

New Yorkers
VOLUNTEER

Susan K. Stern
Chair



Andrew M. Cuomo
Governor



Gladys Carrión, Esq.
Commissioner



**2014 New York State
AmeriCorps Request for Proposals**

Cost Reimbursement, Education Award, & Fixed-Cost Grant Procurement

PART III
New York State Contract Policy Information & Attachments

APPLICATIONS DUE
5:00 PM EST December 10, 2013

New York State Commission on National and Community Service
New York State Office of National and Community Service

PART III - New York State Contract Policy Information & Attachments

Table of Contents

Section One: Contract Policy Information

1.1 Standard Contract Language	3
1.2 Contract Readiness.....	3
1.3 Accessibility of Web Based Information and Applications.....	3
1.4 Contract Management System (CMS)	3
1.5 Charities Registration.	4
1.6 Federal Requirements.....	4
1.7 Vendor Responsibility Requirements.....	4
1.8 Required Electronic Payments and Substitute Form W-9.....	6
1.9 Organizational Chart.....	6
1.10 Minority and/or Women Owned Business Enterprises (M/WBE) – Requirements & Procedures.....	6
1.11 OCFS Rights.....	9
1.12 Iran Divestment Act.....	10
1.13 Criminal History Checks.....	11
1.14 Affirmative Action.....	11
1.15 Omnibus Procurement Act.....	13
1.16 Procedure for Handling of Protests/Appeals of Bid Specifications and Proposed Awards.....	14

Section Two: Appendix

Appendix 1

State of New York Master Contract for Grants.....	16
---	----

Appendix 2

Attachment A: Terms and Conditions.....	42
---	----

Appendix 3

Attachment A-2: Federal Assurances and Certifications.....	47
--	----

Appendix 4

2013 AmeriCorps State & National Grant Provisions (<i>Effective June 2013</i>).....	52
---	----

Appendix 5

Attachment D: Payment and Reporting Terms and Conditions (<i>Revised October, 2011</i>).....	70
--	----

Appendix 6

Attachment MWBE: Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures (<i>July 2012</i>).....	75
---	----



1.1 Standard Contract Language

The terms and conditions for all funded projects are specified in a detailed contract that must be signed by OCFS and approved by the Attorney General and the Office of the State Comptroller before any work is begun or payments made. This RFP includes all relevant contract terms and conditions which can be found in Part III Attachments. Upon contract award and completion of negotiations, OCFS will send successful applicants the complete contract for development and signature prior to submitting it to the Attorney General's Office and the Office of the State Comptroller for execution. See Section II of this Part of the RFP for all attachments and appendices included in this RFP.

1.2 Contract Readiness

The State's Prompt Contracting and Vendor Responsibility provisions require all State agencies to complete contract development and the signatory process within State prescribed timeframes. It is expected that this process will be expedited and awardees will need to be available and prepared to respond within required timeframes. If selected, awardees may be required to travel to Rensselaer for contract development and will need to cover the costs of that travel. Awardees who cannot meet prescribed timeframes for contract development and/or signature will, at OCFS discretion, and barring extenuating circumstances, lose funds awarded.

Prior to submitting an application for funding, applicants are responsible for various verifications which validate their capacity and organizational authority to receive public funding and operate as a not-for-profit corporation in the State of New York, or both. Recipients of grants must be registered in the New York Statewide Financial System (SFS) Central Vendor Registry File and provide their Identification Number at the time of contracting. To register and for additional information on the Vendor File, visit: http://www.osc.state.ny.us/vendor_management/index.htm

Not-for-profit vendors must be registered with the Attorney General's Office as a charitable organization, and the registration must be up to date at the time of contracting. Vendors must be sure all their documents are up to date and comply with the Vendor Responsibility requirements as outlined below. To determine the status of your Charities Registration information, contact: http://bartlett.oag.state.ny.us/Char_Forms/search_charities.jsp

1.3 Accessibility of Web Based Information and Applications

Any web-based intranet and Internet information and applications development, or programming delivered pursuant this procurement must comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and Internet information and applications are accessible to persons with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by OCFS and the results of such testing must be satisfactory to OCFS before web content will be considered a qualified deliverable under the contract or procurement.

1.4 Contract Management System (CMS)

OCFS has developed a comprehensive, web-based Contract Management System (CMS) providing technology that automates the contract development, claiming, and program reporting process. Vendors awarded contracts under this procurement may develop and electronically sign contracts through CMS. The opportunity to submit claims and program reports online is also available to CMS users. All vendors are required to include the *Contract Developer, Contract Signatory, and Claim Signatory Authorization Form* located in *Part II* of this RFP. Vendors opting to use CMS must complete the entire form, while all others may leave the section at the bottom blank. In addition to the Authorization Form, a current Organization Chart that indicates where the organization head or the Chief Administrative Officer and the Contract Developers, Contract Signatories and Claim Signatories appear in relation to the Board of Directors and the organization as a whole must be on file with OCFS, and must be included with the proposal.

A description of CMS, including benefits to vendors, follows: (1) CMS Standardizes the contract development process, automating labor-intensive tasks and providing system edits that reduce common errors; (2) Interactive budget and contract documents streamline the development process. Intuitive screens provide a user-friendly environment; (3) Online claiming functionality allows for expedited payment of claims through use of system edits, elimination of mailing time, and consolidation of all supporting documentation in to one easy to access location; and (4) The system



facilitates prompt contracting and prompt payment thereby making services available to the children and families of New York State in a timely manner. CMS features will permit vendors to do the following online: (1) Develop, manage and electronically sign a contract online; (2) Receive alerts and notifications regarding the status of contract approval; (3) Permit correspondence between the vendor and OCFS; (4) Upload and download contract documents into CMS; (5) Process online budget modifications; (6) Process online claims including both advances and expenditures; (7) Upload supporting documentation for budget modifications and claims; (8) Submit program reports online; (9) Check the status of contracts and payments.

CMS has no hardware requirements. Minimum computer requirements for participating are simply Internet access, Explorer 6.0 and Acrobat Reader 7.0. Acrobat Reader can be obtained free of charge at: <http://get.adobe.com/reader/otherversions/>. For Macintosh users, Safari 3.1 or higher are recommended and can be obtained free of charge at: <http://www.apple.com/support/downloads/safari.html>

1.5 Charities Registration (Not-for-Profit Corporations Only)

Not-for-Profit corporations that submit proposals must comply with Article 7-A of the State Executive Law and the Estates, Powers and Trusts Law, Solicitation and Collection of Funds for Charitable Purposes. The Charities Registration Number or Exemption reason is recorded on the Application Cover Page. See *Part II, Required Forms* of this RFP.

1.6 Federal Requirements

OCFS will be using Federal dollars to fund all or part of this project. The Federal funding requirements are included in the Attachments section of this RFP, and will be included as Appendix A3 Federal Assurances and Certification, of any contract that results from this RFP. A copy of Appendix A3, with a completed and signed Application (See *Part II, Appendix D, Cover Page*) must be returned with the bidder's proposal.

1.7 Vendor Responsibility Requirements

New York State Finance Law requires that State agencies award contracts to responsible contractors including but not limited to not-for-profit and for-profit vendors. Vendor Responsibility will be determined based on the information provided by the bidder on-line through the New York State VendRep System Questionnaire, or through a paper copy of the Vendor Responsibility Questionnaire, and a review of the most recently issued independently audited annual financial statements, that must be included with each bid. OCFS will review the Questionnaire, the audited financial statements and the information provided before making an award.

OCFS reserves the right to reject any proposal if in the sole discretion of OCFS, it determines the bidder is not a responsible vendor, or is not, or may not be, during the life of the contract, a stable financial entity. All proposals are subject to vendor responsibility determination before the award is made and such determination can be revisited at any point up to the final approval of the contract by OSC.

Vendors submitting electronic proposals must file the required Vendor Responsibility Questionnaire online through the State VendRep System at: http://www.osc.state.ny.us/vendrep/info_vrsystem_vendor.htm. Vendors submitting paper proposals are strongly encouraged to file the Questionnaire online, but may choose to complete the Questionnaire in hard copy form.

- If a bidder is completing the Questionnaire on-line through the New York State VendRep System, only a hard copy of the page entitled "Form Overview" needs to be printed and included with the proposal.
- If a bidder chooses to complete a paper copy of the Questionnaire, it must be printed and attached to the proposal, and the Certification page of the form must be signed and notarized. Vendors opting to complete a paper Questionnaire must contact (name of Program staff contact and phone number) or email at (application address) with (Title of RFP) Vendor Responsibility Questionnaire Request in the subject line.

