

<u>STATE AGENCY:</u> NYS Office of Mental Health 44 Holland Avenue Albany, NY 12229 <u>CONTRACT ON BEHALF OF:</u> OMH Office of Counsel	<u>BUSINESS UNIT:</u> OMH01 <u>NYS CONTRACT NUMBER:</u> T103047 <u>ORIGINATING DEPT. ID:</u> 3650000																																							
<u>CONTRACTOR:</u>	<u>TYPE OF PROGRAM:</u> Outside Counsel - Guardianship - Southern Tier																																							
<u>CHARITIES REGISTRATION NUMBER:</u> N/A <u>FEDERAL TAX IDENTIFICATION NUMBER:</u> <u>VENDOR ID:</u>	<u>CONTRACT TERM:</u> TBD <u>CONTRACT AMOUNT FOR TERM:</u> (As per Appendix B) \$149,999.00 <u>RENEWAL TERM:</u> N/A FROM: TO:																																							
<u>APPENDICES ATTACHED OR REFERENCED AND PART OF THIS AGREEMENT:</u> (Applicable Appendixes must be checked [X])																																								
<table> <tr> <td>APPENDIX A</td> <td><input checked="" type="checkbox"/></td> <td>Standard Clauses for New York State Contract</td> </tr> <tr> <td>APPENDIX A-1</td> <td><input checked="" type="checkbox"/></td> <td>Agency-specific Clauses</td> </tr> <tr> <td>APPENDIX B</td> <td><input checked="" type="checkbox"/></td> <td>Budget</td> </tr> <tr> <td>APPENDIX C</td> <td><input checked="" type="checkbox"/></td> <td>Payment and Reporting Schedule</td> </tr> <tr> <td>APPENDIX D</td> <td><input checked="" type="checkbox"/></td> <td>Scope of Work</td> </tr> <tr> <td>APPENDIX F</td> <td><input checked="" type="checkbox"/></td> <td>Business Associate Agreement</td> </tr> <tr> <td>APPENDIX G</td> <td><input checked="" type="checkbox"/></td> <td>Insurance Requirements</td> </tr> <tr> <td>APPENDIX I</td> <td><input checked="" type="checkbox"/></td> <td>Consulting Disclosure Instructions and Form B</td> </tr> <tr> <td>APPENDIX L</td> <td><input checked="" type="checkbox"/></td> <td>Supplier Diversity (MWBE, SDVOB, EEO) Requirements</td> </tr> <tr> <td>APPENDIX X</td> <td><input checked="" type="checkbox"/></td> <td>Modification Agreement Form</td> </tr> <tr> <td>OTHER</td> <td><input checked="" type="checkbox"/></td> <td>Exhibit 7: EEO Workforce Employment Utilization/Compliance Report</td> </tr> <tr> <td></td> <td><input checked="" type="checkbox"/></td> <td>Exhibit 8: NYS Form AC160-S – Statement of Automobile Travel</td> </tr> <tr> <td></td> <td><input checked="" type="checkbox"/></td> <td>Exhibit 9: NYS Form AC3257-S – Claim for Travel Reimbursement by a Non-Employee</td> </tr> </table>		APPENDIX A	<input checked="" type="checkbox"/>	Standard Clauses for New York State Contract	APPENDIX A-1	<input checked="" type="checkbox"/>	Agency-specific Clauses	APPENDIX B	<input checked="" type="checkbox"/>	Budget	APPENDIX C	<input checked="" type="checkbox"/>	Payment and Reporting Schedule	APPENDIX D	<input checked="" type="checkbox"/>	Scope of Work	APPENDIX F	<input checked="" type="checkbox"/>	Business Associate Agreement	APPENDIX G	<input checked="" type="checkbox"/>	Insurance Requirements	APPENDIX I	<input checked="" type="checkbox"/>	Consulting Disclosure Instructions and Form B	APPENDIX L	<input checked="" type="checkbox"/>	Supplier Diversity (MWBE, SDVOB, EEO) Requirements	APPENDIX X	<input checked="" type="checkbox"/>	Modification Agreement Form	OTHER	<input checked="" type="checkbox"/>	Exhibit 7: EEO Workforce Employment Utilization/Compliance Report		<input checked="" type="checkbox"/>	Exhibit 8: NYS Form AC160-S – Statement of Automobile Travel		<input checked="" type="checkbox"/>	Exhibit 9: NYS Form AC3257-S – Claim for Travel Reimbursement by a Non-Employee
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CONTRACT SIGNATURE PAGE**Contract No. T103047**

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR:

By: Printed Name: Title:

Signature: _____ Date: _____

Must complete the Individual, Corporation, Partnership, or LLC Acknowledgement page and have it notarized**STATE AGENCY: NYS Office of Mental Health**

By: Printed Name: William Gwynn Title: Director of Procurement, BPES

Signature: _____ Date: _____

State Agency Certification

In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract. No information that may negatively impact the contractor's responsibility has come to the agency's attention and OMH has reasonable assurance that the contractor continues to be responsible.

CIVIL SERVICE APPROVAL (If Required)**ATTORNEY GENERAL'S SIGNATURE****STATE COMPTROLLER'S SIGNATURE**

Title: _____

Title: _____

Date: _____

Date: _____

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT

Contract No.: T103047

STATE OF)

SS:

County of)

On this ____ day of ____ 20____, before me personally appeared _____, to me known and known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he/she resides at _____,
Town of _____,
County of _____
State of _____ and further that:

[CHECK ONE]

(☐ **If an Individual**): he/she executed the foregoing instrument in his/her name and on his/her own behalf.

(☐ **If a Corporation**): he/she is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he/she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(☐ **If a Partnership**): he/she is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he/she is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(☐ **If a limited liability company**): he/she is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that, he/she is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration Number: _____

State of _____

STATE OF NEW YORK AGREEMENT

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

WITNESSETH:

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

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

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

I. Conditions of Agreement

- A.** This AGREEMENT may consist of successive periods (PERIOD), as specified within the AGREEMENT or within a subsequent Modification Agreement(s) (Appendix X). Each additional or superseding PERIOD shall be on the forms specified by the particular State agency, and shall be incorporated into this AGREEMENT.
- B.** Funding for the first PERIOD shall not exceed the contract amount specified on the face page hereof. Funding for each subsequent PERIOD, if any, shall not exceed the amount specified in the appropriate appendix for that PERIOD.
- C.** This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- D.** To the extent that the AGREEMENT requires modification, the Appendix X – Modification Agreement Form shall be used to formalize the modification(s). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT. To modify the AGREEMENT, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in the AGREEMENT term, or scope of services of the AGREEMENT, is subject to the approval of the Office of the Attorney General and the Office of the State Comptroller in accordance with the terms of Appendix A – Standard Clauses for New York State Contracts.
- E.** The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Scope of Work (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules, and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.
- F.** Conflicts between documents shall be resolved in the following order of precedence:
 - 1.** Appendix A (Standard Clauses for NYS Contracts).
 - 2.** Amendment(s) to this Agreement.
 - 3.** This Agreement (including all Appendices marked on the face page except Appendix A).

In the event of a conflict among documents included in a category listed above, the document latest in time shall take precedence.

II. Payment and Reporting

- A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE'S designated payment office (identified in Appendix C) all appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to the STATE.
- B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for a given PERIOD, a sum not to exceed the amount noted on the face page hereof or in the respective Appendix designating the payment amount for that given PERIOD. This sum shall not duplicate reimbursement from other sources for CONTRACTOR'S costs and services provided pursuant to This AGREEMENT.
- C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

III. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- B. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules regulations, policies or procedures affecting this AGREEMENT.
- C. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A-1.
- D. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.
- E. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.
- F. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

IV. Indemnification

- A. The CONTRACTOR shall be fully liable for the actions of its agents, employees, partners, or Subcontractors and shall fully defend, indemnify and hold OMH harmless from suits, actions, proceedings, claims, losses, damages, and costs (including reasonable attorney fees) of every name and description relating to personal injury and damages to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners, or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not be obligated to indemnify OMH for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of OMH.
- B. OMH shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify OMH, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of the Contractor. Notwithstanding the foregoing, the State reserves the right to join such action at its sole expense, if it determines there is an issue involving a significant public interest.
- C. In the event that an action or proceeding at law or in equity is commenced against OMH arising out of a claim for death, personal injury or damage to real or personal tangible property, negligence caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or

Subcontractors, which shall arise from or result directly or indirectly from the products supplied under this Contract, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify OMH and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of OMH and attempt to secure a continuance to permit the State and OMH to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and OMH may have. In the event of a dispute regarding the defense, the Contractor, and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

- D. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

V. Limitation of Liability

Except as otherwise set forth in the indemnification clause, the limitation of liability shall be as follows:

- A. Contractor's liability for any claim, loss or liability arising out of, or connected with the products or services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal or two (2) times the charges specified in the agreement for the products or services forming the basis of OMH's claim or (ii) one million dollars (\$1,000,000) whichever is greater.
- B. OMH may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs, and the like asserted against OMH unless Contractor at the time of the presentation of claim shall demonstrate to OMH's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- C. Notwithstanding the above, neither the Contractor nor OMH shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by OMH, the Contractor, or others.

VI. Property

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A-1.

