on a same day appointment basis where physician availability allows it.

G. Facility Requirements

- G.1. Facility(ies) must be in compliance with all State, County and City or local health, fire and building codes at

all times.

- G.2. Both the primary and satellite facility(ies) must be accessible to disabled clients including:
 - primary entrance to building usable by a person in a wheelchair
 - toilet usable by a disabled client
 - doors usable by a disabled client, door width at least 32"
 - elevators if more than first floor usable by a disabled client
- G.3. If dressing rooms are used, separate rooms with doors must be provided to assure privacy of clients.
- G.4. Examining rooms must have doors to assure privacy and be not less than 80 square feet.
- G.5. Electric wiring and extension cords to appliances must be in good condition with no frayed wiring, worn insulation or splices.
- G.6. The facility(ies) must have a written procedure for staff action in the event of a medical emergency, fire or disaster.
- G.7. Premises must be kept clean and in good repair.
- G.8. Hand washing facilities must be present in all examination rooms, except those examination rooms designated for psychiatric, psychological and speech-language evaluations.
- G.9. Written policy and procedures must be established and followed to provide a sanitary environment and ensure proper techniques for infection control.
- G.10. Security of clients clothing and personal property must be provided during the examination.
- G.11. Locked storage must be provided for drugs and biologicals.
- G.12. All necessary licenses and inspection certificates to do business as a medical facility must be secured, posted, and kept current including certificate of occupancy, health and fire, and radiology.

III. CONTRACT TERMS

- 1. Contractor shall perform the work and services as described in Section II and fulfill the terms and meet the performance criteria prescribed by this Agreement.
- 2. Contractor shall perform the services described herein through the use of its own employees who shall be experienced in and qualified to perform said work and services. The work shall not be sublet or assigned, either in whole or in part, without prior written approval of OTDA.
- 3. Contractor and staff must be in full compliance for the term of this Agreement with federal, state, and local operating requirements, as appropriate, for providing a facility and services as specified by this Agreement. Compliance must include, but not be limited to, compliance with New York State Education Law Articles 130 and 131. Contractors providing medical consultative examination services must comply with those articles, which regulate the admission to and practice of the professions, including medicine. All such entities must be in compliance with the requirements of Education Law §6527 and in compliance with Article 15 of the New York State Business Corporation Law, or other corporate organization for physicians as authorized by law. All directors and officers of a corporation providing medical examinations (except those entities delineated in §6527) must be physicians. Contractor certifies that all information provided to OTDA with respect to the Procurement Lobbying Act is complete and accurate.
- 4. Contractor will not knowingly use any individual or entity who is currently excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; who has been convicted under Federal or State law, in connection with the delivery of health care services, of fraud, theft, embezzlement, breach of fiduciary responsibility or financial abuse; who has been convicted under Federal or State law of unlawful manufacture, distribution, prescription, or dispensing of a controlled substance; whose license to provide health care services is under investigation, citation, suspension (including suspension stayed on

compliance with compulsory terms) and/or conviction by any State licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity; who has surrendered such a license while formal disciplinary proceedings involving professional conduct were pending; or who has had a civil monetary assessment or penalty imposed on such individual or entity for any activity described in this section or as a result of formal disciplinary proceedings.