Vendors are also encouraged to have subcontractors that are substantially involved with the project file the required Vendor Responsibility Questionnaire on line through the New York State VendRep System, to provide for complete information.



Prior to executing a subcontract agreement the Contractor agrees to provide the information required by OCFS, to determine whether a proposed Subcontractor is a responsible vendor.

To enroll in and use the New York State VendRep System, all vendors may view the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <http://www.osc.state.ny.us/vendrep/index.htm>.

Vendors must provide their New York State vendor Identification Number when enrolling. To request assignment of a Vendor Identification Number or for direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

The Online VendRep System offers the following benefits:

- The Questionnaire is valid for all State agencies and only needs to be completed once every six (6) months, unless there is a change in the Questionnaire responses.
- Ease of completion, filing, access to and submission of the Questionnaire. Efficiencies are multiplied for vendors who bid and contract with the State frequently or with multiple State agencies.
- Questionnaire updates are easily filed by updating only those responses that require change from the previously saved Questionnaire. (As opposed to a paper copy where a new Questionnaire is required each time there is change.)
- The stored questionnaire information eliminates the need to re-enter data for each subsequent questionnaire submission.
- Reduction of costs associated with paper documents including copying, delivery and filing.
- On-line Questionnaire information is secure and accessible to authorized vendor users only. State agencies can only view certified and finalized Questionnaires.
- VendRep question prompts ensure that the correct forms are completed.
- The VendRep On-Line System contains links to all definitions of the terms used in the Questionnaire.

Vendors opting to complete a paper Questionnaire, can access the Questionnaire by clicking the following link: <http://www.ocfs.state.ny.us/main/forms/contracts/>. Please note that there are separate Vendor Responsibility Questionnaires depending on the contractor status. The *Vendor Responsibility Questionnaire Not-For-Profit Business Entity* Form must be used by Not-For-Profit vendors; and the *Vendor Responsibility Questionnaire For-Profit Business Entity* Form must be used by For-Profit vendors.

1.8 Required Electronic Payments and Substitute Form W-9

The Governor's Office of Taxpayer Accountability has issued a directive that all State Agency and Authority contracts, grants and purchase orders executed after February 28, 2010 shall require vendors, contractors and grantees to accept electronic payment (epay).

Additionally as New York State proceeds with implementing the new Statewide Financial System, the Office of the State Comptroller (OSC) is preparing a centralized vendor file. To assist OSC in this project, vendors are directed to provide a Substitute Form W-9 which includes the taxpayer identification number, business name, and business contact person. This data is critical to ensure the vendor file contains information State Agencies need to contract with and pay vendors.

Please note that the contractor payee name and address provided to OSC for the epay program must match exactly the contractor name and address contained in the contractor's contract with the New York State Office of Children and Family Services. If these do not match, then a check is printed and mailed to the payee. Note that limited exemptions may be granted for extenuating circumstances.

Vendors should also file a Substitute Form W-9 with their Electronic Payment Authorization Form.

More information concerning these new requirements, including forms and contacts for questions, can be found at the following links:



<http://www.osc.state.ny.us/agencies/gbull/g240.htm>
<http://www.osc.state.ny.us/epay/how.htm>

1.9 Organizational Chart

The bid must include a current Organization Chart that depicts the entire organization structure and indicates where the organization head or the Chief Administrative Officer and the Contract Developers, Contract Signatories and Claim Signatories appear in relation to the Board of Directors and the organization as a whole.

1.10 Minority and Women-Owned Business Enterprises (MWBE) – Requirements & Procedures

This section outlines Contractor requirements and procedures for business participation opportunities for New York State certified Minority and Women-Owned Business Enterprises (MWBE), and equal opportunities for minority group members and women. See Part 2 of this RFP for further information relating to the required Forms outlined in this section.

New York State Law

Pursuant to New York State Executive Law Article 15-A, The New York State Office of Children and Family Services (OCFS) recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises and the employment of minority group members and women in the performance of OCFS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OCFS establishes goals for maximum feasible participation of New York State Certified minority and women – owned business enterprises ("MWBE") and the employment of minority group members and women in the performance of New York State contracts. In order to be recognized as a certified MWBE, a vendor must be for-profit and certified by Empire State Development.

Business Participation Opportunities for MWBEs – OCFS Established Goals

For purposes of this solicitation, OCFS hereby establishes an overall goal of 22.5% for MWBE participation, 9.5% for Minority-Owned Business Enterprises ("MBE") participation and 13% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract, and Contractor agrees that OCFS may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>. For guidance on how OCFS will determine a Contractor's "good faith efforts", refer to 5 NYCRR §142.8 at the following website: http://www.esd.ny.gov/MWBE/Data/122210_MWBE15-ARegs.pdf

In accordance with 5 NYCRR §142.13 (Provisions in Contracts; Violations), 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 finding constitutes a breach of Contract and OCFS may withhold or recover payment from the Contractor as liquidated or other damages, as well as impose other such remedies as determined necessary. Such liquidated damages shall be calculated up to 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.

Required Documentation



It is expected that all Contractors make a good-faith effort to utilize Minority and/or Women Owned Businesses M/WBEs when there is an opportunity to subcontract or purchase supplies to carry out a contract with the New York State Office of Children and Family Services.

By submitting this proposal, Bidder agrees to complete and submit the following forms, documents and/or information, as required, as evidence of compliance with the foregoing:

- OCFS-4631 – Subcontracting/Suppliers Utilization Form
Submit with proposal - Any modifications or changes to the Subcontracting/Suppliers Utilization Form after a Contract is awarded and/or during the term of a Contract must be reported on a revised Subcontracting/Suppliers Utilization Form and submitted to (Program contact name, division and bureau, address). At the proposal stage, OCFS will review the submitted OCFS-4631 – Subcontracting/Suppliers Utilization Form and, if warranted, issue the Bidder a “Notice of Deficiency” within 30 days of receipt.
- Notice of Deficiency (If warranted by OCFS)
A Notice of Deficiency is issued to the Bidder, if warranted by OCFS, after OCFS’ review of the completed OCFS-4631 – Subcontracting/Suppliers Utilization Form. If OCFS issues a Notice of Deficiency, the Bidder shall respond to the Notice within seven (7) business days of receipt, by submitting a written remedy to (Program contact name, division and bureau, address). If the written remedy submitted is not timely or is found by OCFS to be inadequate, OCFS shall notify and direct the Bidder to submit an OCFS-4442 - MWBE Request for Waiver Form within five (5) business days, requesting either a partial or total waiver of MWBE participation goals. Failure to file the Request for Waiver Form in a timely manner may be grounds for disqualification of the bid or proposal.
- OCFS-4442 - MWBE Request for Waiver Form (if requested by OCFS)
Submit at request of OCFS - This form should be completed and submitted by the Bidder only at the request of OCFS, and only after a determination has been made deeming it necessary, as noted above.
- OCFS-4630 - Subcontractors and Suppliers Letter of Intent to Participate Form
Submit with proposal – This form is to be completed by the proposed M/WBE Subcontractors/Suppliers, and attached to the OCFS-4631 – Subcontracting/Suppliers Utilization Form for each certified Minority or Women-Owned Business Enterprise the Bidder proposes to utilize as subcontractors, service providers or suppliers. If the MBE or WBE proposed for a portion of this proposal/contract is a part of a joint venture or other temporarily-formed business arrangement, the name and address of the joint venture or the temporarily formed business entity should be indicated. If the subcontractors/suppliers are unknown at the time of the proposal, enter Prime Contractor Information and write “unknown” in the “subcontractor/supplier” section
- OCFS-4629 - Project Staffing Plan Form
Submit with proposal - This form should be completed by the Bidder and submitted as part of their proposal identifying the anticipated work force to be utilized on the Contract. Any modifications or changes to the Project Staffing Plan Form after a Contract is awarded must be reported on a revised Project Staffing Plan Form, on a quarterly basis, and submitted to (Program contact name, division and bureau, address). If there are no personal service dollars committed to the contract then the Project Staffing Plan form is not required.
- OCFS-4441 - MWBE Quarterly Report Form
This form applies to contract awardees only and should be completed by Contractor and submitted to (Program contact name, division and bureau, address) within 10 days following the end of each applicable reporting quarter.
- OCFS-3460 – MWBE – Equal Employment Opportunity Policy Statement
This form applies to contract awardees only. If awarded the contract, per the provisions of Article 15-A, the contractor, will be required to submit an EEO policy statement to OCFS. More information on the EEO Policy Statement can be found in Appendix MWBE, located in Part III: Section 6 of this RFP.



