

## APPENDIX E 2

### NEW YORK STATE DEPARTMENT OF HEALTH CONTRACT

This Contract is made by and between the New York State Department of Health (DEPARTMENT) and the CONTRACTOR identified on the face page.

#### WITNESSETH:

**WHEREAS**, the DEPARTMENT has formally requested vendors to submit bid proposals for the project described in Appendix B for which bids were opened on the date noted on the face pages of this Contract; and the DEPARTMENT has determined that the CONTRACTOR is the successful bidder, and the CONTRACTOR covenants that it is willing and able to undertake the services and provide the necessary materials, labor and equipment;

NOW THEREFORE, in consideration of the terms, promises, responsibilities, and covenants set forth below the parties agree as follows:

#### I. General Terms and Conditions

- A. This Contract incorporates the face pages attached and all of the marked appendices identified on the face page.
- B. The maximum compensation for the Contract term of this Contract shall not exceed the amount specified on the face page.
- C. This Contract may be renewed for an additional period (PERIOD), as specified on the face page.
- D. To amend or exercise any renewal option of this Contract, the parties shall prepare new appendices, to the extent that any require modification, and a Contract Amendment Form in the format provided by the DEPARTMENT (Appendix X). Any terms of this Contract not modified shall remain in effect for each PERIOD of the Contract. The Contract Amendment Form is subject to the approval of the Office of the State Comptroller. This Contract may not be amended orally. The CONTRACTOR shall not make any changes in the scope of work at any time without prior authorization in writing from the DEPARTMENT and without prior approval in writing of the amount of compensation for such changes.
- E. Appendix A (Standard Clauses as required by the Attorney General for all State Contracts) takes precedence over all other parts of the Contract.
- F. For the purposes of this Contract, the term "Proposal" includes all Appendix C documents as marked on the face page.
- G. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the DEPARTMENT nor make any claims, demand or application to or for any right based upon any different status.
- H. The CONTRACTOR agrees, throughout the term of this Contract, to maintain, at CONTRACTOR'S expense, those benefits to which its employees are entitled by law, including health benefits, any necessary insurance for its employees, including professional liability, worker's compensation, disability and unemployment insurance, and to provide the DEPARTMENT with certification of such insurance upon request. The CONTRACTOR remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.
- I. For the purposes of this Contract, the Appendix B includes all Request for Proposal (RFP) or Funding Availability Solicitation (FAS) documents including questions and answer documents, amendments and attachments.
- J. Each CONTRACTOR is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other

means as it may select, of character, quality and extent of work to be performed and the conditions under which the Contract is to be executed.

- K. The DEPARTMENT will make no allowance or concession to a CONTRACTOR for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- L. The CONTRACTOR shall have a representative to provide supervision of the work which CONTRACTOR employees are performing to ensure complete and satisfactory performance with the terms of this Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the DEPARTMENT. A confirmation in writing of such orders or directions will be given by the DEPARTMENT when so requested from the CONTRACTOR.
- M. If the DEPARTMENT is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the DEPARTMENT shall have the authority to require the CONTRACTOR to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the DEPARTMENT.
- N. The DEPARTMENT shall conduct any inspection at a time during normal business hours where the activities of the work under this Contract is taking place and in a manner so as not to unreasonably disrupt the CONTRACTOR'S business. During its inspection the DEPARTMENT may view and audit any materials related to this Contract.
- O. No failure by the DEPARTMENT at any time to give notice of any breach by the other party of, or to require compliance with, any condition or provision of this Contract shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

## II. The Payment and Reporting

- A. CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by this Contract, the DEPARTMENT and the State Comptroller, to the DEPARTMENT'S designated payment office in order to receive payment to one of the following addresses:

- 1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [accountspayable@ogs.ny.gov](mailto:accountspayable@ogs.ny.gov) with a subject field as follows:

Subject: **Unit ID:**

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

- 2. Alternate Method:  
Mail vouchers to Business Service Center at the following U.S. postal address:

**NYS Department of Health Unit ID:**

**Building 5, 5<sup>th</sup> Floor  
1220 Washington Ave  
Albany, NY 12226-1900**

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

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating

circumstances. Such electronic payment shall be made in accordance with ordinary DEPARTMENT procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [helpdesk@sfs.ny.gov](mailto:helpdesk@sfs.ny.gov) or by telephone at 1-855-233-8363. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

Payment terms for WIC related services shall be billed monthly, based on (a) the pricing set forth in Appendix P, Pricing Schedule, (b) Section 13.10 through 13.14 of the RFP, (c) the receipt and acceptance of all WIC-specific reports required by Section 8.21 of the RFP, and (d) subject to the performance standards and payment terms set forth in Section 8 and 12 of the RFP.