VII. Subcontracting

The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the OMH. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONTRACTOR may arrange for a portion/s of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subcontractors, subject to approval of the OMH. If the CONTRACTOR determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONTRACTOR to the OMH. As part of this explanation, the subcontractor must submit to the OMH a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONTRACTOR prior to execution of this AGREEMENT.

The CONTRACTOR retains ultimate responsibility for all services performed under the AGREEMENT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts and the Solicitation Document. Unless waived in writing by the OMH, all subcontracts between the CONTRACTOR and subcontractors shall expressly name the STATE, through the OMH, as the sole intended third party beneficiary of such subcontract. OMH 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 OMH or the STATE a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against OMH.

OMH reserves the right, at any time during the term of the AGREEMENT, 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 AGREEMENT.

The CONTRACTOR shall give OMH 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 AGREEMENT. Any subcontract shall not relieve the CONTRACTOR in any way of any responsibility, duty and/or obligation of the AGREEMENT.

If at any time during performance under this AGREEMENT 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.

VIII. Safeguards for Services and Confidentiality

- A.** Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
- B.** Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
- C.** Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A-1.

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APPENDIX A
STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

June 2023

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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

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

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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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

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

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

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

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

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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

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

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

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

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

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must

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promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this

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provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

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

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

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

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of

2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

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

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

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

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

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I. GENERAL PROVISIONS

A. If applicable, this agreement may be extended for an additional term as defined in the renewal term section on the cover page of the contract.

B. The OMH shall have the right to terminate this contract early for: (i) unavailability of funds; (ii) cause; or (iii) convenience. The OMH may invoke its right to terminate for convenience upon forty-five (45) days written notice to the CONTRACTOR of its intent to terminate the contract; except that, if some other provision of the contract gives the State a general right to terminate upon less than forty-five (45) days prior notice, that provision of the contract shall govern and forty-five (45) days notice shall not be required. If the contract is not terminated, prices may be adjusted only as defined in the bid specifications (when incorporated by reference) and APPENDIX B.

C. The OMH reserves the right to terminate this contract in the event it is found that the certification filed by the CONTRACTOR in accordance with the New York State Finance Law 139-k was intentionally false or intentionally incomplete. Upon such finding, the OMH may exercise its termination right by providing written notification to the CONTRACTOR.

II. VENDOR RESPONSIBILITY

A. CONTRACTOR covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed CONTRACTOR's Vendor Responsibility Questionnaire (hereinafter "Responsibility Questionnaire") provided to CONTRACTOR by the STATE prior to execution of this Agreement. CONTRACTOR further covenants and represents that as of the date of execution of this Agreement, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Responsibility Questionnaire.

B. CONTRACTOR shall at all times during the term of this Agreement remain a responsible vendor.

C. CONTRACTOR shall provide to the STATE updates to the Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Responsibility Questionnaire becomes available.

D. In addition, CONTRACTOR shall promptly report to the STATE the initiation of any investigation by any governmental entity for an alleged violation of federal or state law by CONTRACTOR, its Key Employees (as identified on its Responsibility Questionnaire), its officers and/or directors in connection with matters involving, relating to or arising out of CONTRACTOR'S business. Such report shall be made within five (5)

business days following CONTRACTOR becoming aware of investigation and may, subject to the due process provided in Section (G) below, be considered by the STATE in making a Determination of Vendor Non-Responsibility pursuant to this section.

E. The STATE reserves the right, at its sole discretion, at any time during the term of this Agreement:

- i. To require updates or clarifications to the Responsibility Questionnaire upon written request. To inquire about information included in or required information omitted from the Responsibility Questionnaire, and to require CONTRACTOR to provide such information to the STATE within a reasonable timeframe.
- ii. To require CONTRACTOR 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.
- iii. To suspend any or all activities under this Agreement when the State discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, CONTRACTOR must comply with the terms of the suspension order. CONTRACTOR may resume activity under this Agreement at such time as the STATE issues a written notice authorizing a resumption of performance under the Agreement.

F. The STATE reserves the right to make a final determination of non-responsibility (hereinafter "Determination of Non-Responsibility") at any time during the term of this Agreement based on:

- i. Any information provided in the Responsibility Questionnaire and/or in any updates, clarifications or amendments thereof; or
- ii. The STATE's discovery of any material information which pertains to CONTRACTOR's responsibility.

G. Prior to making a final Determination of Non-Responsibility, the STATE shall provide written notice to CONTRACTOR that it has made a preliminary determination of non-responsibility. The STATE shall detail the reason(s) for the preliminary determination, and shall provide CONTRACTOR with a reasonable opportunity to be heard.

H. The STATE's final Determination of Non-Responsibility shall be a basis for termination for cause under this

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Agreement at CONTRACTOR's expense. In the event of a termination for cause under this, or any other provision of this Agreement, the STATE may complete the contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

III. BACKGROUND CHECKS AND REQUIREMENTS FOR CONTRACTORS PROVIDING SERVICES IN OMH OPERATED FACILITIES

A. If the CONTRACTOR is providing services described in Appendix D (Program Work Plan) in his or her individual capacity such that the CONTRACTOR will have regular and substantial contact with any person who is receiving services or support from OMH:

- i. CONTRACTOR agrees to be screened by OMH against the Staff Exclusion List ("SEL") and Statewide Child Abuse Registry List ("SCR") in accordance with Social Services Law Sections 424-a and 495. In the event that SCR notifies OMH of the existence of an indicated report, CONTRACTOR agrees to provide written consent to the SCR to release to OMH any and all information SCR has regarding CONTRACTOR. CONTRACTOR shall provide such additional information as OMH, in its sole discretion, deems necessary to permit OMH to make a determination about CONTRACTOR's suitability to provide the contract services. Any fees associated with this procedure will be paid by the OMH Facility.
- ii. By signing this Agreement, CONTRACTOR represents and warrants that:
 - a) CONTRACTOR has not previously engaged in any act in violation of any law which could compromise the health and safety of Facility patients.
 - b) During the term of this Agreement, CONTRACTOR shall not engage in any act in violation of any law which could compromise the health and safety of Facility patients.
- iii. Prior to being permitted to provide services under this Agreement, CONTRACTOR shall execute the [Justice Center Code of Conduct](https://www.justicecenter.ny.gov/system/files/documents/2021/02/code-of-conduct-acknowledgement-form_feb-2021.pdf) as required by the Protection of People with Special Needs Act. A copy of the Justice Center Code of Conduct can be found at the following link: https://www.justicecenter.ny.gov/system/files/documents/2021/02/code-of-conduct-acknowledgement-form_feb-2021.pdf
- iv. OMH may terminate the Agreement for cause immediately in the event that:

- a) CONTRACTOR is listed on the SEL;
 - b) CONTRACTOR fails to provide consent for release of information from SCR as required in subparagraph (a) above;
 - c) CONTRACTOR fails to provide such additional information as OMH, in its sole discretion, deems necessary to permit OMH to make a determination about CONTRACTOR's suitability to provide for the contract services;
 - d) OMH, in its sole and absolute discretion, determines that CONTRACTOR is not suitable to provide the contract services based on information in the SCR or supplemental information provided by CONTRACTOR;
 - e) OMH receives reliable information that, prior or during the term of the Agreement, CONTRACTOR has engaged in an act in violation of the law which, in OMH's sole and absolute discretion, could compromise the health and safety of Facility patients;
 - f) CONTRACTOR fails to execute, or following execution, to comply with the required [Justice Center Code of Conduct](#);
 - v. Prior to terminating the Agreement for cause as provided in subparagraph Appendix A-1, section 3 subparagraph 4, 3-6 above, OMH shall provide CONTRACTOR with written notice and an opportunity to be heard. Contractor shall be suspended from performing services under the Agreement pending OMH's final determination regarding termination.
- B.** If the CONTRACTOR provides the services described in Appendix D, via employees, agents, or subcontractors (subject individuals), wherein the subject individuals will have regular and substantial contact with any person who is receiving services or supports from OMH:
- i. CONTRACTOR shall assure that the subject individuals agree to be screened by OMH against the SEL and SCR in accordance with Social Services Law Sections 424-a and 495. In the event that SCR notifies OMH of the existence of an indicated report, CONTRACTOR agrees that subject individual must provide written consent to the SCR to release to OMH any and all information SCR has regarding the subject individual. CONTRACTOR shall ensure that subject individuals provide such additional information as OMH, in its sole discretion, deems necessary to permit OMH to

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make a determination about subject individual's ability to provide services to OMH patients. Any fees associated with this procedure will be paid by the OMH Facility.