OCFS may disqualify a Bidder as being non-responsive if a Bidder fails to submit the following documents:

- OCFS-4631 - Subcontracting/Supplier Utilization Form;
- Response (written remedy) to a Notice of Deficiency;
- OCFS-4442 - MWBE Request for Waiver Form;

OR

- If OCFS determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its Subcontracting/Suppliers Utilization Form, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements may be submitted to OCFS at any time during the term of the Contract, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit an OCFS-4441 - MWBE Quarterly Report Form by the 10th day following each end of quarter, over the term of the Contract, documenting the progress made toward achievement of the MWBE goals of the Contract. The form should be submitted to (Program contact name, division and bureau, address).

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A, including Clause 12 - Equal Employment Opportunities for Minorities and Women, and Appendix MWBE. The Contractor is required to ensure that any subcontractors awarded a subcontract over \$100,000 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, shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

If awarded the contract, per the provisions of Article 15-A, the contractor, will be required to submit an EEO policy statement to OCFS.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

1.11 OCFS Rights

OCFS Reserves the right to:

1. Place a monetary cap on the funding amount made in each contract award.
2. Change any of the schedule dates stated in this RFP.
3. Request all bidders who submitted proposals to present supplemental information clarifying their proposals either in writing or by formal presentation.
4. Require that bidders demonstrate, to the satisfaction of the OCFS, any feature(s) present as a part of their proposal which may include an oral presentation of their proposal, and may be considered in the evaluation of the proposal.
5. Direct all bidders who submitted proposals to prepare modifications addressing RFP amendments and/or amend any part of this RFP with notification to all bidders. These actions are without liability to any bidder or other party, for expenses incurred in the preparation of any proposals or modifications submitted in response to this RFP.
6. Make funding decisions that maximize compliance with and address the outcomes identified in this RFP.



7. Fund only one portion, or selected activities, of the selected bidder's proposal; and/or adopt all or part of the selected bidder's proposal based on Federal and State requirements.
8. Eliminate any RFP requirements unmet by all bidders, upon notice to all parties that submitted proposals.
9. Waive procedural technicalities, or modify minor irregularities, in proposals received, after notification to the bidder involved.
10. Correct any arithmetic errors in any proposal, or make typographical corrections to proposals, with the concurrence of the bidder.
11. Negotiate with the selected bidder(s) prior to contract award.
12. Award contract to the next highest bidder, if contract negotiations with the selected bidder(s) cannot be accomplished within an acceptable time frame. No bidder will have any rights against OCFS arising from such actions.
13. Award contracts to more than one bidder, or to other than the lowest bidder.
14. Require that all proposals be held valid for a minimum of 180 days from the closing date for receipt of proposals, unless otherwise expressly provided for in writing.
15. Fund any or all of the proposals received in response to this RFP. However, issuance of this RFP does not commit OCFS to fund any proposals. OCFS can reject any proposals submitted and reserves the right to withdraw or postpone this RFP, without notice, and without liability, to any bidder, or other party, for expenses incurred in the preparation of any proposals submitted in response to this RFP, and may exercise these rights at any time.
16. Use the proposal submitted in response to this RFP as part of an approved contract. At the time of contract development, awardees may be requested to provide additional budget and program information for the final contract.
17. Make additional awards based on the remaining proposals submitted in response to this RFP and/or to provide additional funding to awardees if additional funds become available.
18. Make inquiries of third parties, including but not limited to bidders references, with regard to the applicants' experience, or other matters deemed relevant to the proposal by OCFS. By submitting a proposal in response to this RFP the applicant gives its consent to any inquiry made by OCFS.
19. Require contractors to participate in a formal evaluation of the program to be developed by OCFS. Contractors may be required to collect data for these purposes. The evaluation design will maintain confidentiality of participants and recognize practical constraints of collecting this kind of information.
20. Consider Statewide distribution and regional distribution within New York City, including borough distribution methodology, in evaluating proposals.

1.12 Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies 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" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should OCFS receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, OCFS 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 OCFS shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

OCFS 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.

1.13 National Service Criminal History Checks



To implement the Serve America Act, the Corporation for National and Community Service (CNCS) proposed amendments to its National Service Criminal History Check regulation on July 6, 2011. On October 5, 2012, this final rule was passed. The new rule requires CNCS grantees to conduct and document a National Service Criminal History Check that includes a fingerprint-based FBI criminal history check on individuals in covered positions who begin work, or who start service, on or after April 21, 2011, and who have recurring access to children 17 years of age or younger, to persons age 60 and older, or to individuals with disabilities. Individuals in covered positions include AmeriCorps State and National participants, and other participants, volunteers, or staff funded under a CNCS grant. This final rule is effective January 1, 2013 and can be read in its entirety by clicking on the following link: http://www.nationalserviceresources.org/files/fedregister_final_rule_oct_5_2012.pdf.

1.14 Affirmative Action

It is the policy of OCFS to encourage the employment of qualified applicants/recipients of public assistance by both public organizations and private enterprises who are under contractual agreement to OCFS for the provision of goods and services. OCFS may require the Contractor to demonstrate how the Contractor has complied or will comply with the aforesaid policy.

OCFS is in full accord with the aims and effort of the State of New York to promote equal opportunity for all persons and to promote equality of economic opportunity for minority group members and women who own business enterprises, and to ensure there are no barriers, through active programs, that unreasonably impair access by Minority and Women-Owned Business Enterprises (M/WBE) to State contracting opportunities.

Prospective Offerors to this RFP are subject to the provisions of Article 15-A of the Executive Law and regulations issued thereunder.

1. Contractors and subcontractors shall undertake or continue existing programs of affirmative action 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, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrades, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. Prior to the award of a State contract, the Contractor shall submit an Equal Employment Opportunity (EEO) Policy Statement to the contacting agency within the timeframe established by that agency.
3. The Contractor's EEO Policy Statement shall contain, but not necessarily be limited to, and the Contractor, as a precondition to entering into a valid binding State contract, shall during the performance of the State contract, agree to the following:
 - a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, sexual orientation or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunity without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on State contracts.
 - b) 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, sexual orientation or marital status.
 - c) 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, sexual orientation or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
4. Except for construction contracts, prior to an award of a State contract, the Contractor shall submit to the contracting agency a staffing plan of the anticipated workforce to be utilized on the State contract or, where required, information on the Contractor's total workforce, including apprentices, broken down by specified



- ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the contracting agency. The form of the Staffing Plan shall be supplied by the contracting agency.
5. After an award of a State contract, the Contractor shall submit to the contracting Agency a workforce staffing plan, in a form and manner required by the agency, of the workforce actually utilized on the State contract, broken down by specified ethnic background, gender and Federal Occupational Category or other appropriate categories specified by the contracting agency.
 6. Goals for the utilization of Minority Women Owned Business Enterprises **must be set** for each contract. For purposes of this procurement, the goals for subcontracting and purchasing with Minority and Women Owned businesses are 0% - 5%. Should a Contractor have the ability to subcontract or need to purchase supplies services, or commodities, every effort should be made to subcontract with the purchase from NYS certified Minority and Women-Owned Business Enterprises. It is expected that awardees submit quarterly utilization reports to OCFS to track such expenditures.

In order to assist Contractors with this, the directory of certified businesses, prepared by the Division of Minority and Women's Business Development within the NYS Empire State Development, for use by contractors in complying with the provisions of Executive Law, Article 15-A, and the regulations required pursuant to said Law, will be provided for inspection at OCFS' Office of Minority Program Development.

In order to assist prospective Contractors (Offerors) in their attempts to demonstrate effective affirmative action efforts, OCFS suggests Offerors consider any or all of the following steps while developing their responses to this RFP:

1. Contact all known M/WBEs that may appropriately serve as a subcontractor(s) or a vendor(s) under the contract.
2. Keep a "contact" list of M/WBEs contacted for this particular RFP along with the name of your contact and the result of the contact(s).
3. Use the M/WBEs contacted as a possible resource for additional contacts.

In the event your firm did not obtain the desired results from steps 1-3 above, OCFS suggests that prospective Offerors consider these additional steps (and keep a contact record of the same):

1. Contact area Minority Business Associations, Contractors Associations, Purchase Councils or Professional Organizations serving the area in which the contract will be performed.
2. Contact the NYS Empire State Development, Division of Minority and Women Business Development at (518) 292-5250 or (212) 803-2414 for assistance.
3. Contact OCFS' Office of Equal Opportunity and Diversity Development at (518) 474-3715 in Rensselaer, New York.
4. Contact area community-based organizations that serve the minority community and local elected, appointed, religious or other acknowledged leaders who also may serve as resources.