5. Contractor shall be responsible for compensatory cost of laboratory specimens, examination and test results, and district records lost while in the possession of Contractor.
6. The services provided by the Contractor under this Agreement include any incidental direct labor, clerical, secretarial or supervisory services, overhead, equipment, machine costs, systems development, paper, postage, photocopying, supplies, staff transportation, transcription, telephone, telefax equipment and telecommunications charges, insurance coverage, profit margin, delivery service, staff training, provider relations, and necessary conferences and meetings with OTDA or district representatives. All contract costs and expenses for these services must be recouped through the contract rates identified in Attachment 1.
7. All information collected in performance of this Agreement is the sole property of OTDA and the District.
8. Contractor must notify OTDA's contract liaison staff of any substantial contract-related problems as soon as practicable.
9. During normal business hours during the term of this Agreement and for six (6) years thereafter, the Contractor shall provide all duly authorized representatives of OTDA, NYS Office of the State Comptroller, the District or any other entity authorized to conduct an examination with full access to such additional records as have relationship to the subject matter herein, permitting representatives to inspect and copy such records in the home office or field offices of the Contractor. Such access includes both announced and unannounced inspections, on-site audits and regular reports from Contractor, provided, however, that such inspections, copying and auditing may be done for the exclusive purpose of assuring the State and local agencies involved that the Contractor is properly fulfilling its undertaking according to the terms of this Agreement and to assure that reports furnished in compliance with the provisions of this Agreement are true and correct. Such access shall be extended upon the understanding that all information so obtained will be accorded confidential treatment to the extent that such confidentiality is provided under applicable federal and state statutes and regulations.
10. Contractor agrees to retain and make available to OTDA, the NYS Office of the State Comptroller, the District or any other entity authorized to conduct an audit and duly authorized representatives of those agencies all financial records arising out of this Agreement for a period of not less than six (6) years following termination or final payment hereunder, whichever will occur later. In the event of litigation, such records shall be retained for a period of not less than three (3) years following the termination of such litigation. Such records may be maintained on microfilm, microfiche, or in computer format acceptable to OTDA.
11. Contractor is aware that OTDA is not assuring any volume.
12. The Contractor must extend the terms and conditions to any State agency in New York State. It must also extend the terms and conditions to (1) County Agencies in New York State providing human services such as income maintenance, job training, employment and/or social services or health related services, as well as (2) Social Services Districts (Districts) in New York State including New York City, which is considered a single district, consisting of the Human Resources Administration, The Administration for Children's Services, and the Department of Homeless Services. In the event services are used by a district, upon acceptance by the District of such services, OTDA may accept the resulting bills, consistent with the terms for those services, and process said bills for payment on behalf of the District. In such event, the State will subsequently make the necessary arrangements with the District and the appropriate agency(s) for reimbursement.
13. Contractor cannot refuse to provide service to any referral from the District, without prior approval from OTDA or the District. Neither OTDA nor the District is liable for payment of expenses associated with emergency medical treatment.
14. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, flood, the elements, acts or omission of public

utilities, or strikes, work stoppages, slowdowns or other labor interruptions due to labor/management disputes involving entities other than the parties to this Agreement (or their agents) or any other causes not reasonably foreseeable or beyond the control of a party.

15. This Agreement shall be construed and interpreted in accordance with the laws of the State of New York. Any legal proceedings against OTDA shall be brought in New York State courts.
16. Performance under this Agreement shall commence October 1, 2016, and end on September 30, 2021. It is understood that this Agreement shall be without force and effect until approved by the Comptroller of the State of New York. There will be no time extensions beyond the terms of this Agreement.
17. The Contractor agrees not to enter into any subcontracts for the performance of the obligations contained herein without written approval of OTDA. OTDA will not be responsible for any subsequent failures if a subcontract is not approved. 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 the Contractor.

This Agreement may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, by OTDA.

18. Except where otherwise approved by OTDA, which approval will be given only in incidental or short term situations not to exceed 10% of contract value, all work performed under this Agreement must be performed in territory governed by the laws of the United States and in which the Public Acts, Records, and Judicial Proceedings of the State of New York are entitled to full faith and credit.
19. OTDA and Contractor agree that the Contractor is an independent contractor, and not an employee of OTDA or the District. Contractor agrees to indemnify OTDA for any loss OTDA, the New York State Department of Health or 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 omissions of Contractor, its officers and/or employees or subcontractors. Contractor shall be liable without limitation, for direct damages for personal injury, death or damage to real property or tangible personal property attributable to the negligence or other tort of Contractor, its officers, employees or agents. Furthermore, Contractor agrees to indemnify, defend, and save harmless the State, OTDA, the New York State Department of Health, the District and its officers, agents, and employees from any and all claims and losses accruing or resulting to any contractor, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by Contractor in the performance of this Agreement, 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, use, or disposition of any data furnished under this Agreement, or based on any libelous or other unlawful matter contained in such data or written material in any form produced pursuant to this Agreement. Furthermore, the Contractor, its agents, servants, and employees hereby agree to hold harmless OTDA, the State, the New York State Department of Health, the District's, their agents, servants and employees from any action arising out of Contractor's use of or presence on the property of the State, OTDA, or the District while performing services under this Agreement.