- ii. CONTRACTOR, solely at its own expense, shall pre-screen and conduct background checks which shall consist of an investigation to determine evidence of criminal history; verification of education, professional license, certification or other credentials required. CONTRACTOR assumes responsibility for ensuring that no subject individual has previously engaged in any act in violation of any law which could compromise the health and safety of Facility patients.
 - iii. CONTRACTOR must assure that subject individuals agree to read and sign the [Justice Center Code of Conduct](#).
 - iv. OMH reserves the right to bar any subject individual from performing contract services under this Agreement in the event that such individual fails to meet the requirements set forth herein. OMH may terminate the Agreement for cause immediately in the event that CONTRACTOR is unable to provide services to the OMH facility via a subject individual who has complied with all requirements identified in items (i) – (iii) above.
- C.** If the CONTRACTOR provides goods or services, as described in Appendix D, which OMH, in its sole discretion, determines are payable by Federal health care programs, as defined in subsection 1128B(f) of the Social Security Act:
- i. CONTRACTOR acknowledges that OMH receives Federal health care program funds to support its healthcare operations and must comply with various federal program integrity laws, including but not limited to, sections 1128 and 1128A of the Social Security Act, codified at 42 U.S.C. §§ 1320a–7 and 1320a–7a, respectively, which prohibit and provide sanctions for providers that enter into contracts with individuals or entities which are excluded from participation in a Federal health care program, for the provision of items or services for which payment may be made under such a program.
 - ii. CONTRACTOR agrees to confirm the identity and determine the exclusion status of any person who provides the services described in Appendix D and any persons with an ownership or control interest, as defined in 42 C.F.R. § 455.101, in the CONTRACTOR through at least annual checks of the following Federal and State databases:
 - a) The Social Security Administration's Death Master File;
 - b) The National Plan and Provider Enumeration System (NPPES);
 - c) The List of Excluded Individuals/Entities (LEIE);
 - d) The Excluded Parties List System (EPLS); and
 - e) The New York State Exclusion Database, available at <https://omig.ny.gov/medicaid-fraud/medicaid-exclusions>
 - iii. CONTRACTOR shall retain and upon request provide to OMH, screening documentation for persons required to be screened and attest to OMH on a monthly basis for two (2) of the five (5) databases if requested by OMH that such persons are not excluded from Federal health care programs.
 - iv. CONTRACTOR shall review OMH's Medicaid Compliance Policy https://omh.ny.gov/omhweb/policymanual/a_500.pdf and complete the mandatory training for that policy. CONTRACTOR shall maintain documentation attesting to the completion of this training on an annual basis and provide attestations to OMH upon request.
 - v. CONTRACTOR shall immediately notify OMH in the event that any person required to be screened is excluded from Federal health care programs.
 - vi. OMH may terminate the Agreement for cause immediately in the event that any person required to be screened is excluded from Federal health care programs and it is not possible or practical to ensure that such person can be terminated, reassigned or otherwise prevented from providing services under this Agreement in such a way as to ensure continued Federal program participation.
- D.** If the CONTRACTOR provides the services described in Appendix D, via employees, agents, or subcontractors (subject individuals), wherein the subject individuals will have regular and substantial contact with any person who is receiving services or supports from OMH:
- i. CONTRACTOR shall assure that subject individuals have, or will have, prior to their

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official start date, American Heart Association Basic Life Support ("AHA BLS") certification.

- ii. CONTRACTOR, solely, at its own expense, shall arrange for subject individuals to enroll and complete Instructor-led Classroom AHA BLS prior to their official start date. Certified AHA Training Centers may be found at the following link: [AHA link](#)
- iii. CONTRACTOR shall provide the BLS Provider Course Completion Card for each subject individual who will providing services under this agreement, pursuant to the services described in Appendix D.
- iv. CONTRACTOR shall retain proof of subject individual's AHA BLS certification and ensure ongoing compliance with certification renewal for the duration of the subject individual's assignment.
- v. OMH reserves the right to bar any subject individual from performing contract services under this Agreement in the even that such individual fails to meet the requirements set forth in this section.
- vi. OMH shall not accept any alternative or substitute Basic Life Safety certification in lieu of the AHA BLS certification via instructor-led classroom training.

IV. SALES TAX CERTIFICATION If Section 5-a of the NYS Tax Law is applicable, the CONTRACTOR must submit the following forms as and when required: to the NYS Tax Department, a Contractor Certification Form ST-220-TD, and to OMH, a Contractor Certification to Covered Agency Form ST-220-CA.

V. SUSPENSION OF WORK The OMH may order the CONTRACTOR, in writing, to suspend performance for a reasonable period of time. OMH shall have no obligation to reimburse CONTRACTOR'S expenses during the suspension period.

VI. DELIVERABLE OWNERSHIP The CONTRACTOR warrants to the OMH that it has secured sufficient right, title and interest to ensure that OMH may use any design, device, material, source-code or process comprising all or part of the deliverables.

If the deliverables for this Agreement include goods or services relating to computer software and/or hardware, such deliverables shall be provided in accordance with the Contractor's specifications for the goods or services being purchased, in addition to any other applicable specifications (e.g., specifications set forth in the solicitation for such goods or services, Contractor's

proposal to supply such goods or services or other provisions of this Agreement).

VII. DATA ACCESS AND CONFIDENTIALITY In the event that CONTRACTOR is provided access to any electronic data or computer application maintained by OMH, OMH may request, and CONTRACTOR shall execute, such additional forms or agreements as OMH generally requires as a condition of such access (e.g., Data Exchange Agreement, Computer Application Sharing Agreement, Confidentiality and Non-Disclosure Agreement). If CONTRACTOR is provided such access, the CONTRACTOR is responsible for complying with New York State Policies, Standards and Guidelines, including those available at: <http://its.ny.gov/tables/technologypolicyindex>

VIII. LICENSING Unless otherwise provided, the OMH has an irrevocable, royalty-free, non-exclusive and world-wide license to publish, reproduce, display, disclose or otherwise use any of the contract deliverables; provided, however, that if and to the extent that the contract deliverables require CONTRACTOR to create, write, develop or produce an original work which is or could be subject to protection under the laws governing intellectual property, including but not limited to the laws of copyright and patents (the "Work"), such Work shall be deemed to be a work made for hire and in the course of the services being rendered under this Agreement and shall belong exclusively to OMH, with OMH having the sole right to obtain, hold and renew in its own name, all copyrights or other appropriate protection. To the extent that any such Work may not be deemed to be a work made for hire, CONTRACTOR hereby irrevocably assigns to OMH all right, title and interest therein. CONTRACTOR shall ensure that all copies of the Work are marked with appropriate copyright notices and shall give OMH all reasonable assistance and execute all documents necessary to assist and/or enable OMH to perfect, preserve, register and/or record its rights in any Work. Upon termination, cancellation or expiration of this Agreement, CONTRACTOR shall turn over all Works to OMH, and upon request, any OMH documents or items furnished to CONTRACTOR during the performance of this Agreement.

IX. PROTECTED HEALTH INFORMATION In the event that CONTRACTOR, in the course of performance hereunder, obtains access to information, data or records deemed confidential in accordance with the provisions of Mental Hygiene Law Section 33.13 and/or "protected health information" as such term is defined in 45 C.F.R. Parts 160, 164, then CONTRACTOR shall restrict its use of that information, data, records or protected health information for the limited purposes of this Agreement and if a "business associate" within the meaning of 45 CFR §164.103, in accordance with Appendix F of this

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Agreement and/or such other Business Associate Agreement as may govern the relationship between the parties. Any further dissemination or any use beyond that specifically authorized, of any such information, data, records or protected health information by CONTRACTOR, its subcontractors, agents, successors or associates shall constitute an unlawful disclosure of confidential information in violation of Mental Hygiene Law Section 33.13, and/or 45 C.F.R. Parts 160, 164, as applicable. CONTRACTOR acknowledges that it has an affirmative obligation to safeguard any such information, data, records or protected health information from unnecessary distribution amongst its employees, subcontractors and agents and to any third parties. CONTRACTOR specifically agrees to indemnify OMH from damages to third parties flowing from any breach of the confidentiality of such information, data, records or protected health information in the possession or control of CONTRACTOR or any expenses that OMH may be required by law to incur to remediate any such breach. Protected health information includes all information about an individual receiving services and, depending on specific content, may be protected by a variety of state and federal laws, including:

New York Mental Hygiene Law Article 33
New York Public Health Law Article 27-F and 18
N.Y.C.R.R. 36—81.
Federal Regulations and 42 C.F.R. Part 2
The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule at 45 C.F.R. Parts 160 and 164

Please note that, as required by New York Public Health Law Section 2782(5), the following notice is provided to you and is applicable in the event you receive access to information, data, records, or protected health information containing AIDS/HIV related confidential information as defined in Section 2780(7) of the New York Public Health Law:

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure."

- X. NEW YORK STATE OFFICE OF MENTAL HEALTH CONFIDENTIAL INFORMATION** In the event that CONTRACTOR, in the course of performance hereunder, obtains access to information, data or records deemed confidential by OMH (other than information,

data or records which is already covered by paragraph IX above) ("Protected Health Information"), CONTRACTOR shall hold all such Confidential Information in confidence and not disclose or make it available to third parties without OMH's written permission. CONTRACTOR further agrees to use such Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. This obligation will not apply to information which:

- A.** Was known to CONTRACTOR prior to receipt from OMH as evidenced through written documentation;
- B.** Was or becomes a matter of public information or publicly available through no fault on the part of CONTRACTOR;
- C.** Is acquired from a third party entitled to disclose the information to CONTRACTOR;
- D.** Is developed independently by CONTRACTOR without the use of OMH's Confidential Information; or
- E.** Is required to be disclosed pursuant to law, regulation or court order; provided, however, that in the event of a demand for such disclosure, CONTRACTOR shall not make such disclosure without prior written notice to OMH and an adequate opportunity for OMH to oppose such disclosure, including seeking an injunction as appropriate under the circumstances.