The above-noted provisions are set forth to aid prospective Offerors who may require assistance in their attempt to comply with OCFS affirmative action initiatives. However, prospective Offerors are at liberty to propose a course of action of their own that is reasonable and accomplishes the aim of the aforementioned provisions.

1.15 Omnibus Procurement Act

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 on the internet at www.empire.state.ny.us For additional information and assistance, contact:

New York State Empire State Development
Procurement Assistance Unit
30 South Pearl Street
Albany, New York 12245



Phone: (518) 292-5250, Fax: (518) 292-5803

OR

633 Third Avenue
New York, New York 10017
Phone: (212) 803-2414, Fax: (212) 803-2459

A directory of minority and women-owned business enterprises is available on the internet at www.empire.state.ny.us. For additional information and assistance, contact either of the above listed offices.

The Omnibus Procurement Act of 1992 requires that by signing a bid proposal, contractors certify that whenever the total bid amount is greater than \$1 million:

1. The contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State.
2. Document their efforts to encourage the participation of New York State business enterprises as suppliers and subcontractors by showing that they have:
 - Solicited bids, in a timely and adequate manner, from New York State Empire State Development business enterprises including certified minority/ women-owned businesses, or
 - Contacted the New York State Empire State Development to obtain listings of New York State business enterprises and MWBEs, or
 - Placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State, or
 - Participated in bidder outreach conferences.
 - If the contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made.
 - If the contractor does not intend to use subcontractors, the contractor shall provide a statement verifying such.
3. The contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-961), as amended.
4. The contractor will be required to notify New York State residents of employment opportunities through listing any such positions with Community Services Division of the New York State Department of Labor, providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The agency agrees to document these efforts and to provide said documentation to OCFS upon request.
5. Bidders located in a foreign country are notified that the State may assign or otherwise transfer offset credits to third parties located in New York State, and the bidders shall be obligated to cooperate with the State in any and all respects in making such assignment or transfer, including, but not limited to, executing any and all documents deemed by the State to be necessary or desirable to effectuate such assignment or transfer, and using their best efforts to obtain the recognition and accession to such assignment or transfer by any applicable foreign government.
6. Bidders are hereby notified that state agencies and authorities are prohibited from entering into contracts with businesses whose principle place of business is located in a discriminatory jurisdiction. "Discriminatory jurisdiction" is defined as a state or political subdivision which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York State business enterprise in the procurement of commodities and services by the same or a non-governmental entity influenced by the same. A list of discriminatory jurisdiction is maintained by the Commissioner of the New York State Empire State Development.

1.16 Procedure for Handling of Protests/Appeals of Bid Requirements and Proposed Awards
(OCFS) Procedure for Handling of Protests/Appeals of Bid Requirements and Proposed Awards

Section 1: Applicability

Section 2: Definitions

Section 3: Informal Complaints or Protests



- Section 4: Formal Protest Procedure
- Section 5: Appeal of Formal Protest Decision

Section 1: Applicability

The intent and purpose of these guidelines is to set forth the procedure to be utilized when an interested party challenges a contract award by OCFS. These guidelines shall apply to all contract awards by OCFS.

Section 2: Definitions

1. "Interested party" means a participant in the procurement process and those whose participation in the procurement process has been foreclosed by OCFS.
2. "Contract award" is a written determination from OCFS to an offeror indicating that OCFS has accepted the offeror's bid or offer.
3. "Protest" shall mean a written challenge to a contract award by OCFS.
4. "Procurement" shall mean any method used to solicit or establish a contract. (i.e. invitation for bid, request for proposal, single/sole source, etc.)
5. "Protesting party" is the party who is filing a protest to the bid, contract award, or other aspect of procurement.

Section 3: Informal Complaints or Protests

In order to reduce the administrative burden and to be responsive to interested parties, other than as provided below, OCFS staff will be receptive to and attempt to resolve issues, inquiries, questions and complaints on an informal basis, whenever possible. Information provided informally by any interested party will be fully reviewed by the OCFS Program Division responsible for the Procurement. Matters that are identified by the interested party as containing, or that OCFS perceives to contain, potentially confidential or trade secret information, may be shared internally within OCFS as necessary. OCFS staff will document the subject matter and results of any informal complaints and inquiries. OCFS' response to the informal complaint or inquiry will indicate the existence of a formal protest policy available to the interested party should the informal process fail to resolve the matter.

Final OCFS determinations or recommendations for award may be reconsidered only in the context of a formal written protest.

Section 4: Formal Protest Procedure

Any interested party who believes that there are errors or omissions in the procurement process, who believes they have been aggrieved in the drafting or issuance of a bid solicitation or who believe they have been treated unfairly in the application, evaluation, bid award, or contract award phases of the procurement, may present a formal protest to OCFS and request administrative relief concerning such action.

A. Submission of Bid or Award Protests

1. Deadline for Submission
 - a. Concerning Alleged Errors, Omissions or Prejudice in the Bid Specifications or Documents: Formal protests which concern alleged errors in the drafting of bid specifications must be received by OCFS at least ten (10) calendar days before the date set in the solicitation for receipt of bids.
 - b. Concerning Proposed Contract Award: Formal protests concerning a pending contract award must be received within five (5) business days after the protesting party knows or should have known of the facts which form the basis of the protest. Formal protests will not be accepted by OCFS concerning a contract award after the contract between OCFS and the offeror who received the contract award has been approved by the Office of the State Comptroller.

B. Review and Final Determination

1. Formal protests must be filed with the OCFS Associate Deputy Commissioner of Administration. Any protests filed with the OCFS Program Division responsible for the procurement will be advanced to the Associate Deputy Commissioner of Administration. Copies of all protests will be provided by the Associate Deputy Commissioner of Administration to the OCFS Division of Legal Affairs and other necessary parties within OCFS, as determined by the Associate Deputy Commissioner of Administration.



2. Formal protests shall be resolved through written correspondence; however, either the protesting party or OCFS may request a meeting to discuss a formal protest. Where further formal resolution is required, the Program Division responsible for the procurement may designate a State employee not involved in the procurement action ("designee") to determine and undertake the initial resolution or settlement of any protest.
3. The OCFS Program Division responsible for the procurement will conduct a review of the records involved in the protest, and provide a memorandum to the Associate Deputy Commissioner of Administration or the Associate Deputy Commissioner's designee summarizing the facts, an analysis of the substance of the protest, and a preliminary recommendation including: (a) an evaluation of the findings and recommendations, (b) the materials presented by the protesting party and/or any materials required of or submitted by other bidders, (c) the results of any consultation with the OCFS Division of Legal Affairs, and (d) a draft response to the protest.
4. A copy of the final protest decision, stating the reason(s) upon which it is based and informing the protesting party of the right to appeal an unfavorable decision to the OCFS Executive Deputy Commissioner shall be sent to the protesting party or its agent within thirty (30) business days of receipt of the protest, except that upon notice to the protesting party such period may be extended. The final protest determination will be recorded and included in the procurement record, or otherwise forwarded to the Office of the State Comptroller (OSC).

C. Appeals

1. The final protest determination shall be deemed a final and conclusive agency determination unless a written notice of appeal is received by the OCFS Executive Deputy Commissioner no more than fifteen (15) business days after the date the final protest decision is sent to the protesting party.
2. The Executive Deputy Commissioner or his or her designee shall hear and make a final determination on all appeals.
3. An appeal may not introduce new facts unless responding to facts or issues unknown to the protesting party prior to the final protest determination.