OTDA and the State shall indemnify, and hold harmless the Contractor and its trustees, officers, agents and employees from any and all claims and losses occurring or resulting to Contractor arising out of the negligence of OTDA or State, or any Officer, agent or employee thereof in connection with reports submitted by Contractor, such as denying medical coverage, provided the Contractor's report was not negligently prepared or the Contractor did not otherwise act negligently.

20. 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 Consultative Medical Examinations Application Instructions, 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 Application, 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 Application, 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 140-145), 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 by reference herein, for the specific EEO/MWBE requirements and associated forms required for this procurement.

21. a. For purposes of this contract, OTDA hereby establishes an overall goal of 7.5% for MWBE participation, 0% for New York State certified Minority Business Enterprise ("MBE") participation and 7.5% for New York State certified Women Business Enterprise ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that OTDA may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how OTDA will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8. Additionally, an overall goal of 7.5 % is established for Equal Employment Opportunity (EEO) participation.

b. For the purpose of this contract, OTDA hereby establishes an overall goal of 6.0% for Service-Disabled Veteran-Owned Business Enterprises (SDVOB) participation (based on the current availability of qualified SVOB's). A contractor ("Contractor") on the subject contract ("Contract") must document its good faith efforts to provide meaningful participation by SVOBs as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that OTDA may withhold payment pending receipt of the required SVOB documentation. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Contractors must be able to demonstrate a good faith effort to comply with their utilization plans by using certified SDVOBEs in a commercially useful function for the appropriate predetermined percentage value. Where the State has determined that a contractor has failed to comply and demonstrate a good faith effort to comply, after having given notice of deficiency, the state agency may proceed with the next Offeror if the state agency has not received a request to review its determination. Any contractor who willfully and intentionally fails to comply with the SDVOBE participation requirements shall be liable for damages, and shall provide for other appropriate remedies.

22. State Finance Law Consultant Disclosure Provisions (Appendix G)

Pursuant to New York State Finance Law Section 163(4)(g), State agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract, such report to include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

The Contractor(s) selected as a result of this procurement will be required to submit **Form A** prior to contract approval and **Form B** on an annual basis. OTDA has provided the appropriate forms as **Appendix G** to this procurement.

Please note that although these forms are not required as part of the Application submissions, OTDA encourages Proposers to include them with their Application submissions to expedite contract execution if the Proposer is awarded the contract.

23. In the event that any significant services rendered by the Contractor are discontinued by OTDA, or in the event of the OTDA's actions or policy decisions which result in significant reductions in expenses incurred by the Contractor, the parties will renegotiate in good faith to establish the amount by which the Contractor's expenses are reduced in the cost per service is otherwise payable to the Contractor. The benefit of said agreed, reduced operating charges shall be one hundred percent (100%) to OTDA.

In the event Contractor initiates significant improvements in the system or implementation thereof, as for example through equipment selection or utilization, enhancements in testing equipment or file management methods, which result in significant reductions in expenses incurred by the Contractor, OTDA and Contractor will negotiate in good faith to allocate a portion of such reduced expenses to a reduction in the cost per services otherwise payable to the Contractor. Unless otherwise agreed to by the parties, the benefit of such reduced expenses shall be thirty-five percent (35%) to OTDA and sixty-five (65%) to the Contractor.