### **III. Term and Termination**

- A. Upon approval of the Office of the State Comptroller this Contract shall be effective for the term as specified on the face page.
- B. This Contract may be terminated by mutual written agreement of the Contracting parties.
- C. This Contract may be terminated by the DEPARTMENT for cause upon the failure of the CONTRACTOR to comply with the terms and conditions of this Contract, including the attachments hereto, provided that the DEPARTMENT shall give the CONTRACTOR written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving CONTRACTOR'S receipt therefore, such written notice to specify the CONTRACTOR'S failure and the termination of this Contract. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the DEPARTMENT. The CONTRACTOR agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Contract may be deemed terminated immediately at the option of the DEPARTMENT upon the filing of a petition in bankruptcy or insolvency, by or against the CONTRACTOR. Such termination shall be immediate and complete, without termination costs or further obligations by the DEPARTMENT to the CONTRACTOR.
- E. The DEPARTMENT reserves the right to stop the work being performed under this Contract at any time that the DEPARTMENT deems the CONTRACTOR to be unwilling or unable to perform the work to the satisfaction of the DEPARTMENT. In the event of such cessation of work, and where the CONTRACTOR has been afforded an opportunity to cure its inability to adequately perform within a reasonable time as specified by the DEPARTMENT, but not to exceed 30 days, and the CONTRACTOR has failed to remedy such defect of performance to the satisfaction of the DEPARTMENT, the DEPARTMENT shall have the right to terminate this Contract and to arrange for the completion of the work in such manner as the DEPARTMENT

may deem advisable; and if the cost of having the work completed by a replacement CONTRACTOR exceeds the amount of the initially- awarded Contract, the initial CONTRACTOR and its surety shall be liable to the DEPARTMENT for any excess cost on account thereof.

- F. This Contract may be canceled at any time by the DEPARTMENT giving to the CONTRACTOR not less than 30 days written notice that on or after a date therein specified this Contract shall be deemed terminated and canceled.
- G. Provisions Upon Default
  - 1. In the event that the CONTRACTOR, through any cause, fails to perform any of the terms, covenants or promises of this Contract, the DEPARTMENT thereupon have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the CONTRACTOR.
  - 2. If, in the judgment of the DEPARTMENT, the CONTRACTOR acts in such a way which is likely to or does impair or prejudice the interests of the DEPARTMENT, the DEPARTMENT shall thereupon have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the CONTRACTOR. The CONTRACTOR shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the CONTRACTOR prior to the effective date of termination of this Contract, such compensation shall not exceed the total cost incurred for the work which the CONTRACTOR was engaged in at the time of termination, subject to audit by the State Comptroller.
- H. Upon termination of this Contract, the following shall occur:
  - 1. CONTRACTOR shall make available to the DEPARTMENT for examination all data, records and reports relating to this Contract;
  - 2. Except as otherwise provided in this Contract, the liability of the DEPARTMENT for payments to the CONTRACTOR and the liability of the CONTRACTOR for services hereunder shall cease.

#### **IV. Contract Insurance Requirements**

- A. Prior to the start of work under this Contract, the CONTRACTOR shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, insurance of the types and in the amounts as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York ("admitted" carriers) with an A.M. Best Company rating of "A-" or better or as acceptable to the DEPARTMENT. Before commencing performance of the work, the CONTRACTOR shall deliver to the DEPARTMENT evidence of such policies in a form acceptable to the DEPARTMENT. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. The DEPARTMENT may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the DEPARTMENT to accept insurance placed with a non-authorized carrier under any circumstances.
- B. Conditions Applicable to Insurance. All policies of insurance required by this Contract must meet the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the CONTRACTOR are specified in subsection C Specific Coverages and Limits of this section.
2. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed in writing by the DEPARTMENT, policies must be written on an occurrence basis. Under certain circumstance, the DEPARTMENT may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the CONTRACTOR must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the Contract. Written proof of this extended reporting period must be provided to the DEPARTMENT prior to the policy's expiration or cancellation.
3. **Certificates of Insurance/Notices.** CONTRACTOR shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the DEPARTMENT, before commencing any work under this Contract. Certificates shall reference the Contract Number. Certificates shall be mailed to:  
Name/Title:  
Organizatio:  
Address:  
Address:

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least 30 days prior written notice except for non-payment as required by law to the DEPARTMENT at the address specified above in this paragraph. In addition, if required by the DEPARTMENT, the CONTRACTOR shall deliver to the DEPARTMENT within forty-five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

Certificates of Insurance shall:

- a. Be in the form approved by the DEPARTMENT.
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by this Contract.
- c. Specify the Additional Insureds and Named Insureds as required herein.
- d. Refer to this Contract by number, the Supplemental Certificate, and any other attachments on the face of the certificate,
- e. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and
- f. Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance, Supplemental Insurance Certificates, and other attachments) will be accepted. Electronic forms will be accepted as original documents, provided the subject electronic document can be directly traced back to the insurance carrier, agent, or broker via email distribution or similar means.

4. Primary Coverage. The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the DEPARTMENT for any claim arising from the CONTRACTOR'S Work under this CONTRACT, or as a result of the CONTRACTOR'S activities. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) so as to limit coverage against claims that arise out of the work, or that remove or modify the "insured contract" exception to the employer's liability exclusion, or that do not cover the additional insured for claims involving injury or employees of the named insured or subcontractors, are not acceptable.
5. Policy Renewal/Expiration. At least two weeks prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the DEPARTMENT than the expiring policies shall be delivered to the DEPARTMENT in the manner required for service of notice in subsection B.3. Certificates of Insurances/Notices of this Section. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract or proof thereof is not provided to the DEPARTMENT, the CONTRACTOR shall immediately cease work under this Contract. The CONTRACTOR shall not resume work under this Contract until authorized to do so by the DEPARTMENT. Any delay, time lost, or additional cost incurred as a result of the CONTRACTOR not having insurance required by this Contract or not providing proof of same in a form acceptable to the DEPARTMENT shall not give rise to a delay claim or any other claim against the DEPARTMENT. Should the CONTRACTOR fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided to the DEPARTMENT, the DEPARTMENT may withhold further Contract payments, treat such failure as a breach or default of the Contract, and/or, after providing written notice to the CONTRACTOR, require the Surety, if any, to secure appropriate coverage and/or purchase insurance complying with this Contract and charge back such purchase to the CONTRACTOR.
6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductible/self-insured retentions above \$100,000.00, which are subject to approval from the DEPARTMENT. Additional surety/security may be required in certain circumstances. The CONTRACTOR shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
7. Subcontractors. Should the CONTRACTOR engage a subcontractor, the CONTRACTOR shall endeavor to impose the insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. Proof thereof shall be supplied to the DEPARTMENT.

C. Specific Coverages and Limits

The types of insurance and minimum policy limits shall be as follows:

1. Workers' Compensation

For work to be performed in New York State, 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 NYS Workers' Compensation Law. The CONTRACTOR shall provide notice to the DEPARTMENT immediately if CONTRACTOR'S Worker's Compensation coverage has lapsed or terminated during the PERIOD of this Contract.

If the Contract involves work on or near a shoreline, a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Act policy as applicable must be provided. Any waiver of this requirement must be approved by the DEPARTMENT and will only be granted in unique or unusual circumstances.

Unless the CONTRACTOR is a political sub-division of New York State, evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

- a. C-105.2 (September 2007, or most current version) - Certificate of Workers' Compensation Insurance.
- b. U-26.3 - Certificate of Workers' Compensation Insurance from the State Insurance Fund.
- c. GSI-105/SI-12 - Certificate of Workers' Compensation Self Insurance.
- d. CE-200 - Certificate of Attestation of Exemption (If CONTRACTOR meets the requirements)

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

## 2. Disability Benefits

For work to be performed in New York State, 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 NYS Disability Benefits Law. Any waiver of this requirement must be approved by the DEPARTMENT and will only be granted in unique or unusual circumstances. The CONTRACTOR shall provide notice to the DEPARTMENT immediately if CONTRACTOR'S Disability coverage has lapsed or terminated during the PERIOD of this Contract.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

- e. DB-120.1 (May 2006 or most current version) - Certificate of Insurance Coverage under the NYS Disability Benefits Law
- f. DB-155 - Certificate of Disability Self Insurance
- g. CE-200 - Certificate of Attestation of Exemption

All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier.