- XI. CONTINUITY OF THE AGREEMENT** If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken. The paragraph headings in this Agreement are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. This Agreement has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

- XII. STATE AGENCY SALES TAX EXEMPTION** In that purchases by the State of New York are not subject to sales tax, transportation tax and Federal excise tax, payment for such amounts may not be claimed, declared or allowed under this agreement. Exemption certificates will be provided upon request.

- XIII. STATE/FEDERAL FALSE CLAIMS ACT AND CONTRACTOR COOPERATION** Federal law requires that OMH provide their Contractors with information about the Federal False Claims Act, the New York State False Claims Act and other federal and state laws that play a role in preventing and detecting fraud, waste and

APPENDIX A-1
AGENCY SPECIFIC CLAUSES
(State Operations)

abuse in federal health care programs. This information must include the whistleblower protections that are in these laws. OMH must also provide its Contractors with information about OMH's own policies and procedures for detecting and preventing waste, fraud and abuse.

Detailed descriptions of these laws, their whistleblower protections and OMH's policies are at:
<https://omh.ny.gov/omhweb/guidance/mfa/medicaidfraudabuse.html>

Information can also be found at the New York State Medicaid Inspector General web site located at www.omig.ny.gov to obtain information about these laws. CONTRACTORS having difficulty finding this information or wishing to request a paper copy may contact OMH Counsel's Office at (518) 474-1331 or MedicaidPolicy@omh.ny.gov.

All Contractors of OMH are required to participate in the reviews and audits described in the OMH policies, and to abide by these policies with respect to funding for OMH services. Contractors are required to make the information at the web site address listed above available to all their employees and to sub-contractors involved in performing work under the contract with OMH.

XIV. ENVIRONMENTAL SUSTAINABILITY On April 26, 2008, Governor David A. Paterson signed Executive Order No. 4 – establishing a State Green Procurement and Agency Sustainability Program that will promote environmental sustainability and stewardship. These programs and policies will focus on reducing potential impacts on public health and the environment by supporting recycling, reducing or eliminating the use of toxic substances, pollution and waste, increasing energy efficiency and using renewable energy source.

Where feasible, contractors shall adhere to the NYS Executive Orders No. 4 (issued 04/26/08) which is referenced at the online web address of <https://ogs.ny.gov/greenny/executive-order-4> and Executive Order No. 134 (issued 01/05/05 by former Governor George E. Pataki), which is referenced at the on-line address of <https://ogs.ny.gov/greenny>

XV. FORCE MAJEURE Neither Party shall be responsible for any delay or failure of performance under this Agreement to the extent resulting from causes beyond its reasonable control and without its fault or negligence, including but not limited to acts of God, fire, flood, war, terrorism, labor disputes, strikes, lockouts, riot or civil commotion; provided that the party claiming non-responsibility hereunder shall give prompt notice to the other that a force majeure event has occurred and if requested, evidence thereof. Dates for the performance or completion of the work shall be extended by such delay

of time as may be reasonably necessary to compensate for the delay.

XVI. NEW YORK STATE BUSINESS USAGE IN CONTRACT PERFORMANCE New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders are reminded that they must continue to utilize small, minority and women-owned business, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

XVII. NOTICES

- A.** All notices permitted or required hereunder shall be in writing and shall be transmitted by one of the following methods:
- i. certified or registered United States mail, return receipt requested;
 - ii. facsimile transmission;
 - iii. personal delivery;
 - iv. expedited delivery service, or
 - v. e-mail.

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

**APPENDIX A-1
AGENCY SPECIFIC CLAUSES
(State Operations)**

NYS Office of Mental Health

Bureau of Procurement Enterprise Services
75 New Scotland Avenue – Unit R
Albany, NY 12208
Telephone Number: (518) 549-0643
Fax Number: (518) 549-5207
Email Address: BPES@omh.ny.gov

Contractor

Name
Title
Address
City, State, Zip
Phone #
Email address

- B.** 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.
- C.** 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.

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XVIII. INSURANCE Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and Appendix G of this contract boilerplate and shall upon request promptly provide documentation of specified coverages at any point during the contract term.

APPENDIX B BUDGET

The Contractor shall provide guardianship-related legal services in the Southern Tier region only, as detailed in Appendix D below.

Reimbursement for legal services shall be paid according to the following hourly rates:

Title	Hourly Rate
Partner	\$
Associate	\$
Paralegal	\$

Costs or disbursements incurred in order to carry out the services to be provided, except for judicial filing fees, appointed counsel for the AIP, and Court Evaluator fees, as ordered by the Court, shall not exceed the amount specified below.

Judicial filing fees, appointed counsel for the AIP, and Court Evaluator fees, as ordered by the Court, shall be paid directly by OMH.

Reimbursement to the Contractor for services and expenses provided for the life of this contract shall not exceed \$149,999.00 unless an amendment is approved by OMH with requisite pre-approvals to increase the total contract value.

Travel: Reimbursement of **mileage only** is allowed for travel to and from court hearings pursuant to services provided under this contract. Mileage expenses, if necessary, will be reimbursed in accordance with the travel allowances announced by the Office of the State Comptroller (OSC), which correspond to the rates provided by the federal General Services Administration. See [Privately owned vehicle \(POV\) mileage reimbursement rates | GSA](#) for current per-mile rate. Travel-related expenses shall be subject to the same limitations, which apply to New York State employees. Any claim for mileage reimbursement must be indicated as a separate line item on monthly invoices submitted for payment, and must be accompanied by completed NYS Forms AC160-S – “Statement of Automobile Travel” and AC3257-S – “Claim for Travel Reimbursement by a Non-Employee” as documentation (see Exhibits 8 & 9).

APPENDIX C PAYMENT AND REPORTING SCHEDULE

CONTRACTOR shall submit to the OMH one properly completed monthly invoice together with required supporting documentation, in a format satisfactory to the OMH. For purposes of this provision and Article 11A of the State Finance Law, the invoice shall be remitted to the Office of General Services (OGS) Business Services Center (BSC) care of the NYS Office of Mental Health to the following email address, which will help expedite the payment process. Accounts payable@ogs.ny.gov

Though not required, physical invoices may be mailed to the BSC at the following address:

NYS Office of Mental Health
c/o OGS BSC Accounts Payable
Building #5, 5th Floor
1220 Washington Ave
Albany, New York 12226-1900

Proper Invoice Format:

A proper invoice is a written or electronic request for payment submitted by the CONTRACTOR that must contain the following information:

1. Vendor Information:

- Contractor Name:
- NYS Vendor ID number:
- Contact Person Name:
- Contact Person E-mail Address:
- Contact Person Telephone Number:

2. Contract Information:

- NYS Contract Number: **OMH01-T103047-3650000**
- Name of NYS Agency that ordered goods or services: **OMH Office of Counsel**
- Agency/Facility Routing ID: **3650028**
- Current Purchase Order Number assigned by Agency: **TBD**

3. Payment Request Information:

- Description of goods or services being billed for that aligns with the Appendix B of the contract;
- Quantity of goods delivered or services rendered;
- Amount Requested
- Invoice Date
- Invoice Number (assigned by Contractor)
- Backup documentation supporting invoice amounts

Payments to CONTRACTOR will be due thirty (30) days thereafter and shall be made in accordance with usual State practices. **However, no payments shall be due prior to the date upon which this Agreement was approved by the New York State Office of the State Comptroller.** Additionally, the OMH may at its discretion, withhold any payment due under this Agreement until such time as the CONTRACTOR has submitted to OMH all Deliverables, including reports, which are due prior to invoice submission. When applicable, this includes submission of **Consultant Disclosure Form B and MWBE Contractors Compliance Reports, all of which shall be considered required deliverables of this Agreement.**

APPENDIX C PAYMENT AND REPORTING SCHEDULE

Invoice Submission:

- **Timeliness of Invoice Submission**

CONTRACTOR shall submit one properly completed invoice, together with required supporting documentation, in a format that conforms to the **Proper Invoice Format** requirements of this Appendix C and is otherwise satisfactory to OMH.

Invoices should be submitted no later than ninety (90) days of the completion of services that are being invoiced. CONTRACTOR must provide written justification for the late submission of invoices beyond this requirement.

CONTRACTOR is responsible for the timely submission of properly completed invoices to ensure that funding appropriations are available for payment within the Fiscal Year that services were completed. Late submission of invoices for services rendered in previous fiscal years may be rejected due to unavailability of funds. At OMH's sole discretion, late invoices may be rejected unless sufficient justification is provided by the vendor documenting the causes of the delay.

Consultant Disclosure Requirements:

- Form B must be received by the OMH by the defined due date of April 30th. For contracts that end prior to March 31 of any calendar year, the Form B will be due when submitting the invoice for the final month of services rendered under the contract.

Invoices:

Payment of invoices may be withheld if reports or forms are not submitted as required. The invoice will not be considered complete unless reports or forms are submitted in a timely manner. **Incomplete Invoices are not eligible for interest payments.**

Submit only **ONE** monthly invoice (and **ONE** invoice number) for all services/cumulative periods of services rendered during that month. The invoice **must** also include the date(s) and the rate(s) charged as per Appendix B and the description of the specific service rendered. All invoices shall include appropriate back up documentation such as signed time cards, signed log sheets, travel receipts, Time and Materials documentation, etc. At a minimum, payrolls must show the following information for each person employed on a public work project:

1. Name
2. Classification(s) in which the worker was employed
3. Hourly wage rate(s) paid
4. Supplements paid or provided
5. Daily and weekly number of hours worked in each classification.