24. NOTICES

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:

State of New York Office of Temporary and Disability Assistance

Name: Ms. Susanne Haag
Title: Temporary Assistance Specialist 2
Address: 40 N. Pearl Street, 11D, Albany, New York 12243
Telephone Number: (518) 486-6291
Facsimile Number: (518) 486-7650
E-Mail Address: Susanne.Haag@otda.state.ny.gov

[Contractor]

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.

25. The Contractor hereby assures OTDA that with respect to its performance under this Agreement and all other activities in which it is engaged, the Contractor is in substantial compliance and will continue to be in substantial compliance throughout the life of this Agreement with any and all applicable statutes and regulations.

26. The Contractor agrees to safeguard the confidentiality of information relating to individuals who may receive services in the course of this project and shall maintain the confidentiality of all such information in conformity with the provisions of applicable State (Section 136 of Social Services Law) and Federal laws and regulations. (Social Security Act Section 1106, 42 U.S.C. 1306, 42 USC 1396(a)(7)) (SSA Reg No. 1, 20 CFR Part 401 and 45 CFR Parts 160 and 164) (Privacy Act, 5 U.S.C. 552a)(FOIA 5 U.S.C. 552.) The Contractor shall also 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). In the event of an information security breach, the Contractor must immediately notify OTDA's Information Security Officer, and adhere to State and OTDA 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. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this Agreement. The Contractor shall immediately notify the district or OTDA of its receipt of a request of such information. The decision of OTDA as to the resolution of such requests shall be binding upon the Contractor.

27. This Agreement is subject to the following confidentiality provisions:

- (a) The Contractor, its officers, agents and employees and subcontractors, shall treat all information, with particular emphasis on information relating to recipients and providers, which is obtained by it through its performance under this Agreement, as confidential information to the extent required by the Laws of the State of New York and of the United States and any regulations promulgated thereunder. Unauthorized disclosure of Child Protective Services data is a crime under Section 422(12) of the Social Services Law.
- (b) Individually identifiable information relating to any eligible recipient or provider shall be held confidential and shall not be disclosed by the Contractor, its officers, agents and employees or subcontractors, without the prior written approval of the Commissioner or a designee.
- (c) All other information about or from OTDA's operations, policies, and procedures not covered by sections (a) or (b) above, must be kept confidential as if it were so covered. The use of any information obtained by the Contractor in the performance of its duties under this Agreement shall be limited to purposes directly connected with such duties, unless otherwise provided in writing by the Commissioner or a designee.
- (d) The Contractor shall promptly advise OTDA or the District of all requests made to the Contractor for information described above.
- (e) The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or subcontractors contains a provision, which conforms to the provisions of this article.
- (f) The Contractor will use the same care and discretion to avoid disclosure, publication or dissemination of Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate.
- (g) Except for personal information relating to recipients and providers which shall be kept confidential pursuant to requirements of New York State and federal laws, and information relating to the business and finances of the State or the Contractor, confidential information disclosed by one party to the other continues to be subject to this Agreement for six years following termination of this Agreement. No obligation of confidentiality applies to:
 - 1) Information the Contractor already possesses without an obligation of confidentiality.
 - 2) Information the Contractor develops independently from publicly available data.
 - 3) Information the Contractor receives without obligation of confidentiality from a third party.
 - 4) Information that is, or becomes, publicly available without breach of this Agreement.
- (h) In the event either party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other party, it shall, to the extent permitted by law, provide prompt notice to the other of such receipt. The party receiving the request shall thereafter be entitled to comply with such subpoena or other process to that extent permitted or required by law.

28. The Contractor shall supply their own personal computers and printers, and related software and telecommunications equipment to be used for OTDA and District tasks including the receipt of electronic CE orders when applicable, appointment scheduling, report preparation and transmittal, voucher billing, and other items as identified by the OTDA.