D. Reservation of Rights and Responsibilities of OCFS

1. OCFS reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State.
2. If OCFS determines that there are compelling circumstances, including the need to proceed immediately with contract award and development of final contracts in the best interests of the State, then these protest procedures may be suspended and such determination shall be documented in the procurement record.
3. OCFS will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action, including solicitation of bids, or withdraw the recommendation of contract award prior to issuance of a formal protest decision.
4. OCFS will continue procurement and contract award activity prior to the final protest determination. The receipt of a formal bid protest will not stop action on the procurement and award of the contract(s) or on development of final contracts
 - a. The procurement record and awarded contract(s) will be forwarded to OSC, and a notice of the receipt of a protest and any appeal will be included in the procurement record. If a final protest determination, or a final decision on an appeal, has been reached prior to transmittal of the procurement record and the contract(s) to OSC, a copy of the final determination or decision will be included in the procurement record and with the contract(s).
 - b. If a final protest determination is made after the transmittal of the procurement record and contract(s) to OSC, but prior to OSC approval, a copy of the final OCFS determination will be forwarded to OSC when issued, along with a letter either: a) confirming the original OCFS recommendation for award(s); b) modifying the proposed award recommendation; or c) withdrawing the original award recommendation.
5. All records related to formal protests and appeals shall be retained for at least one (1) year following resolution of the protest. All other records concerning the procurement shall be retained according to the applicable requirements for records retention

Section 5: Appeal of Formal Protest Decision

If the protesting party is still not satisfied with the result of its protest after conclusion of the appeal to the OCFS Executive Deputy Commissioner, the protesting party may file an appeal with OSC. The protest to the OSC Bureau of Contracts



must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award by OCFS. Such appeal must be filed with the Director of the Bureau of Contracts at the Office of the State Comptroller, 110 State Street, 11th Floor, Albany, NY 12236. For more information see OSC Bulletin G-232: http://www.osc.state.ny.us/agencies/gbull/g_232.htm



APPENDIX 1

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS

STATE AGENCY (Name & Address):		BUSINESS UNIT/DEPT. ID: CONTRACT NUMBER: CONTRACT TYPE: <input type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input type="checkbox"/> Fixed Term Agreement		
CONTRACTOR PRIMARY MAILING ADDRESS: CONTRACT MAILING ADDRESS: Check if same as primary mailing address		PROJECT NAME: AGENCY IDENTIFIER: CFDA NUMBER (Federally Funded Grants Only):		
CURRENT CONTRACT TERM: From: To: CURRENT CONTRACT PERIOD From: To: AMENDED TERM: From: To: AMENDED PERIOD: From: To:		CONTRACT FUNDING AMOUNT (<i>Multi-Year</i> - enter total projected amount of the contract; <i>Fixed-term/Simplified renewal</i> - enter current period amount): CURRENT: AMENDED: SOURCE(S): State Federal Other		
<i>FOR MULTI-YEAR AGREEMENTS ONLY-</i> CONTRACT PERIOD AND FUNDING AMOUNT: (Out years represent projected funding amounts) #	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				
See Attachment B Summary				



STATE OF NEW YORK MASTER CONTRACT FOR GRANTS

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

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

STANDARD TERMS AND CONDITIONS

I. GENERAL PROVISIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds \$50,000 (or \$85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

Budget Changes: An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

C. Order of Precedence:

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-21, Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-22, Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

D. Funding: Funding for the term of the Master Contract shall not exceed the amount specified as "Contract Funding Amount" on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

1 To the extent that the modifications to Attachment A-2 are required by federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

2 To the extent that the terms of Attachment A-2 are required by federal requirements and conflict with other provisions of the Master Contract, the federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).



E. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

F. Modifications: To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

G. Governing Law: The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

H. Severability: Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

I. Interpretation: The headings in the Master Contract 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. The Master Contract 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.

J. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:
 - a) by certified or registered United States mail, return receipt requested;
 - b) by facsimile transmission;
 - c) by personal delivery;
 - d) by expedited delivery service; or
 - e) by e-mail.
2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).
3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).
4. 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 e-mail, upon receipt.
5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Master Contract by giving fifteen (15) calendar days prior 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 the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

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

L. 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 the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master 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 setoff pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.

M. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

N. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Master 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 shall be considered to be 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 State Agency and with the concurrence of OSC, where the original contract was subject to OSC'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 the merged 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 the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

O. Legal Action: No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

P. No Arbitration: Disputes involving the Master 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.

Q. Secular Purpose: Services performed pursuant to the Master Contract 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.

R. Partisan Political Activity and Lobbying: Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

S. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its 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 it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.³

T. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

U. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

V. Federally Funded Grants: All of the Specific federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants) hereto. To the extent that the Master Contract is funded in whole or part with federal funds, (i) the provisions of the Master Contract that conflict with federal rules, federal regulations, or federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable federal 3As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision, rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants) hereto.



II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. **General Renewal:** The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

2. **Renewal Notice to Not-for-Profit Contractors:**

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State's intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

C. Termination:

1. **Grounds:**

a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.

b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.

c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.

d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.

e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.

f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.



2. Notice of Termination:

- a) Service of notice: Written notice of termination shall be sent by:
 - (i) personal messenger service; or
 - (ii) certified mail, return receipt requested and first class mail.
- b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:
 - (i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or
 - (ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. Effect of Notice and Termination on State's Payment Obligations:

- a) 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.
- b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

4. Effect of Termination Based on Misuse or Conversion of State or Federal Property: Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

- a) the repayment to the State of any monies previously paid to the Contractor; or
- b) the return of any real property or equipment purchased under the terms of the Master Contract; or
- c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

D. Suspension: The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.
2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.
3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.
4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.
5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.



6. Timeliness of advance payments or other claims for reimbursement, 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.

7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).

2. Advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page.

3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.

4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.

5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule). Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan). The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan). The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan). The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement: 4 Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event. Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.



e) Fee for Service Reimbursement:⁵ Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:⁶ Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:⁷ The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

h) Fifth Quarter Payments:⁸ Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.

4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.

5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.

6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.

7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded in whole or in part with federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

D. Identifying Information and Privacy Notification:

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, 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 Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to ⁸ Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract. include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. 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 principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This 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.

⁴ A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.

⁵ Fee for Service is a rate established by the Contractor for a service or services rendered.

⁶ Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

⁷ Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

E. Refunds:

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the designated refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).
2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.
2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:
 - a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:
 - (i) *Narrative/Qualitative Report:* The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.
 - (ii) *Statistical/Quantitative Report:* The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)
 - (iii) *Expenditure Report:* The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.
 - (iv) *Final Report:* The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).
 - (v) *Consolidated Fiscal Report (CFR):* The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).
 - b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:
 - (i) *Progress Report:* The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.
 - (ii) *Final Progress Report:* Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule).



Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.
2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State 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. The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.
2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.
2. The Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of \$100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.
3. Prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.



4. When a subcontract equals or exceeds \$100,000, the subcontractor must submit a Vendor Responsibility Questionnaire (Questionnaire).
5. When a subcontract is executed, the Contractor must provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.
6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use Of Material, Equipment, Or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.
2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of \$1,000 or more per unit.
 - a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.
 - b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.
 - c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.
 - d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.
 - e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.
 - f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such property.
 - g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.
2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:
 - a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.
 - b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.
3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants).
4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.
5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. **General:**



- a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).
- b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:
- (i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
 - (ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.
 - (iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
 - (iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
- c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), 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.
- d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law 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 Section 87 of the Public Officers Law, is reasonable.
- e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. Cost Allocation:

- a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.
- b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. Federal Funds: For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants).

F. Confidentiality: The Contractor agrees that it shall use and maintain information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records deemed confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.



2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

- a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and
- b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section V(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional nondiscrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), 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. 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 the Master Contract shall be performed within the State of New York, the 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 the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the 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 the Master Contract. The Contractor shall be subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting State 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 State Agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting State 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 Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;



2. The Contractor 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;
3. The Contractor shall 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
4. At the request of the State, 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 shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and
5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State 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 State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall 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.

K. 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.

1. If the total dollar amount of the Master Contract is greater than \$1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:
 - a) The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and womenowned 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 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 the Master Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:



1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;
2. any debts owed for UI contributions, interest, and/or penalties;
3. the history and results of any audit or investigation; and
4. copies of wage reporting information. Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.
2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.
3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.
4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:
 - a) to require updates or clarifications to the Questionnaire upon written request;
 - b) to inquire about information included in or required information omitted from the Questionnaire;
 - c) to require the Contractor to provide such information to the State within a reasonable timeframe; and
 - d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and
 - e) to require the 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. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.
5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.
6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:
 - a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or
 - b) the State's discovery of any material information which pertains to the Contractor's responsibility.
7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the 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 the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

P. 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.

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

⁹ Not applicable to not-for-profit entities.



APPENDIX 2

Attachment A

PROGRAM SPECIFIC TERMS AND CONDITIONS FOR ALL

NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES (OCFS) CONTRACTS

(05-2013)

A) AGENCY SPECIFIC TERMS AND CONDITIONS

1. PERSONNEL

a. It is the policy of OCFS to encourage the employment of qualified applicants for, or recipients of, public assistance by both public organizations and private enterprises who are under contractual agreement to OCFS for the provision of goods and services. Contractor will be expected to make best efforts in this area.