## 3. Commercial General Liability

For work to be performed in New York State, the CONTRACTOR shall provide and maintain Commercial General Liability Insurance (CGL) covering the liability of the CONTRACTOR for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Contract, using form CG 00 01 12 07 or a policy providing equivalent coverage. The limits under such policy shall not be less than the following:

- a. Each Occurrence limit - \$1,000,000
- b. General Aggregate - \$2,000,000
- c. Products/Completed Operations must be equivalent to the "General Aggregate" limit

- d. Personal/Advertising Injury - \$1,000,000
- e. Damage to Rented Premises - \$50,000
- f. Medical Expense - \$5,000

Coverage shall include, if applicable, the following:

- a. premises liability;
- b. independent contractors/subcontractors;
- c. blanket Contractual liability, including tort liability of another assumed in a Contract;
- d. defense and/or indemnification obligations, including obligations assumed under this Contract;
- e. cross liability for additional insureds;
- f. products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by this Contract;
- g. explosion, collapse, and underground hazards;
- h. CONTRACTOR means and methods;
- i. liability resulting from Section 240 or Section 241 of the New York State Labor Law; and
- j. Cybersecurity Liability.

The following ISO forms must be endorsed to the policy:

- a. CG 00 01 01 96 or an equivalent - Commercial General Liability Coverage Form
- b. CG 20 10 11 85 or an equivalent - Additional Insured-Owner, Lessees or CONTRACTORS (Form B)
- c. CG 25 03 11 85 or an equivalent - Designated Construction Project(s) general aggregate limit (only required for construction Contracts).

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction Contracts.

Policies shall name the State of New York as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any umbrella/excess policies used to meet the "Each Occurrence" limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with any other insurance maintained by the DEPARTMENT. Any other insurance maintained by the DEPARTMENT shall be in excess of and shall not contribute with the CONTRACTOR'S or subcontractor's insurance, regardless of the "Other Insurance" clause contained in either party's policy of insurance.

#### 4. Commercial Automobile Liability

Commercial Auto Liability insurance covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least one

million dollars and shall name the State of New York as additional insured. The limits may be provided through a combination of primary and umbrella/excess liability policies. If this Contract involves the removal of hazardous waste from the project site or otherwise transporting hazardous materials, pollution liability coverage for covered autos shall be provided by form CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached.

#### 5. Umbrella and Excess Liability

When the limits of the CGL, Auto, and/or Employers Liability policies procured are insufficient to meet the limits specified, the CONTRACTOR shall procure and maintain Commercial Umbrella and/or Excess Liability policies with limits in excess of the primary; provided, however, that the total amount of insurance coverage is at least equal to the requirements set forth above. Such policies shall follow the same form as the primary. Any insurance maintained by the DEPARTMENT or any additional insured shall be considered excess of and shall not contribute with any other insurance procured and maintained by the CONTRACTOR including primary, umbrella and excess liability regardless of the "other insurance" clause contained in either party's policy.

### V. Conflicts of Interest

- A. Prior to the execution of this Contract, the CONTRACTOR shall provide to the DEPARTMENT a form (Attachment 4, Contractor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONTRACTOR'S performance of the services does not and will not create a conflict of interest with, nor position the CONTRACTOR to breach any other Contract currently in force with the State of New York, that the CONTRACTOR will not act in any manner that is detrimental to any State of New York project in which the CONTRACTOR is rendering services.
- B. The CONTRACTOR hereby reaffirms the attestations made in Attachment 4 and further covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONTRACTOR'S satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Contract. The CONTRACTOR shall have a duty to notify the DEPARTMENT immediately of any actual or potential conflicts of interest.
- C. In conjunction with any subcontract under this Contract, the CONTRACTOR shall obtain and deliver to the DEPARTMENT, prior to entering into a subcontract, Attachment 4 Contractor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The CONTRACTOR shall also require in any subcontracting contract that the subcontractor, in conjunction with any further subcontracting contract, obtain and deliver to the DEPARTMENT a signed and completed Contractor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.
- D. The CONTRACTOR shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated entity which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the CONTRACTOR or former officers and employees of the DEPARTMENT and its affiliates, in connection with your rendering services enumerated in this Contract. If a conflict does or might exist, please describe how you will eliminate or prevent it. Indicate what procedures

will be followed to detect, notify the DEPARTMENT of, and resolve any such conflicts. The DEPARTMENT will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of the DEPARTMENT, a real or potential conflict of interest cannot be cured.