29. Disputes:

- a. This disputes provision shall apply to any dispute of the parties relating to performance under the Agreement except liquidated damages. Any dispute concerning any question of fact or law arising under the Agreement, which is not disposed of, by mutual agreement of the parties shall be initially decided by the adjudicator designee (hereinafter "Designee") of the Director the Bureau of Contract Management (hereinafter "Director"). The Director shall also designate the person who will present the OTDA's position in the dispute (hereinafter "Advocate").
- b. Within thirty days of such designations, the Advocate will state and brief the Designee on the OTDA's position on the dispute. The Contractor will then have thirty days to make its submission; the submission may include any material the Contractor deems relevant to the dispute. All documents may be sent either by surface mail, by carrier, or electronically.
- c. The Advocate will have a right to submit a response to the Contractor's submission. The response must be limited to the material rebutting evidence and arguments raised by the Contractor in its most recent submission and must be submitted within fifteen days of receipt of the Contractor's submission. If the Advocate submits a response, the Contractor will have thirty days to prepare and submit a response to the Advocate's rebuttal submission; this response shall consists wholly of material which responds to evidence or arguments raised in the Advocate's rebuttal. Any actual submission by the Advocate shall generate a right of rebuttal by the Contractor.
- d. The Advocate and the Contractor will be informed in writing by the Designee when the submission process is deemed complete. The Designee shall have the right to take administrative notice of relevant matters of law and fact as he believes appropriate, in accordance with general principles of Administrative Law.
- e. The Designee will prepare and forward the recommended written decision to the Director. The Director shall: (a) evaluate the Designee's findings and recommendations, (b) review the materials presented by the Contractor and the Advocate, (c) if necessary, consult with agency Counsel, and (d) prepare a response to the dispute either ratifying, modifying, or reversing the recommended decision. The Director's decision will be rendered within 45 days of the date when the submission process is deemed complete pursuant to 31.d, above.
- f. A copy of the Director's decision stating the reason(s) upon which it is based and informing the Contractor of the right to appeal an unfavorable decision to the General Counsel of OTDA, will be issued to both parties. The dispute decision shall be deemed a final and conclusive agency decision unless a written notice of appeal is received no more than 15 calendar days after the date the decision is received by the Contractor. Such notice of appeal must be filed with the General Counsel of OTDA.
- g. The General Counsel of OTDA or his designee(s) shall hear and make a final decision on all appeals. A formal dispute appeal may not introduce new facts unless responding to facts or issues unknown to the Contractor prior to the final dispute decision. The General Counsel's decision will be rendered within 30 calendar days of the date that the notice of appeal is received by the General Counsel.
- h. If the Contractor is unwilling to accept the decision rendered through this procedure or if a decision is not made within 90 calendar days after the record is deemed final, it may then pursue its normal legal remedies de novo, but it is specifically agreed that any and all reports rendered through this procedure shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Agreement by the State shall govern operation thereunder and the Contractor and OTDA shall continue to perform under this Agreement.
- i. The Director and General Counsel shall have the power to change any or all of their designees or otherwise alter the rules of proceeding upon written notice to the Contractor.
- j. The Contractor shall be required to bring all legal proceedings relating to this Agreement against OTDA or the State of New York in a court of competent jurisdiction in the State of New York.

30. This Agreement shall be subject to the following termination provisions:

- (a) By mutual written agreement of the contracting parties.
- (b) By OTDA for cause upon the failure of the Contractor to comply with the terms and conditions provided that

OTDA shall give the Contractor written notice via registered or certified mail with return receipt requested, or shall be delivered in hand and a receipt granted, specifying Contractor's failure. Such termination shall be effective immediately upon receipt of such notice, established by receipt returned to OTDA.