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

2. GENERAL TERMS AND CONDITIONS

a. The Contractor agrees to comply in all respects with the provisions of this CONTRACT and the attachments thereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the ATTACHMENTS. Any modifications to the tasks or workplan contained in Attachment C must be mutually agreed to by both parties in writing before the additional or modified tasks or workplan shall commence.

b. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize Federal financial participation to OCFS under the Federal Social Security Act, where applicable.

c. If funds from this CONTRACT will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply:

- Opinions prepared by consultant law firms construing the statutes or Constitution of the State of New York do not constitute the view 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, Division of the Appeals and Opinions Bureau, Department of Law, The Capitol, Albany, New York 12224.
- The Contractor shall provide to OCFS in a format provided by OCFS such additional information concerning the provision of legal services as OCFS shall require.

d. OCFS will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this CONTRACT and activities completed or contemplated thereunder. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this CONTRACT shall be directed to the Contract Manager.

e. If additional funds become available for the same purpose as described in the original procurement, OCFS reserves the right to modify the CONTRACT to provide additional funding to the Contractor for provision of additional mutually agreed upon services and/or to extend the provision of services under the CONTRACT. This additional funding can be provided within an existing period, or in conjunction with a change in the original term. Any changes in the amount or changes in period and amount are subject to the approval of OCFS and the Office of the State Comptroller (OSC).

f. All organizations that receive Federal and/or New York State financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal and/or New York State financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program



beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal and/or New York State financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct Federal and/or New York State financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal and/or New York State financial assistance.

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

3. CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

a. The Contractor agrees to safeguard the confidentiality of financial and client information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such financial and client information with regard to services provided under this CONTRACT in conformity with the provisions of applicable State and Federal laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this CONTRACT.

b. Any contractor who will provide goods and/or services to a residential facility or program operated by OCFS agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of OCFS to sign the Confidentiality Non-Disclosure Agreement and Contractor Employee and Volunteer Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of OCFS and/or any financial and/or client identifiable information concerning such youth. Additionally, OCFS will require a database check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) and, at the discretion of OCFS, of the Vulnerable Persons Central Register (VPCR) of each employee and volunteer of the contractor who has the potential for regular and substantial contact with children in the care or custody of OCFS. Any other contractor whose employees and volunteers will have access to financial and/or client identifiable information concerning youth in the care or custody of OCFS agrees to require all such employees and volunteers to sign the Confidentiality Non-Disclosure Agreement before any such employees and volunteers are permitted access to any financial and/or client identifiable information concerning such youth.

4. PUBLICATIONS AND COPYRIGHTS

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

b. All of the license rights so reserved to OCFS and the State of New York under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR 92 if the CONTRACT is federally funded.

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

5. PATENTS AND INVENTIONS

The Contractor agrees that any and all inventions, conceived or first actually reduced to practice in the course of, or under this CONTRACT, or with monies supplied pursuant to this CONTRACT, shall be promptly and fully reported to OCFS. Determination as to ownership and/or disposition of rights to such inventions, including



whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

6. TERMINATION

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

7. FISCAL SANCTION

In accordance with the OCFS Fiscal Sanction policy, Contractors may be placed on fiscal sanction when OCFS identifies any of the following issues:

- The Contractor has received an Advance, overpayment or other funds under this or another CONTRACT that has not been refunded to OCFS within the established timeframe;
- An OCFS, OSC, or other audit identifies significant fiscal irregularities and/or that funds are due to OCFS;
- The Contractor has not provided satisfactory services as required under the terms of this CONTRACT;
- The Contractor has not provided fiscal or program reports as required under the terms of this CONTRACT;
- A local, state or federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the Contractor;
- The Contractor is not in compliance with State or federal statutes or regulations, or applicable OCFS guidelines, policies and/or procedures; or
- Unsafe physical conditions exist at a program site operated by the Contractor and funded under this CONTRACT with OCFS.

Once the Contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or CONTRACT renewals will not be processed until the issues have been satisfactorily resolved. The Contractor will be notified in advance of any proposed Fiscal Sanction and will be provided a timeframe within which the issues must be resolved in order to avoid a Fiscal Sanction. Issues that are not resolved within the timeframe established by OCFS may be referred to the Attorney General (AG) for collection or legal action. If a CONTRACT is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the timeframes established by the AG. The contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest, is paid.

8. PROCUREMENT LOBBYING LAW

The Contractor will comply with all New York State and OCFS procedures relative to the permissible contacts and disclosure of contacts as required by State Finance Law Sections 139-j and 139-k and OCFS procedures and will affirmatively certify that all information provided pursuant to those provisions is complete, true and accurate. This certification is included in the Offerer's Certification and Affirmation of Understanding and CONTRACT pursuant to State Finance Law Sections 139-j and 139-k.

OCFS reserves the right to terminate this CONTRACT if the Offerer's Certification filed by the Contractor in accordance with the New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such a determination by the OCFS, OCFS may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this CONTRACT. Nothing herein shall preclude or otherwise limit OCFS's right to terminate this contact as otherwise set forth in the applicable provisions of this CONTRACT.

9. REQUIRED REPORTS – CONTRACTS FOR CONSULTING SERVICES

If consulting services (including services for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services) are provided, the Contractor must submit on or before May 15th of each year for the annual period ending March 31st, Form OCFS-4843, State Consultant Services – Contractor's Annual Employment Record. This form must report information for all employees who provided services under the CONTRACT whether employed by the Contractor or a subcontractor. This form will be available for public inspection and copying under the Freedom of Information Law with any individual employee names and social security numbers redacted.



Contractors can obtain this form from their Contract Manager or through the Internet at the following site:
<http://www.ocfs.state.ny.us/main/Forms/Contracts/OCFS-4843%20State%20Consultant%20Services-Contractors%20Annual%20Employment%20Record.doc>

The Contractor must submit a completed Form OCFS-4843, State Consultant Services – Contractor’s Annual Employment Record, to each of the following addresses:

New York State Office of Children and Family Services
Bureau of Contract Management
52 Washington Street, South Building, Room 202
Rensselaer, New York 12144

New York State Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, New York 12236
Attn: Consultant Reporting

New York State Department of Civil Service
Alfred E. Smith Office Building
8th Floor Counsel’s Office
Albany, New York 12239

10. IRAN DIVESTMENT ACT

By entering into this CONTRACT, Contractor certifies 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” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such 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 the CONTRACT will be required to certify that it is not on the Prohibited Entities List before OCFS may approve a request for Assignment of CONTRACT.

During the term of the CONTRACT, should OCFS receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, OCFS 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 OCFS shall take such action as may be appropriate and provided for by law, rule, or CONTRACT, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

OCFS reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the CONTRACT, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

11. ADDITIONAL ASSURANCES

a. Expectation of Insured: The Contractor, if a municipal corporation, represents that it is a self-insured entity. If a not-for-profit corporation or entity other than a self-insured municipal corporation, the Contractor agrees to obtain and maintain in effect a general policy of liability insurance in an appropriate amount. The Contractor agrees that it will require any and all Subcontractors with whom it subcontracts pursuant to this CONTRACT to obtain and maintain a general policy of liability insurance in an appropriate amount.

b. Notwithstanding the provisions of Article 14 of this CONTRACT, to the extent the contractor provides health care and treatment or professional consultation to residents of facilities operated by OCFS, in conformance with Executive Law §522 the provisions of paragraphs A, B and C of Article 14 (Article 14 A., B. and C.) shall not apply. In such cases, the provisions of Public Officers Law §17, to the extent provided by Executive Law §522, shall apply instead.

12. EXECUTIVE ORDER NUMBER 38

Executive Order Number 38 sets Limits on State-Funded Administrative Costs & Executive Compensation. Contracts, payment requests and reporting must comply with the regulations promulgated pursuant to this Executive Order. The Order can be found at the following website address:
<https://www.governor.ny.gov/executiveorder/38>



13. MINORITY AND WOMEN-OWNED BUSINESS (M/WBE)

Pursuant to New York State Executive Law Article 15-A, OCFS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority and Women-Owned Business Enterprises (M/WBE) and Equal Employment Opportunities (EEO) for minority group members and women in the performance of OCFS contracts. Accordingly, information regarding OCFS' target goals for M/WBE participation in contracting activities as well as guidelines for Prime Contractor responsibilities pursuant to this law are outlined in [Appendix M/WBE](#) entitled "Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures". Included in this document are links to the forms and instructions required as a part of this program.

c. If funds from this CONTRACT will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply:

- Opinions prepared by consultant law firms construing the statutes or Constitution of the State of New York do not constitute the view 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, Division of the Appeals and Opinions Bureau, Department of Law, The Capitol, Albany, New York 12224.
- The Contractor shall provide to OCFS in a format provided by OCFS such additional information concerning the provision of legal services as OCFS shall require.

d. OCFS will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this CONTRACT and activities completed or contemplated thereunder. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this CONTRACT shall be directed to the Contract Manager.