Note: A sample of an acceptable payroll form (WH-347) can be obtained at the United States Department of Labor web site: <http://www.dol.gov/>

The use of form WH-347 is not mandatory; the form is available for the convenience of contractors/subcontractors that are required to submit payrolls.

In addition, the Commissioner of Labor may require contractors to furnish, within ten days of a request, payroll records sworn to as their validity and accuracy for public work and private work. Payroll records include, but are not limited to, timecards, work description sheets, proof that supplements were provided, cancelled payroll checks and payrolls. Failure to provide the requested information within the allotted ten days will result in the withholding of up to 25% of the contract, not to exceed one hundred thousand dollars. If the contractor or subcontractor does

APPENDIX C PAYMENT AND REPORTING SCHEDULE

not maintain a place of business in New York State and the amount of the contract exceeds \$25,000, payroll records and certifications must be kept on the project worksite.

Do not submit statements.

Non-Compliance:

The CONTRACTOR shall provide complete and accurate billing invoices to OMH in order to receive payment. Billing invoices submitted to OMH must contain all information and supporting documentation required by the Contract, OMH, and the State Comptroller. In the event that the CONTRACTOR submits an inaccurate or incomplete invoice, OMH may refuse to pay the invoice and may return it to the CONTRACTOR with a written explanation for the decision to refuse payment. The CONTRACTOR must submit a corrected invoice within 30 days. OMH reserves the right to deem the CONTRACTOR non-compliant and to terminate the contract if, after having been giving notice and an opportunity to cure, the CONTRACTOR fails to submit accurate and complete invoices on more than 3 occasions during the term of the contract.

Electronic Payment:

The CONTRACTOR is required to participate in the Electronic Payment program offered by the NYS Office of the State Comptroller (OSC). For additional information and to apply for Electronic Payments, the CONTRACTOR is directed to the following web site: <https://esupplier.sfs.ny.gov>

All correspondence relating to the OSC Electronic Payments program should be directed to:

**NYS Office of the State Comptroller
Bureau of Accounting Operations
Warrant & Payment Control Unit
110 State Street – 9th Floor
Albany, NY 12236
Telephone: (518) 457-7717 or (855) 233-8363
E-Mail: epunit@osc.state.ny.us**

Payment for invoices submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper is expressly authorized by OMH's Office of Financial Management, at OMH's sole discretion, due to extenuating circumstances. Such electronic payment shall be in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. The CONTRACTOR acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where OMH's Office of Financial Management has expressly authorized payment by paper check as set forth above.

Contractor Inquiry on Paid Invoices through eSupplier:

eSupplier is a system that allows suppliers to maintain information pertaining to their addresses and contacts. It can also be used to review information related to Purchase Orders (PO), invoices and payments. The Contract must be enrolled in eSupplier and must have at least one user with a valid user ID and password in order to perform searches on payment information, PO information and invoice information. See the [Vendor Guide to New York State's Centralized Vendor Management](#) process for more information on registering and logging into Vendor Self Service.

APPENDIX D
Scope of Work

Contract # OMH01-T103047-3650000
Outside Counsel – Guardianship – Southern Tier

WHEREAS, the New York State Office of Mental Health (“OMH”) operates numerous adult psychiatric centers and community residences (hereinafter, “facility” or “facilities”) throughout New York State for the treatment and housing of patients and residents who may require the appointment of guardians pursuant to Article 81 of Mental Hygiene Law to assist with their personal needs or property management;

WHEREAS, with the exception of legal services related to property guardianship matters with a potential civil recovery and any other matter which is required to be referred to the New York State Attorney General, OMH requires legal services related to pursuing adult guardianships for patients and residents of OMH facilities who it believes are alleged incapacitated persons pursuant to Article 81 of the Mental Hygiene law;

WHEREAS, OMH has determined that it is necessary to enter into a legal retainer agreement for provision of such services; and

WHEREAS, **[CONTRACTOR NAME]** is experienced and well qualified to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein set forth, the parties hereto agree as follows:

1. The Contractor is hereby retained by OMH to provide legal services as requested from time to time throughout the term of this Agreement, to commence guardianship proceedings on behalf of OMH and its facilities in Supreme or Surrogate Courts of the State of New York, to represent OMH and its facilities in all aspects of such proceedings and to advise OMH on adult guardianship matters.
2. Contractor shall be outside counsel to OMH in the provision of legal services hereunder, in consultation with identified OMH facility staff and the OMH Office of Counsel.
3. Contractor shall devote necessary and adequate resources to allow for the timely completion of all guardianship matters referred by OMH Office of Counsel.
4. OMH facilities covered hereunder shall include the following:
 - Elmira Psychiatric Center, 100 Washington Street, Elmira, NY 104901-2898;
 - Greater Binghamton Health Center, 425 Robinson Street, Binghamton, NY 13904-1755
5. Upon referral by the OMH Office of Counsel, Contractor will work collaboratively with identified facility staff and the OMH Office of Counsel to obtain all of the information necessary for Contractor to draft orders to show cause and petitions for the commencement of guardianship proceedings. Contractor shall prepare such documents for review by the Office of Counsel and signature by the facility director of the OMH facility where the allegedly incapacitated person resides or the director’s designee. In preparing documents, Contractor shall ensure that any communication with third parties, including but not limited to relatives, prior services providers, or others familiar with the allegedly incapacitated person, on behalf of OMH and the facility are authorized pursuant to Section 33.13 of the Mental Hygiene Law, the Health Insurance Portability and Accountability Act, as amended, and federal regulations promulgated under such laws.
6. Guardianship petitions prepared by Contractor are not required to contain a recommendation regarding who the court should appoint as Guardian for any allegedly incapacitated person. Contractor may advise OMH if they have identified a suitable and willing guardian to propose in a petition, except that Contractor shall not propose the Contractor or any member of the Contractor’s law firm to serve as guardian for any OMH patient or resident who is the subject of a referred matter. Contractor shall not

APPENDIX D

Program Work Plan

accept any referral fees in connection with the appointment of any guardian. Contractor shall not accept an appointment to serve as guardian for any subject allegedly incapacitated person.

7. As necessary, Contractor shall prepare affidavits for execution by facility staff members to accompany the petition or prepare facility staff members to provide testimony at guardianship hearings.
8. Contractor shall effectuate proper service upon the parties as required by New York State law, the cost of which shall be invoiced to the Office of Mental Health in addition to legal service fees and other disbursements.
9. Contractor shall appear on behalf of OMH at all hearings scheduled in a Guardianship matter commenced by Contractor, including preliminary conferences scheduled by the court. Contractor shall represent the agency in such proceedings to ensure the appointment of guardians empowered to act on behalf of subject allegedly incapacitated persons in the manner and scope desired by OMH, as identified in the referral or in subsequent communications from OMH.
10. To the extent permitted by the court, Contractor shall draft and negotiate guardianship orders of appointment in consultation with opposing counsel prior to submission to the court or review orders of appointment prepared by opposing counsel.
11. OMH shall pay Contractor for all professional services provided under this Agreement in accordance with Appendix B: Budget. See Appendix C: Payment and Reporting Schedule for detailed information regarding billing and payments. The fees for such professional services and other costs or disbursements incurred in order to carry out the legal services to be provided, shall not exceed the amount of forty-nine thousand, nine hundred ninety-nine (\$49,999) per the term of the Agreement, unless approved in advance by OMH through the amendment process. It is understood and agreed that all judicial filing, application or similar fees, and court-ordered payments to parties other than the Contractor, if applicable, shall be paid directly by OMH, and shall not be included in the Contractor's charges or amounts set out in this Agreement.
12. If this Contract contains a provision for hourly fees, the Contractor shall provide an accounting of legal services in increments of 15 minutes or less.
13. Contractor shall devote such time as may be necessary to provide legal services described herein, subject to the Appendix B, but shall not be prevented from providing its services to any other client not in conflict with this Agreement. Contractor shall not agree to provide legal services directly to any OMH facility or any other entity affiliated with OMH without the prior written consent of the OMH Office of Counsel.
14. The relationship of Contractor to OMH and the State of New York arising out of this Agreement shall be that of attorney and client.
15. Contractor shall not issue formal legal opinions interpreting the Constitution or statutes of the State of New York or OMH regulations in connection with performing services under this Agreement. Opinions prepared by retained attorneys or law firms construing the Constitution or statutes of the State of New York do not constitute the opinion of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Appeals and Opinions Bureau, Department of Law, State Capital, Albany, New York.
16. The retained attorney or law firm will represent the State of New York in judicial litigation related to the services to be provided under this agreement only when such services are specifically requested by the OMH Office of Counsel and approved by the Attorney General. Approval of this contract by the Attorney General shall constitute approval to initiate any guardianship proceeding requested by OMH, with the exception of property guardianship matters with a potential civil recovery, as said matters must

APPENDIX D Program Work Plan

be referred to the Attorney General's Civil Recoveries Bureau, and any other matter which is required to be referred to the Attorney General. However, approval to file an appeal in any such matter must be requested separately for each matter to be appealed and must be specifically approved by the Attorney General prior to the commencement of any services therefor.