- (c) If OTDA deems that termination would be in the best interest of the State. In the event the OTDA gives notice of termination pursuant to this paragraph, such notice shall be given no less than thirty (30) days prior to the date on which termination shall become effective.
- (d) OTDA reserves the right to terminate this Agreement should the Contractor fail to substantially meet all Federal, New York State, and/or Local regulations.
- (e) Should Federal or State funds for this Agreement become unavailable, OTDA shall deem this Agreement terminated immediately without termination costs.
- (f) Should this Agreement be terminated for any reason or circumstances other than specified and it is determined that OTDA is responsible for such termination, then in that event, the Contractor agrees to accept and OTDA agrees to pay as full compensation for any damages the Contractor actually suffers as a result thereof, the Contractor's reasonable and appropriate expenses incurred in connection with this Agreement. The Contractor agrees not to seek any punitive damages, compensation for lost profits, or any other additional compensation or redress as a result of any such event.
- (g) In the event of termination based on any of the provisions of this section, the Contractor shall not incur new obligations for the terminated portion after the notice of effective date and shall cancel as many outstanding obligations as possible.
- (h) The Contractor agrees not to engage in any conduct which the Contractor knows or has reason to believe would violate or would assist an employee of the OTDA in violating Sections 73 or 74 of the Public Officers Law. If OTDA determines that the Contractor has violated the provisions of this subdivision, OTDA shall be entitled to terminate this Agreement.
- (i) 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 Agreement or failure to notify OTDA of any investigation, citation, suspension (including suspension stayed on compliance with compulsory terms) and/or conviction by a State agency of a matter within its jurisdiction that could reasonably be construed to affect the Contractor's performance under this Agreement shall entitle the OTDA to terminate this Agreement, at its discretion, within thirty days after the Contractor notifies OTDA of such finding or OTDA notifies the Contractor that it has become aware of such finding.
- (j) Except as otherwise provided in this Agreement, any termination of this Agreement by OTDA under this section shall be deemed to be a termination of this Agreement for cause. The remedies set forth in this section shall be in addition to any other remedy available to OTDA under this Agreement or under any other provisions of law.
- (k) To the extent permitted by law, this Agreement may 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 obligations by the Office to the Contractor.
- (l) OTDA reserves the right to terminate this Agreement, as amended, in the event it is found that the certification filed by the Contractor in accordance with New York State Procurement Lobbying Act was intentionally false or intentionally incomplete. Upon such finding, OTDA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

In the event the Contractor knows or has reason to believe this Agreement is or will be terminated for any reason, the Contractor must notify OTDA immediately and provide a termination/transition plan within 24 hours of such notice. The parties hereto agree that the following procedures shall be applied in the event of any termination of this Agreement. It is mutually understood that an orderly and controlled transition from the existing Contractor to any successor, be it OTDA or another contractor, is essential to OTDA in the continuation of its mission and to

preserve the benefit to OTDA or other successor, of any systems, procedures and operating practices developed under this Agreement. The Contractor's responsibilities during this Agreement close-out period (final 30 days of this Agreement) shall consist of providing the successor's management personnel with access to the procedures developed for completion of services and of cooperating to achieve an orderly transition of services. The Contractor will not be entitled to any additional reimbursement for close-out services provided.

31. Contractor shall be reimbursed for services performed under this Agreement based on the submission of a Claim For Payment Form (AC-3253-S) satisfactory to OTDA and the Comptroller of the State of New York. Procedures to be performed are identified in Attachment 1. Services shall be invoiced at the DDD rate, or agreed upon rate if lower, for each procedure. Bills must conform to OTDA's fiscal payment process. Contractor will submit an AC-3253-S to OTDA no more than once per month for each District, certifying the amount reimbursable; and shall maintain accounting records in accordance with Paragraphs 9 and 10, subject to OTDA examination and audit. It is the Contractor's responsibility to insure proper and timely delivery of services ordered pursuant to the Contract and the proper and timely submission of the associated Claim For Payment Form (AC-3253-S). The following payment policy will control. If an examination is cancelled by the district prior to the examination date and the provider has received timely notice of the cancellation yet conducts the examination anyway, no payment will be made. In those instances where extenuating circumstances exist, the District will determine if sufficient information is available and may authorize payment.
32. Additional procedures can be introduced by OTDA and included under the provisions of this Agreement. OTDA reserves the right to modify examination, testing, reporting, and procedural requirements over the term of this Agreement. Rates associated with additional procedures or substantial modifications may be renegotiated. Any significant additional services will be subject to the approval of the Office of the State Comptroller.
33. The Contractor agrees, pursuant to Section 1352, Title 31, United States Code, not to expend Federal appropriated funds received under this Agreement to pay any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement. The Contractor agrees to complete and submit a "Certification Regarding Lobbying" form in accordance with its instructions.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement or the underlying Federal grant, the Contractor agrees to complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall include the provisions of this Section in all subcontracts under this Agreement and require that all subcontractors certify and disclose accordingly.