APPENDIX 3

Attachment A-2 Federally Funded Grants Rev. 6/15/11 Federal Assurances and Certifications

Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Office of Family and Children Services.

By signing and submitting this application, contract or contract amendment an authorized representative of the applicant or contractor asserts that the applicant or contractor:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Executive Order Number 11246 as amended by E.O. 11375 relating to Equal Employment Opportunity, which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding



labor standards for federally assisted construction sub-agreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93- 205).

12. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

13. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

14. This contract is funded in whole or part with federal funds under the CDFA No(s) shown on the first page of Appendix C or Appendix X for renewals. OCFS is a pass - through entity of these federal funds. As a recipient of these federal funds, the Contractor may be determined, as shown on the first page of Appendix C or Appendix X for renewals, to be a sub-recipient of federal assistance. Sub-recipients of federal funds have the responsibility of reporting to OCFS in addition to the sub-recipient's responsibility to file reports with the federal clearinghouse designated by Office of Management and Budget (OMB). If this contract will require the Contractor to expend \$500,000 or more of federal funds from this contract or in total with other contracts or grants of federal funds or assistance in the Contractor's fiscal year, regardless of the source of the funding, the Contractor is required to comply with the terms and provisions of the OMB Circular A-133. The Contractor will notify OCFS if it reasonably expects to expend the sum of \$500,000 of federally derived funds, in its fiscal year, as soon as it has notice of awards, grants or contracts totaling \$500,000 in federal funds but in no event later than the close of the calendar year. The Contractor will have an audit performed pursuant to the requirements of OMB Circular A-133 and provide OCFS with the required reports within 30 days of the Contractor's receipt of the independent audit report or within 9 months after the close of the Contractor's fiscal year, whichever event is sooner.

15. Certifies that Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The contractor/grantee further agrees that it will require the language of this certification be included in any sub-awards which contain provisions of children's services and all subgrantees shall certify accordingly.

16A. 1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below. 2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. 3. For grantees other than individuals, Alternate I applies. For grantees who are individuals, Alternate II applies. 5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in



its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements. 6. Workplace identifications must include the actual address of buildings (or parts of buildings) or sites where work under the grant takes place. Categorical descriptions may be used (e.g. all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). 7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five). 8. Definitions of terms in the Non-procurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules: Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes; Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance; Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g. volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of sub-recipients or subcontractors in covered workplaces).

16B. Alternate I (Grantees Other Than Individuals). 1. The grantee certifies that the applicant will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (b) Establishing an ongoing drug-free awareness program to inform employees about: (1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a) above; (d) Notifying the employee in the statement required by paragraph (a) above, that, as a condition of employment under the grant, the employee will-(1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for violation of a criminal drug status occurring in the workplace no later than five calendar days after such conviction; (e) Notify the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant; (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f). For purposes of paragraph (e) regarding agency notification of criminal drug convictions, the DHHS has designated the following central point for receipt of such notices: Division of Grants Policy and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C., 20201.

16C. Alternate II (Grantees Who Are Individuals). 1. The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; 2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

17. Certifies that Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a



Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (non-appropriated) funds. The requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93). The undersigned (authorized official signing for the applicant organization) certifies, to the best of his or her knowledge and belief that: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its instructions, and continuation sheet are included at the end of this application form.) (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

18A1. Agrees that, a) By signing and submitting this proposal, the prospective primary applicant is providing the certification set out below. b) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. c) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. d) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. e) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Office of Children and Family Services for assistance in obtaining a copy of those regulations. f) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. g) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction" provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. h) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs. i) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. j) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

18A2. (1) Certifies to the best of its knowledge and belief, that the applicant and its principals: a) Are not presently debarred,



suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency; b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 19A. 2. (1) b) of this certification; and d) Have not within a three-year period preceding this application/proposal had on or more public transactions (Federal, State, or local) terminated for cause or default. (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

18B.1 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions Instructions for Certification. a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below. b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. c) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances. d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.

Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs. h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. i) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

18B.2 a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.



APPENDIX 4

2013 AMERICORPS STATE and NATIONAL GRANT PROVISIONS Effective June 1, 2013

These Corporation for National & Community Service (CNCS) AmeriCorps State and National Grant Provisions are **binding on the grantee**. By accepting funds under this grant, the grantee agrees to comply with, and include in all subgrants, the AmeriCorps State and National Grant Provisions, all applicable federal statutes, regulations and guidelines, and any amendments thereto. The grantee agrees to operate the funded program in accordance with the approved grant application and budget, supporting documents, and other representations made in support of the approved grant application. The term grantee is used to connote either grantee or subgrantee, as appropriate, throughout these Provisions.

TABLE OF CONTENTS

- I. Changes from the 2012 AmeriCorps Grant Provisions
- II. Legislative and Regulatory Authority
- III. Other Applicable Statutory and Administrative Provisions
 - A. States, Indian Tribes, U.S. Territories, and Local Governments
 - B. Nonprofit Organizations
 - C. Educational Institutions
 - D. Other Applicable Statutes and Regulations
 - E. Exemptions for Fixed Amount Grants
 - F. Order of Precedence
- IV. AmeriCorps Special Provisions
 - A. Definitions
 - B. Affiliation with the AmeriCorps National Service Network
 - C. Member Recruitment, Selection, and Exit
 - D. Supervision and Support
 - E. Changes in Member Terms of Service or Program Slots
 - F. Release from Participation
 - G. Living Allowances, Other In-Service Benefits, and Taxes
 - H. Member Records and Confidentiality
 - I. Budget and Programmatic Changes
 - J. Reporting Requirements
 - K. Grant Period and Incremental Funding
- V. General Provisions
 - A. Responsibilities under Grant Administration
 - B. Financial Management Standards
 - C. The Office of Inspector General
 - D. Program Income
 - E. Safety
 - F. Non-Discrimination Public Notice and Records Compliance
 - G. Grants Products
 - H. Suspension or Termination of Grant
 - I. Fixed Amount Awards
 - J. Trafficking in Persons
 - K. Central Contractor Registration and Universal Identifier Requirements
 - L. Transparency Act Award Term (for grants & cooperative agreements of \$25,000 or more)
- VI. Attachment: Grant Program Civil Rights and Non-Harassment Policy



I. CHANGES FROM THE 2012 AMERICORPS GRANT PROVISIONS

For your convenience, we have identified some changes from last year's AmeriCorps State and National grant provisions. The list below is general and informational in nature, not comprehensive. We reiterate the importance of reviewing all grant provisions, because grantees are responsible for knowing, understanding, and complying with all grant provisions.

1. Section IV.B. – Strengthened the language requiring programs to identify themselves as AmeriCorps programs.
2. Section IV.C.5. – Moved the section on Timekeeping to Section IV.D.6.
3. Section IV.D.2. – Added two additional requirements for contents of the Member Service Agreement
4. Section IV.E.2. – Added the exception that Fixed Amount grantees cannot change slot types.
5. Section IV.E.3.c. – Clarified the definition of grantees eligible to refill slots.
6. Section IV.H.4. – Added a section 4 citing the location of the revised Criminal History Check regulations and describing documentation requirements for the National Sex Offender check.
7. Section IV.I.1. – Added a section to provide more flexibility to programs to respond to disasters.
8. Section IV.J.3 – Updated the requirement for the Reporting of Other Federal Funds to include an earlier submission date if the final financial report is due prior to October 31st.
9. Section IV.K. – Updated the section on incremental funding to clarify the CNCS role in making funding decisions on continuation grants.
10. Section V.B.4 – Removed the cap on consultant services.
11. Section V.G.2. – Strengthened the requirement to display the AmeriCorps logo in Grant Products
12. Section V.I. – Clarified the amount of funds drawn on fixed amount awards.
13. Replaced the 2012 Civil Rights and Non-Harassment Policy with the 2013 Policy

II. LEGISLATIVE AND REGULATORY AUTHORITY

This grant is authorized by and subject to the National and Community Service Act of 1990, as amended by the Serve America Act, (42 U.S.C. 12501 *et seq.*) (NCSA) and the implementing regulations at 45 CFR Chapter XXV. Grantees must comply with the requirements of the NCSA and its implementing regulations.

III. OTHER APPLICABLE STATUTORY AND ADMINISTRATIVE PROVISIONS

The following applicable federal cost principles, administrative requirements and audit requirements are incorporated by reference:

A. STATES, INDIAN TRIBES, U.S. TERRITORIES, AND LOCAL GOVERNMENTS

The following circulars and their implementing regulations apply to states, Indian tribes, U.S. territories, and local governments:

1. OMB Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments – 45 CFR Part 2541.
2. OMB Circular A-87, Cost Principles for State and Local Governments – 2 CFR Part 225.
3. OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

Fixed Amount grants are exempt from OMB Circular A-87, Cost Principles for State and Local Governments – 2 CFR Part 225.