- E. The CONTRACTOR shall disclose whether it or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics, or its predecessors or its predecessor entities (collectively, "Commission"), and if so, shall include a brief description indicating how any matter before the Commission was resolved or whether it remains unresolved. The DEPARTMENT will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of the DEPARTMENT, a real or potential conflict of interest cannot be cured.
- F. The DEPARTMENT and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The DEPARTMENT will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of the DEPARTMENT, a real or potential conflict of interest cannot be cured.

## **VI. Public Officers Law**

Contractors, consultants, vendors, and subcontractors may hire former employees of the DEPARTMENT. However, for informational purposes, in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

## **VII. Ethics Requirements**

The CONTRACTOR and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the DEPARTMENT to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of DEPARTMENT employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The CONTRACTOR certifies that all of its employees and those of its subcontractors who are former employees of the DEPARTMENT and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the CONTRACTOR or its subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the CONTRACTOR or its subcontractors derived from this Contract. The CONTRACTOR shall identify and provide the DEPARTMENT with notice of those employees of the CONTRACTOR and its subcontractors who are former employees of the DEPARTMENT that will be assigned to perform services under this Contract and ensure that such employees comply with all applicable laws and prohibitions. The DEPARTMENT may request that the CONTRACTOR provide whatever information the DEPARTMENT deems appropriate about each such person's engagement, work cooperatively with the DEPARTMENT to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the DEPARTMENT, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The DEPARTMENT shall have the right to withdraw or withhold

approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The DEPARTMENT shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

## **VIII. Subcontracting**

- A. The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its Scope of Work without the prior written approval of the DEPARTMENT. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.
- B. The CONTRACTOR may arrange for a portion/s of its responsibilities under this Contract to be subcontracted to qualified, responsible subcontractors, subject to approval of the DEPARTMENT. If the CONTRACTOR determines to subcontract a portion of the services, once known, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this Contract must be fully explained by the CONTRACTOR to the DEPARTMENT. As part of this explanation, the CONTRACTOR must submit to the DEPARTMENT a completed Contractor Assurance of No Conflict of Interest or Detrimental Effect form (Attachment 4), from each known subcontractor as required under this section.
- C. The CONTRACTOR retains ultimate responsibility for all services performed under the Contract.
- D. All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this Contract including, but not limited to, the body of this Contract, Appendix A - Standard Clauses for New York State Contracts and, if applicable, Appendix B. Unless waived in writing by the DEPARTMENT, all subcontracts between the CONTRACTOR and subcontractors shall expressly name the DEPARTMENT as the sole intended third party beneficiary of such subcontract. The DEPARTMENT reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the DEPARTMENT a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the DEPARTMENT.
- E. The DEPARTMENT reserves the right, at any time during the term of the Contract, to verify that the written subcontract between the CONTRACTOR and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this Contract.
- F. The CONTRACTOR shall give the DEPARTMENT immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the CONTRACTOR'S duties under the Contract. Any subcontract shall not relieve the CONTRACTOR in any way of any responsibility, duty and/or obligation of this Contract.
- G. If at any time during performance under this Contract total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

## **IX. General Specifications**

- A. The work shall be commenced and shall be actually undertaken within such time as the DEPARTMENT may direct by notice, whether by mail, e-mail, or other writing, whereupon the

undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the DEPARTMENT may prescribe.