34. 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).
35. Section 163 of the State Finance Law requires that contractors certify that the information provided on the Contractor/Subcontractor Background Questionnaire(s) submitted for itself, affiliates, any business entity of which Contractor is a subsidiary and subcontractors (where the subcontractor is known at the time of the contract award, its qualifications are a material factor in the award, and its subcontract will equal or exceed \$100,000 over the life of this Agreement) be certified prior to contract approval. In addition, it must be certified that the information is unchanged or a new Contractor/Subcontractor Background Questionnaire be submitted prior to this Agreement being extended or amendment.

The OTDA recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the

VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact OTDA of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the OTDA or the Office of the State Comptroller's Help Desk for a copy of the paper form.

36. New York State Sales and Compensating Use Taxes: Tax Law Section 5-a, which was added to the Tax Law under Part N of Chapter 60 of the Laws of 2004, imposes upon certain contractors the obligation to certify whether or not the Contractor and its affiliates are required to register to collect State sales and compensating use tax. Where required to register, the Contractor must also certify that it is, in fact, registered with the New York State Department of Taxation and Finance (DTF). The law prohibits the New York State Comptroller, or other approving agency, from approving a contract awarded to an Offeror meeting the registration requirements, but who is not so registered in accordance with the law.

Pursuant to Tax Law Section 5-a, the Contractor will be required to complete and sign, under penalty of perjury, the Contractor Certification Form ST-220. The Contractor must also submit a copy of the Certificate of Authority, if available, for itself and any affiliates required to register to collect State sales and compensating use tax. If Certificates of Authority are unavailable, the Contractor, affiliate, subcontractor or affiliate of subcontractor must represent that it is registered and that it has confirmed such status with DTF.

37. The parties agree to be bound by the additional terms contained in Appendix A which is attached hereto and made a part hereof.

38. The Contractor shall, at its own cost and expense, obtain and maintain in full force and effect, with sound and reputable insurers, during the term of this Agreement, the following minimum insurance coverage: a) Workers' Compensation Insurance in accordance with law; and b) Comprehensive General Liability Insurance of at least \$1,000,000.

OTDA shall receive thirty (30) calendar days' advance written notice in the event of cancellation or material change in any of the above insurance coverage. The Contractor shall furnish OTDA with a certificate(s) acceptable to OTDA showing such insurance is in force during the term of this Agreement and naming OTDA as a certificate holder. The insurance coverage may be provided in combinations of Primary Liability and Excess Liability (Umbrella Form).

39. 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 Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where OTDA has expressly authorized payment by paper check as set forth herein.

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 OTDA, in 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.

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](#).

**NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE**

AGENCY CODE: 27000

CONTRACT NUMBER: _____

Agency Certification

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

CONTRACTOR SIGNATURE:

AGENCY SIGNATURE:

Name: _____

Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

State of New York)
SS:
County of _____)

On this _____ day of _____, 20__ before me personally came _____ known by me or sufficiently proven to me to be the person whose signature appears on the written instrument, and who being duly sworn did depose and say that s(he) is the _____ of _____; the corporation described in and which executed the foregoing instrument; that s(he) knows the Corporate Seal of said Corporation; that the seal affixed to said instrument is the Corporate Seal; that it was so affixed by the order of the Board of Directors of said corporation and s(he) signed his/her name thereto by like order.

NOTARY PUBLIC
My commission expires

Approved as to Form:
Attorney General

Approved:
State Comptroller

By: _____

By: _____

Date: _____

Date: _____