17. In the performance of its obligations hereunder, Contractor shall (i) comply with all applicable laws, rules and regulations pertaining to the rendering of the services; (ii) maintain all licenses required under applicable law; and (iii) maintain adequate "Professional Liability Insurance" at its own cost, furnishing OMH with copies of appropriate license(s) and evidence of insurance as OMH may reasonably require.
18. Contractor agrees that **[CONTRACTOR REPRESENTATIVE]** shall have primary supervisory responsibility for the legal services performed hereunder. Such partner or his or her designee, identified in writing, shall be the contact person with OMH Counsel, appropriate facility personnel and other OMH personnel during the term of this Agreement.
19. Contractor acknowledges that OMH is a covered entity, as defined in 45 CFR Part 160 of the Health Insurance Portability and Accountability Act of 1996 regulations and in performing this contract, the Contractor will receive, maintain, process or otherwise have access to Protected Health Information of OMH patients and residents. Contractor has executed a HIPAA Business Associate Agreement, attached hereto as Appendix F, and will comply with all of the requirements contained therein.
20. Contractor acknowledges that this Agreement/Contract is subject to New York State Freedom of Information Law ("FOIL") as set forth in Article 6 of the New York State Public Officers Law.
21. Per Appendix B travel expense stipulation, Contractor may invoice mileage expense only for travel to and from court hearings pursuant to services provided under this contract. Such mileage expense shall be reimbursed per current U.S. GSA privately owned vehicle (POV) mileage reimbursement rates. Any monthly invoiced claim for mileage reimbursement must be recorded on & accompanied by completed NYS Form AC160-S "Statement of Automobile Travel" and NYS Form AC3257-S "Claim for Travel Reimbursement by a Non-Employee".

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**APPENDIX F
BUSINESS ASSOCIATE AGREEMENT**

Updated January 23, 2018

The terms and conditions of this document entitled “*Appendix F, Business Associate Agreement*” (“Business Associate Agreement”), and attached to and incorporated in the Agreement, shall apply in the event that Protected Health Information is used or disclosed in connection with or in the course of Contractor’s performance of the Agreement, and pursuant to which Contractor may be considered a “business associate” of the New York State Office of Mental Health as such term is defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) including all pertinent regulations (45 CFR Parts 160 and 164) issued by the U.S. Department of Health and Human Services, as amended.

For purposes of this Business Associate Agreement, the term “Contractor” shall mean and include the term “Business Associate” as such term is defined in 45 CFR §160.103.

I. DEFINITIONS

Terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms in 45 CFR §§160.103, 164.103, and 164.501.

Breach shall have the same meaning as the term “Breach” in §13400 of the HITECH Act and guidance issued by the Department of Health and Human Services, and shall include the unauthorized acquisition, use, or disclosure of Protected Health Information that compromises the privacy or security of such information.

Covered Entity shall mean the New York State Office of Mental Health.

Data Aggregation shall mean, with respect to protected health information created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such protected health information by the business associate with the protected health information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

Designated Record Set shall have the same meaning as the term “Designated Record Set” in 45 CFR §164.501.

HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.

HITECH Act shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 226 (Feb. 17, 2009), codified at 42 U.S.C. §§300jj *et seq.*, §§17901 *et seq.*

Individual shall have the same meaning as the term “Individual” in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

Protected Health Information shall have the same meaning as the term “Protected Health Information” in 45 CFR §160.103, but is limited to the protected health information created or received by Contractor from, for or on behalf of Covered Entity in connection with or in the course of Contractor’s performance of the Agreement.

Required by Law shall have the same meaning as the term “Required by Law” in 45 CFR §164.103.

Secretary shall mean the Secretary of the Federal Department of Health and Human Services or his/her designee.

Security Incident shall have the same meaning as the term “Security Incident” in 45 CFR §164.304.

APPENDIX F BUSINESS ASSOCIATE AGREEMENT

Security Rule shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, subparts A and C.

Unsecured Protected Health Information shall mean Protected Health Information that is not secured through the use of a technology or methodology specified by the Secretary in guidance, or as otherwise defined in §13402(h) of the HITECH Act.

II. CONTRACTOR RESPONSIBILITIES

- A. Contractor agrees not to use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.
- B. Contractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the Agreement, and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity pursuant to this Agreement. Contractor agrees to fully comply with the responsibilities of Business Associates as set forth in §13401 of the HITECH Act.
- C. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of the Agreement.
- D. Contractor agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR §164.410, and any Security Incident of which it becomes aware. In the event of a Breach of Unsecured Protected Health Information:
 - i. Contractor shall promptly notify Covered Entity of the Breach when it is discovered, but no later than 30 days from the discovery of the Breach. A Breach is considered discovered on the first day on which Contractor knows or should have known of such Breach. Such notification shall identify the Individuals whose Unsecured Protected Health Information has, or is reasonably believed to have, been the subject of the Breach, and their contact information.
 - ii. Covered Entity shall promptly notify Individuals about a Breach of their Unsecured Protected Health Information as soon as possible, but not later than 60 calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Notification shall meet the requirements of §13402 of the HITECH Act.
- E. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, Contractor agrees to ensure that any agent or subcontractor of Contractor to whom Contractor provides Protected Health Information received from, or created or received by Contractor on behalf of Covered Entity pursuant to the Agreement agrees to at least the same restrictions and conditions that apply through this Business Associate Agreement to Contractor with respect to such Protected Health Information. Contractor will ensure that Business Associate Agreements are executed with all subcontractors that will perform functions or activities on behalf of Contractor that involve the use or disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, Covered Entity.
- F. To the extent that the information made available to Contractor under the Agreement includes Protected Health Information in a Designated Record Set, Contractor agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.

APPENDIX F BUSINESS ASSOCIATE AGREEMENT

- G.** To the extent that the information made available to Contractor in connection with or in the course of Contractor's performance of the Agreement includes Protected Health Information in a Designated Record Set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.
- H.** Contractor agrees to document such disclosures of Protected Health Information under the Agreement and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.
- I.** Contractor agrees to provide to Covered Entity or an Individual, in a time and manner designated by Covered Entity, information collected in accordance with paragraph (H) of Section II of this Business Associate Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528. If Contractor assists Covered Entity in maintaining an electronic health record (EHR), Contractor shall support Covered Entity in providing, upon the request of the Individual, an accounting of disclosures of Protected Health Information in the EHR within the prior three years, as well as an electronic copy of Protected Health Information that is part of an EHR.
- J.** To the extent Contractor is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Contractor shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations; and shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent that Covered Entity is responsible for compliance with such rule.
- K.** Contractor agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of Covered Entity pursuant to the Agreement, available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner as designated by the Covered Entity, for purposes of the Secretary's determining Covered Entity's compliance with the HIPAA Rules.
- L.** Contractor shall make its internal practices, books, and records available to the Secretary for purposes of determining its compliance with the HIPAA Rules.

III. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

Except as otherwise limited in the Agreement and this Business Associate Agreement, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

IV. SPECIFIC USE AND DISCLOSURE PROVISIONS

- A.** Except as otherwise limited in the Agreement or this Business Associate Agreement, Contractor may use Protected Health Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor.
- B.** Except as otherwise limited in the Agreement and this Business Associate Agreement, Contractor may disclose Protected Health Information for the proper management and administration of the Contractor, provided that disclosures are Required by Law, or Contractor obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that it will remain confidential and shall be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person,

APPENDIX F BUSINESS ASSOCIATE AGREEMENT

and the person notifies the Contractor of any instances of which it is aware in which the confidentiality obligations under this Business Associate Agreement have been breached.

- C.** Except as otherwise limited in the Agreement and this Business Associate Agreement, Contractor may use Protected Health Information to provide Data Aggregation services relating to the health care operations of Covered Entity as permitted in 45 CFR §164.504(e)(2)(i)(B).
- D.** Contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with New York State Mental Hygiene Law and 45 CFR §164.502(j)(1).

V. OBLIGATIONS OF COVERED ENTITY

- A.** Covered Entity shall notify Contractor of any limitation(s) in its Notice of Privacy Practices produced in accordance with 45 CFR §164.520, to the extent that such limitation may affect Contractor's use or disclosure of Protected Health Information.
- B.** Covered Entity shall notify Contractor of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Contractor's permitted or required uses and disclosures.
- C.** Covered Entity shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

VI. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity. Covered Entity may permit Contractor to use or disclose Protected Health Information for Data Aggregation or management and administrative activities of Contractor, if the Agreement includes provisions for same.

VII. REMEDIES IN EVENT OF BREACH/INDEMNIFICATION

- A.** In the event of breach by Contractor of any of the covenants and assurances contained in this Business Associate Agreement, Contractor hereby agrees that immediate and irreparable harm may result to Covered Entity, and to the business of Covered Entity, which harm would not be adequately compensated by monetary damages. As such, in the event of breach of any of the covenants and assurances contained in Sections II, III, or IV above, Covered Entity shall be entitled to enjoin and restrain Contractor from any continued violation of such Sections.
- B.** Contractor shall defend, indemnify and hold Covered Entity harmless against all claims, losses, liability, costs and other expenses (including reasonable attorneys' fees), without limitation (collectively, "Liability"), resulting from or arising out of the acts or omissions of Contractor in the performance of its duties and obligations under this Business Associate Agreement, except to the extent that such Liability results from or arises out of the acts or omissions of Covered Entity. Contractor's Liability under the foregoing provision shall include responsibility to pay, or where appropriate, to reimburse Covered Entity, for all costs associated with notification required by HIPAA or HITECH due to a Breach within the meaning of this Business Associate Agreement, except to the extent that such Liability results from or arises out of the acts or omissions of Covered Entity. Contractor shall be fully liable for the actions of its agents, employees and subcontractors.
- C.** The terms of this Section VII shall survive expiration or termination of the Agreement.