- B. The CONTRACTOR will be required to complete the entire work or any part thereof as the case may be, to the satisfaction of the DEPARTMENT in strict accordance with the specifications and pursuant to this Contract.
- C. CONTRACTOR will possess, and maintain, at no cost to the DEPARTMENT and for the term of the Contract, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this Contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- D. Certification Regarding Debarment and Suspension

Regulations of the Department of Health and Human Services, located at Part 376 of Title 2 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive Departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

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

By signing this Contract or submitting a proposal pursuant to a solicitation issued by the Department, the prospective lower tier participant is providing the certification set out below:

- a. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to the other remedies available to the Federal Government, New York State or the DEPARTMENT may pursue available remedies, including suspension and/or debarment.
- b. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- c. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and

voluntarily excluded, as used in this Section, are defined in 2 CFR Part 180, as supplemented by 2 CFR Part 376.

- d. The prospective lower tier participant agrees by signing this contract or submitting a proposal pursuant to a solicitation issued by the DEPARTMENT that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 2 CFR Part 180, as supplemented by 2 CFR Part 376, or 48 CFR Part 9, Subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DEPARTMENT.
- e. The prospective lower tier participant further agrees by signing this contract or proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
- f. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 2 CFR Part 180, as supplemented by 2 CFR Part 376, or 48 CFR Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. The DEPARTMENT strongly encourages each participant to check the List of parties Excluded from Federal Procurement and Non-procurement Programs in the System for Award Management.
- g. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this Section.
- h. Except for transactions authorized under paragraph (d) of this certification, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 2 CFR Part 180 or 48 CFR Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the New York State or the DEPARTMENT may pursue available remedies, including suspension and/or debarment.
- i. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions
  - i. The prospective lower tier participant certifies, by signing this contract or submitting a proposal to the Department, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal agency.
  - ii. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### E. Ownership Clauses

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this Contract shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health." Any such

materials must be reviewed and approved by the DEPARTMENT for conformity with the policies and guidelines of the DEPARTMENT prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The DEPARTMENT reserves the right to disallow funding for any educational materials not approved through its review process.

2. Any publishable or otherwise reproducible material developed under or in the course of performing this Contract, dealing with any aspect of performance under this Contract, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the DEPARTMENT, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the DEPARTMENT or under circumstances as indicated in paragraph 1 of this subsection. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the DEPARTMENT. The DEPARTMENT shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
3. No report, document or other data produced in whole or in part with the funds provided under this Contract may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this Contract, without express written permission of the DEPARTMENT.
4. All reports, data sheets, documents, etc. generated under this Contract shall be the sole and exclusive property of the DEPARTMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the DEPARTMENT or its authorized agents.
5. This is a "Work for Hire" Contract. The DEPARTMENT will be the sole owner of all source code and any software which is developed for use in any application software provided to the DEPARTMENT as a part of this Contract.

#### F. Confidentiality Clause

The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this CONTRACT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

#### G. Date/Time Warranty

1. Definitions: For the purposes of this warranty, the following definitions apply:

"Product" shall include, without limitation: when solicited from a vendor in a state government entity's Contracts, RFPs, IFBs, or mini-bids, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition, function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.

"Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution Contract with the third party manufacturer. "Third Party Product" does not include product where vendor is: (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

## 2. Date/Time Warranty Statement

CONTRACTOR warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations.

Where a CONTRACTOR proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where CONTRACTOR is providing ongoing services, including but not limited to: a) consulting, integration, code or data conversion, b) maintenance or support services, c) data entry or processing, or d) contract administration services (e.g., billing, invoicing, claim processing), CONTRACTOR warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of CONTRACTOR'S business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/ time transitions, including leap year calculations. CONTRACTOR shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this Contract through: (a) ninety (90) days or (b) the CONTRACTOR'S or Product manufacturer or developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

## H. Lead Guidelines

All products supplied pursuant to this Contract shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the DEPARTMENT'S acceptance of this Contract.

## I. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during this Contract term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
2. Suspension of Work (for Non-Responsibility): The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the

suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under this Contract.

3. Termination (for Non-Responsibility): Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard with appropriate DEPARTMENT officials or staff, this Contract may be terminated by Commissioner of Health or his or her designee at the CONTRACTOR'S expense where the CONTRACTOR is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

#### J. Indemnification

CONTRACTOR shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the DEPARTMENT from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property and intellectual property, caused by any intentional act or negligence of CONTRACTOR, its agents, employees, partners or subcontractors, without limitation; provided, however, that the CONTRACTOR shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the DEPARTMENT.