**APPENDIX F
BUSINESS ASSOCIATE AGREEMENT**

VIII. CONSIDERATION

Contractor acknowledges that the promises it has made in this Business Associate Agreement shall, henceforth, be relied upon by Covered Entity in choosing to continue or commence a business relationship with Contractor.

IX. INTERPRETATION OF THIS BUSINESS ASSOCIATE AGREEMENT IN RELATION TO OTHER CONTRACTS BETWEEN THE PARTIES

Should there be any conflict between the language of this Business Associate Agreement and any other contract or agreement entered into between the Parties (either prior or subsequent to the date of this Business Associate Agreement), the language and provisions of this Business Associate Agreement shall control and prevail unless, in a subsequent written agreement, the Parties specifically refer to this Business Associate Agreement by its title and date, and specifically state that the provisions of the later written agreement shall control over this Business Associate Agreement; except that in the event of a conflict with Appendix A (Standard Terms and Conditions of New York State Contracts) in any agreement to which such Appendix A applies (either prior or subsequent to the date of this Business Associate Agreement), Appendix A shall govern.

X. TERM AND TERMINATION

A. Term.

The provisions of this Business Associate Agreement shall be effective as of the effective date of the Agreement and shall survive termination of the Agreement and shall not terminate unless and until all Protected Health Information is destroyed, or returned to Covered Entity or, if it is infeasible to return or destroy Protected Health Information, in accordance with the termination provisions in Section (C)(2) of this Section, in which case Contractor's obligations hereunder shall continue for so long as Contractor maintains the Protected Health Information.

B. Termination for Cause.

A breach of this Business Associate Agreement by either party shall be considered a material breach of the Agreement and may be grounds for termination of the Agreement for cause.

C. Effect of Termination.

- i. Except as provided in subparagraph (C)(ii) of this Section, upon termination of the Agreement for any reason, Contractor shall return to Covered Entity or destroy all Protected Health Information received from Covered Entity, or created or received by Contractor on behalf of Covered Entity. This provision shall apply to all Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information. Upon request by Covered Entity, Contractor shall certify in writing to Covered Entity that all Protected Health Information has been returned or destroyed as required by this section.
- ii. In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information. Upon request by Covered Entity, Contractor shall certify in writing to Covered Entity that it has

**APPENDIX F
BUSINESS ASSOCIATE AGREEMENT**

taken all the steps required by this section to protect Protected Health Information which could not feasibly be returned or destroyed.

XI. MISCELLANEOUS

A. Regulatory References

A reference in this Business Associate Agreement to the HIPAA Rules means the rules as in effect or amended, and for which compliance by a Covered Entity and/or Business Associate is required.

B. Amendment

The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

C. Survival

The respective rights and obligations of Contractor under Section 9 of this Business Associate Agreement shall survive the termination of this Business Associate Agreement.

D. Interpretation

Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits compliance with the HIPAA Rules.

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APPENDIX G ADDITIONAL INSURANCE REQUIREMENTS

Prior to the start of work the **Contractor** shall procure at its sole cost and expense, and shall maintain in force at all times **during the term of this Agreement**, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York with an A.M. Best Company rating of —A-II or better. The OMH 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 OMH to accept insurance placed with a non-authorized carrier under any circumstances.

The **Contractor** shall deliver to OMH evidence of such policies in a form acceptable to the OMH. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

General Conditions

A. Conditions Applicable to Insurance. All policies of insurance required by this agreement must meet the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the **Contractor** are specified herein.
- 2. Policy Forms.** Except as may be otherwise specifically provided herein or agreed in writing by OMH, policies must be written on an **occurrence** basis. Under certain circumstances, the OMH 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 OMH 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 OMH, before commencing any work under this contract. Certificates shall reference the Contract Number. Certificates shall be mailed to the:

**NYS Office of Mental Health
Bureau of Procurement Enterprise Services – Unit R
75 New Scotland Avenue
Albany, NY 12208**

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 thirty (30) days prior written notice except for non-payment as required by law to the OMH, Attn: NYS Office of Mental Health, 75 New Scotland Avenue, Albany, NY 12208. In addition, if required by the OMH, the **Contractor** shall deliver to the OMH 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 OMH.
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the 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.

Originals, copies, faxed, and electronic documents (Certificates of Insurance, Supplemental Insurance Certificates and other attachments) will be accepted.

- 4. Primary Coverage:** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the OMH for any claim arising from the **Contractor's** Work under this contract, or as a result of the **Contractor's** activities. Any other insurance maintained by the OMH shall be excess of and shall not contribute with the **Contractor's** insurance regardless of the —other insurance clause contained in the OMH's own policy of insurance.
- 5. Policy Renewal/Expiration:** At least two (2) 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 OMH than the expiring policies shall be delivered to the OMH in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above. 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 the Contract or proof thereof is not provided to the OMH, the **Contractor** shall

APPENDIX G

ADDITIONAL INSURANCE REQUIREMENTS

immediately cease Work on the Project. The **Contractor** shall not resume Work on the Project until authorized to do so by the OMH. Any delay, time lost, or additional cost incurred as a result of the **Contractor** not having insurance required by the Contract or not providing proof of same in a form acceptable to the OMH, shall not give rise to a delay claim or any other claim against the OMH. Should the **Contractor** fail to provide or maintain any insurance required by this contract, or proof thereof is not provided to the OMH, the OMH 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 the Contract and charge back such purchase to the **Contractor**.

6. Self-Insured Retention/Deductibles: Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. For Construction contracts – General, Environmental, and/or Builders' Risk deductibles or self-insured retentions above \$100,000 are subject to approval from the OMH. 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 OMH.

1. General Liability 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. The limits under such policy shall not be less than the following:

- Each Occurrence limit - \$2,000,000
- General Aggregate – \$2,000,000
- Products/Completed Operations - \$2,000,000
- Personal Advertising Injury – \$1,000,000
- Damage to Rented Premises - \$50,000
- Medical Expense – \$5,000

Coverage shall include, but not be limited to, the following:

- premises liability,
- independent contractors, blanket contractual liability, including tort liability of another assumed in a contract,

- defense and/or indemnification obligations, including obligations assumed under this contract,
- cross liability for additional insured's,
- products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract,
- explosion, collapse, and underground hazards,
- contractor means and methods,
- liability resulting from Section 240 or Section 241 of the New York State Labor Law.

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 NYS Office of Mental Health 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 polic(ies) shall be primary to, and non-contributing with, any other insurance maintained by the OMH. Any other insurance maintained by the OMH shall be 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.

When the Work involves construction or demolition within 50 feet of rail stations, yards, tracks, or other railroad property, the exclusion for work done within 50 feet of railroad property (the Railroad exclusion) must be deleted. Also see requirements for Railroad Protective Liability insurance.

2. Workers' Compensation For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Workers' Compensation Law.

If the Agreement involves work on or near a shoreline, a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Acts policy as applicable must be provided. Any waiver of this requirement must be approved by the

APPENDIX G ADDITIONAL INSURANCE REQUIREMENTS

OMH and will only be granted in unique or unusual circumstances.

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:

- (1) C-105.2– Certificate of Workers' Compensation Insurance (September 2007, or most current version)
- (2) U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund
- (3) GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance.

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

- 3. Disability Benefits** For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement 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 OMH and will only be granted in unique or unusual circumstances.

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

- (1) DB-120.1 (May 2006 or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law.
- (2) DB-155 – Certificate of Disability Self Insurance.

- (3) 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

- 4. Professional Liability** The Professional and any professional sub-consultant retained by the Professional to work on the Contract shall procure and maintain during and for a period of three (3) years after completion of this Contract, Professional Liability Insurance in the amount of (refer to the applicable matrix) issued to and covering damage for liability imposed on the Professional by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract. The professional liability insurance may be issued on a claims-made policy form, in which case the Professional shall purchase at its sole expense, with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

If applicable, the Professional shall provide coverage of the Professional's negligent act, error or omission in rendering or failing to render professional services required by this Contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants.

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APPENDIX I

Consultant Disclosure Form B

In 2006 the NYS State Finance Law was amended to require State contractors who provide consulting services to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor.

In order to comply with this law the contractor must complete the attached Form B. ***This Form will need to be submitted each year by the contractor for each year the contract is in effect. Its purpose is to capture historical information, detailing actual employment data for the most recently concluded State fiscal year, which runs from April 1 – March 31.***

OMH is requesting that Form B be completed and sent to the following three (3) agencies by the close of business on April 30th of each year that this contract is in effect. For contracts that end prior to March 31 of any calendar year, the Form B will be due when submitting the invoice for the final month of services rendered under the contract.