#### K. Indemnification Relating to the Third Party Rights

1. The CONTRACTOR will also indemnify and hold the DEPARTMENT harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the DEPARTMENT in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the DEPARTMENT'S gross negligence or willful misconduct, provided that the DEPARTMENT shall give CONTRACTOR: (a) prompt written notice of any action, claim or threat of infringement suit, or other suit, (b) the opportunity to take over, settle or defend such action, claim or suit at CONTRACTOR'S sole expense, and (c) assistance in the defense of any such action at the expense of CONTRACTOR.
2. If usage shall be enjoined for any reason or if CONTRACTOR believes that it may be enjoined, CONTRACTOR shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (a) to procure for the DEPARTMENT the right to continue Usage (b) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (c) to replace said service or Product or part(s) thereof, as applicable, with non- infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate this Contract, in whole or in part as necessary and applicable, provided the DEPARTMENT is given a refund for any amounts paid for the period during which Usage was not feasible.

## L. Force Majeure

1. A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled by the DEPARTMENT or the CONTRACTOR, its subcontractors, or others under the CONTRACTOR'S or its subcontractor's control. Force majeure includes, but is not limited to, acts of god, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the CONTRACTOR or the DEPARTMENT in the performance of this Contract where non-performance, by exercise of reasonable diligence, cannot be prevented. The CONTRACTOR shall provide the DEPARTMENT with written notice of any force majeure occurrence as soon as the delay is known.
2. Neither the CONTRACTOR nor the DEPARTMENT shall be liable to the other for any delay in or failure of performance under this Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the CONTRACTOR and the DEPARTMENT to be necessary to enable complete performance by the CONTRACTOR if reasonable diligence is exercised after the case of delay or failure has been removed.
3. Notwithstanding the above, at the discretion of the DEPARTMENT where the delay or failure will significantly impair the value of this Contract to the DEPARTMENT, the DEPARTMENT may:
  - a. Accept allocated performance or deliveries from the CONTRACTOR. The CONTRACTOR, however, hereby agrees to grant preferential treatment to the DEPARTMENT with respect to product, materials, or services; or
  - b. Purchase from other sources (without recourse to and by the CONTRACTOR for the costs and expenses thereof) to replace all or part of the product, materials, or services which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the DEPARTMENT; or
  - c. Terminate the Contract or the portion thereof, which is subject to delays, and thereby discharge any unexecuted portion of this Contract or the relevant part thereof.
4. In addition, the DEPARTMENT reserves the right, at its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (a) the volatility is due to causes outside the control of the CONTRACTOR; (b) the volatility affects the marketplace or industry, not just the particular source of supply utilized for performance of this Contract; (c) the effect on pricing or availability of supply is substantial; and (d) the volatility so affects the CONTRACTOR'S performance that continued performance of this Contract would result in a substantial loss.

## M. Notices

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

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

e. by e-mail

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

**X. Contact at State of New York Department of Health**

Name/Title  
Address  
Email  
Phone/Fax

**Contact at Contractor**

Name/Title  
Address  
Email  
Phone/Fax

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

The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Contract by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representative for the purposes of receiving notices under this Contract. 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.

**N. Provision Related to Consultant Disclosure Legislation**

If this Contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, CONTRACTOR'S Annual Employment Report" no later than May 15th following the end of each DEPARTMENT fiscal year included in this Contract term. This report must be submitted to:

1. The NYS Department of Health, at the following address New York State Department of Health, Bureau of Contracts Room 2827, Corning Tower, Albany, NY 12237; and
2. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11<sup>th</sup> Floor, Albany NY 12236 ATTN: Consultant Reporting or via fax at (518) 474-8030 or (518) 473-8808; and
3. The NYS Department of Civil Service, Albany NY 12239, ATTN: Consultant Reporting.

O. Provisions Related to New York State Information Security Breach and Notification Act

CONTRACTOR shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.

P. Technology Purchases Notification

The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology."

1. For the purposes of this policy, "Technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the DEPARTMENT determines that the potential exists for coordinating purchases among New York State agencies and/or the purchase may be of interest to one or more other New York State agencies, prior to award selection, this RFP and all responses thereto are subject to review by the New York State Office for Information Technology Services. Accessibility of State Agency Web-based Intranet and Internet Information and Applications

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