1. By mail: **NYS Office of the State Comptroller**

Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

Or By fax: (518) 474-8030 or (518) 473-8808

2. By mail: **NYS Department of Civil Service**

Alfred E. Smith Office Building
Albany, NY 12239

3. By mail: **NYS Office of Mental Health**

Capital District Psychiatric Center
CBO Procurement Unit
75 New Scotland Avenue
Albany, NY 12208

Instructions for filling out Form B (reference Form A that was submitted with the solicitation packet):

Form B should be completed for contracts for consulting services in accordance with the following:

Scope of Contract: a general classification of the single category that best fits the predominate nature of the services provided under the contract. - **To be completed by the Contractor.**

Employment Category: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.) - **To be completed by the Contractor**

Number of Employees: the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors. – **To be completed by the Contractor**

Number of hours (to be) worked: the total number of hours worked during the Report Period by the employees in the employment category. – **To be completed by the Contractor**

Amount Payable under the Contract: the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period. – **To be completed by the Contractor**

APPENDIX L
SUPPLIER DIVERSITY REQUIREMENTS

1. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS

I. General Provisions

- A. OMH is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Office of Mental Health ("OMH"), to fully comply and cooperate with the OMH in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, OMH hereby establishes an overall goal of **0%** for MWBE participation, **0%** for New York State certified minority-owned business enterprises ("MBE") participation and **0%** for New York State certified women-owned business enterprises ("WBE") participation (collectively, "MWBE Contract Goals") based on the current availability of qualified MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

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

- C. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR § 142.8, the Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the [AGENCY] for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. The Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated thereunder by the Division of Minority and Women's Business Development of the New York

APPENDIX L

State Department of Economic Development (the "Division") and by the provisions of Executive Order #162. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. The Contractor shall comply with the following provisions of Article 15-A:

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

C. Exhibit 7 - Workforce Employment Utilization Report ("Workforce Utilization Report")

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by OMH on a QUARTERLY basis during the term of the contract.
2. Separate forms shall be completed by Contractor and any Subcontractor.
3. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Utilization Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or

APPENDIX L

Subcontractor's total workforce, the Contractor shall submit the Workforce Utilization Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

4. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract of the Workforce Utilization Report on a quarterly basis.
- D. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to OMH, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OMH shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor non-responsiveness.

V. Waivers

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

VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to OMH by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

APPENDIX L

- A. Where OMH determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the OMH liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by OMH, the Contractor shall pay such liquidated damages to the OMH within sixty (60) days after they are assessed by the OMH unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the OMH.

2. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OMH recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OMH contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OMH conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

APPENDIX X

Page 1 of 2

Dept ID: _____ Contract No. Enter Contract Number Contract Description: Enter brief description

Entire Contract Term (including amendment period): _____ Entire Contract Amount for Term: _____

Amendment # _____ Amendment Period: _____ Amendment Amount for Period: _____

This is an AGREEMENT between The State of New York, acting by and through the NYS Office of Mental Health, having its principal office at 44 Holland Avenue, Albany, NY 12229 (hereinafter referred to as the STATE), and Enter Contractor Name (hereinafter referred to as the CONTRACTOR), for modification of the contract as amended for (check all that apply):

☐ Modification of Appendices: Appendix ☐ Addition of Funds ☐ Extension for Time ☐ Other: Describe

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR:

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Must complete the Individual, Corporation, Partnership, or LLC Acknowledgement page and have it notarized

STATE AGENCY: NYS Office of Mental Health

Printed Name: _____ Title: _____

Signature: _____ Date: _____

State Agency Certification

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

"No information that may negatively impact the contractor's responsibility has come to the agency's attention and OMH has reasonable assurance that the contractor continues to be responsible"

CIVIL SERVICE APPROVAL (If Required)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

Contract Number: T103047

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGEMENT

STATE OF _____)
 County of _____) SS:

On this ____ day of _____, 20____, before me personally appeared _____, to me known and known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he/she resides at _____,
 Town of _____,
 County of _____,
 State of _____; and further that:

[CHECK ONE]

☐ **If an Individual**): he/she executed the foregoing instrument in his/her name and on his/her own behalf.

☐ **If a Corporation**): he/she is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he/she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ **If a Partnership**): he/she is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he/she is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ **If a Limited Liability company**): he/she is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that, he/she is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

 Notary Public

Registration Number: _____ **State of** _____

EXHIBIT 7
EQUAL EMPLOYMENT OPPORTUNITY WORKFORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT

Contract No.: OMH01-T103047-3650000	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Reporting Period: <input type="checkbox"/> January 1, 20__ - March 31, 20__ <input type="checkbox"/> April 1, 20__ - June 30, 20__ <input type="checkbox"/> July 1, 20__ - September 30, 20__ <input type="checkbox"/> October 1, 20__ - December 31, 20__
Offeror's Name: TBD		Report includes: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
Offeror's Address: TBD		

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification													
		Male (M)	Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)	
Officials/Administrators																	
Professionals																	
Technicians																	
Service Maintenance Workers																	
Office/Clerical																	
Skilled Craft Workers																	
Paraprofessionals																	
Protective Service Workers																	
Totals																	

PREPARED BY (Signature):	TELEPHONE NO.: EMAIL ADDRESS:	DATE:
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EXHIBIT 7
EQUAL EMPLOYMENT OPPORTUNITY
WORK FORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT

Instructions for Submitting the Workforce Utilization Report

The Workforce Utilization Report ("Report") is to be submitted on a monthly basis for construction contracts¹, and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total workforce, information on the contractor's and/or subcontractor's total workforce may be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to SupplierDiversity@omh.ny.gov within ten (10) days following the end of each month or quarter, whichever is applicable.

Instructions for Completing the Workforce Utilization Report

1. **REPORTING ENTITY:** Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. **FEDERAL EMPLOYER IDENTIFICATION NUMBER:** Enter the Federal Employer Identification Number (FEIN) assigned by the IRS. Contractors utilizing their social security number in lieu of an FEIN should leave this field blank.
3. **CONTRACTOR NAME and CONTRACTOR ADDRESS:** Enter the primary business address for the entity completing the Report.
4. **CONTRACT NUMBER:** Enter the number of the contract to which the Report applies.
5. **REPORTING PERIOD:** Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report. Only select one box.
6. **WORKFORCE IDENTIFIED IN REPORT:** Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor's or subcontractor's total workforce.
7. **OCCUPATION CLASSIFICATIONS and SOC JOB TITLE:** Select the occupation classification and job title that best describes each group of employees performing work on the state contract under columns A and B.
8. **EEO JOB TITLE and SOC CODE:** These fields will populate automatically based upon the Occupation Classifications and SOC Job Titles selected. Do not modify the results generated in these fields.
9. **NUMBER OF EMPLOYEES and NUMBER OF HOURS:** Enter the number of employees and total number of hours worked by such employees for each job title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
10. **TOTAL GROSS WAGES: [TO BE REPORTED QUARTERLY]** Enter the total gross wages paid to all employees for each job code, and each gender and racial/ethnic group, identified in the Report. Contractors and subcontractors should report only gross wages for work on the contract paid to employees during the period covered by the Report. "Gross wages" are those reported by employers to employees on their wage statements. Gross wages are defined more specifically by 20 NYCRR §2380.4 and typically include every form of compensation for employment paid by an employer to his, her or its employees, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, tips and the reasonable value of board, rent, housing, lodging or similar advantage received.
11. **PREPARER'S INFORMATION:** Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

Race/Ethnic Identification

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group with which he or she most closely identifies. No person may be counted in more than one race/ethnic group. In determining an employee's race or ethnicity, a contractor may rely upon an employee's self-identification, employment records, or, in cases where an employee refuses to identify his or her race or identity, observer identification. The race/ethnic categories for this Report are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Resources

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact SupplierDiversity@omh.ny.gov.

¹ The Gross Wages column is only required to be completed on a quarterly basis commencing 1/1/2018.

[illegible]

EXHIBIT 9
NYS Form AC3257-S
CLAIM FOR TRAVEL REIMBURSEMENT BY A NON-EMPLOYEE

<small>AC3257-S (Effective 1/12)</small>				
State of New York		<h2 style="margin: 0;">CLAIM FOR TRAVEL REIMBURSEMENT BY A NON-EMPLOYEE</h2>		
Agency traveled for				
Vendor ID		Vendor Name		
Last Name		First Name		MI
Address				
City			State	Zip
Business Purpose		Travel Destination		
Travel Start Date and Time		Travel End Date and Time		
Travel Description				
Indicate All Expenses – If more space is required in any section, use the associated detail form (number shown in parentheses below)				Totals
Lodging				
Transportation (AC3259-S)				
Meals (AC3258-S)				
Mileage Claimed (AC160-S) <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 100px;"> miles @ ¢ per mile = </div>				
Incidental Expenses – List (AC3259-S)				
Total Amount Claimed				
<p style="text-align: center; margin: 0;">Vendor's Certification</p> <p style="margin: 5px 0;">I certify that the above bill is just, true and correct; that no part thereof has been paid except as stated and that the balance is actually due and owing, and that taxes from which the State is exempt are excluded.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 33%; border-bottom: 1px solid black; text-align: center;">Signature</div> <div style="width: 33%; border-bottom: 1px solid black; text-align: center;">Title</div> <div style="width: 33%; border-bottom: 1px solid black; text-align: center;">Date</div> </div>				