B. NONPROFIT ORGANIZATIONS

The following circulars and their implementing regulations apply to nonprofit organizations:

1. OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations – 45 CFR Part 2543 or 2 CFR Part 215.
2. OMB Circular A-122, Cost Principles for Nonprofit Organizations – 2 CFR Part 230.
3. OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

Fixed Amount grants are exempt from OMB Circular A-122, Cost Principles for Nonprofit Organizations - 2 CFR Part 230.

C. EDUCATIONAL INSTITUTIONS

The following circulars and their implementing regulations apply to educational institutions:

1. OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations – 45 CFR Part 2543 or 2 CFR Part 215.



2. OMB Circular A-21, Cost Principles for Educational Institutions – 2 CFR Part 220.

3. OMB Circular A-133, Audits of States, Local Governments and Nonprofit Organizations.

Fixed Amount grants are exempt from OMB Circular A-21, Cost Principles for Educational Institutions – 2 CFR Part 220.

These documents can be found here: www.whitehouse.gov/omb/financial_offm_circulars/.

D. OTHER APPLICABLE STATUTES AND REGULATIONS

The grantee must comply with all other applicable statutes, executive orders, regulations, and policies governing the grant, including, but not limited to, those cited in these Grant Provisions, the Grant Assurances and Certifications, and those cited in 45 CFR Parts 2541 and 2543.

E. EXEMPTIONS FOR FIXED AMOUNT GRANTS

Fixed Amount grants are exempt from the Cost Principles. (See above for the exemptions.) Fixed Amount grants must comply with OMB Circular A-133 and the Uniform Administrative Requirements. Fixed Amount grants include Education Award program (EAP) Fixed Amount grants, Professional Corps Fixed Amount grants, and Full-Cost Fixed Amount grants.

F. ORDER OF PRECEDENCE

Any inconsistency in the Grant Award shall be resolved by giving precedence in the following order (a) applicable Federal statutes, (b) applicable Federal regulations, (c) CNCS Grant Special Provisions, (d) CNCS Grant General Provisions, (e) the Notice of Funding Opportunity, and (f) the approved Grant Application including all assurances, certifications, attachments, and pre-award negotiations.

IV. AMERICORPS SPECIAL PROVISIONS

A. DEFINITIONS

For purposes of this grant the following definitions apply:

1. **Grantee**, for the purposes of this agreement, means the direct recipient of this grant. The grantee is legally accountable to the CNCS for the use of grant funds and is bound by the provisions of the grant. The grantee is responsible for ensuring that subgrantees or other organizations carrying out activities under this award comply with all applicable Federal requirements, including these provisions, regulations and OMB circulars incorporated by reference.

2. **Subgrantee** refers to an organization receiving AmeriCorps grant funds or member positions from a grantee of the CNCS. See 2 CFR § 215.5 and 45 CFR § 2453.5, and 45 CFR § 2541.370.

3. **Operating site** means the organization that manages the AmeriCorps program and places members into service locations. State subgrantees (programs) are operating sites. National grantees must identify at least one operating site to which they can assign service locations in the state where they are placing members.

4. **Service Location** means the organization where or with which a member actually provides his or her service in the community. Typical service locations are schools, food banks, health clinics, community parks, etc. The service location may be the same as the operating site, but only if the member actually serves at or with the operating site organization. A member may serve at multiple service locations, all of which must be listed in the portal, although the program must select only one for the member's primary assignment.

5. **Member or participant** means an individual:

- a. Who has been selected by a grantee or subgrantee to serve in an approved national service position;
- b. Who is a U.S. citizen, U.S. national, or lawful permanent resident alien of the United States;
- c. Who is at least 17 years of age at the commencement of service unless the member is out of school and enrolled in a full-time, year-round youth corps or full-time summer program as defined in the Act (42 U.S.C. § 12572 (a)(3)(B)(x)), in which case he or she must be between the ages of 16 and 25, inclusive, and
- d. Who has a high school diploma or an equivalency certificate (or agrees to obtain a high school diploma or its equivalent before using an education award) and who has not dropped out of elementary or secondary school in order to begin a term of service as an AmeriCorps member (unless enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 484 of the Higher Education Act of 1965, 20 U.S.C. § 1091), or who has been determined through an independent assessment conducted by the grantee to be incapable of obtaining a high school diploma or its equivalent.



B. AFFILIATION WITH THE AMERICORPS NATIONAL SERVICE PROGRAM

1. **Identification as an AmeriCorps Program or Member.** The grantee shall identify the program as an AmeriCorps program and members as AmeriCorps members. All partnership agreements/MOUs related to the AmeriCorps program must explicitly state that the program is an AmeriCorps program and AmeriCorps members are the resource being provided.

2. **The AmeriCorps Name and Logo.** AmeriCorps is a registered service mark of CNCS. CNCS provides a camera-ready logo. All grantee and subgrantee websites shall clearly state that they are an AmeriCorps grantee and shall prominently display the AmeriCorps logo. Grantees and subgrantees shall use the AmeriCorps name and logo on service gear and public materials such as stationery, application forms, recruitment brochures, on-line position postings or other recruitment materials, orientation materials, member curriculum materials, signs, banners, press releases and publications related to their AmeriCorps program in accordance with CNCS requirements.

To publicize the relationship between the program and AmeriCorps, the grantee shall describe their program as "an AmeriCorps program." Grantees shall provide information or training to their AmeriCorps members about how their program is part of the national AmeriCorps program and about the other national service programs of CNCS. Grantees are strongly encouraged to place signs that include the AmeriCorps name and logo at their service sites and may use the slogan "AmeriCorps Serving Here." AmeriCorps members should state they are AmeriCorps members during public speaking opportunities.

The grantee may not alter the AmeriCorps logo, and must obtain written permission from CNCS before using the AmeriCorps name or logo on materials that will be sold, or permitting donors to use the AmeriCorps name or logo in promotional materials. The grantee may not use or display the AmeriCorps name or logo in connection with any activity prohibited by statute, regulation, or in these grant provisions.

C. MEMBER RECRUITMENT, SELECTION, AND EXIT

Member recruitment and selection requirements are in CNCS's regulations at 45 CFR §§ 2522.210 and Part 2540. In addition, the grantee must ensure that the following procedures are followed:

1. **Notice to CNCS's National Service Trust.** The grantee must notify CNCS's National Service Trust, via the MyAmeriCorps Portal, within 30 days of a member's start of, completion of, suspension from, or release from, a term of service. Suspension of service is defined as an extended period during which the member is not serving, nor accumulating service hours or receiving AmeriCorps benefits.

The grantee also must notify the Trust, via the My AmeriCorps Portal, when a change in a member's term of service is approved and changed (i.e. from full-time to less than full-time or vice versa). Failure to report such changes within 30 days may result in sanctions to the grantee, up to and including, suspension or termination of the grant. Grantees or subgrantees meet notification requirements by using the appropriate electronic system to inform CNCS of changes within the required time frames. Any questions regarding the Trust should be directed to the Trust Office (800) 942-2677.

Penalties for false information: Any individual who makes a materially false statement or representation in connection with the approval or disbursement of an education award or other payment from the National Service Trust may be liable for the recovery of funds and subject to civil and criminal sanctions.

2. **Parental Consent.** Parental or legal guardian consent must be obtained for members under 18 years of age before members begin a term of service. Grantees may also include an informed consent form of their own design as part of the member service agreement materials.

3. **Reasonable Accommodation.** Programs and activities must be accessible to persons with disabilities, and the grantee must provide reasonable accommodation to the known mental or physical disabilities of otherwise qualified members, service recipients, applicants, and staff. All selections and project assignments must be made without regard to the need to provide reasonable accommodation. See the FAQ titled "Reasonable Accommodation" for more information.

4. **Assigning Members to Service Locations.** The grantee is required to ensure that all operating sites and all service locations are entered in the My AmeriCorps portal for all members within 30 days of members' starting a term of service. The grantee is required to include the name of the organization, and the full address or zip-plus-four of the service locations where each member will be serving. If a member is serving at multiple service locations, the program must select the one where the member serves a majority of his or her hours for the member's assignment, however, all service locations must be listed in the portal.



5. **Completion of Terms of Service.** The grantee must ensure that each member has sufficient opportunity to complete the required number of hours of service to qualify for the education award. Members must be exited within 30 days of the end of their term of service. Should a program not be renewed, a member who was scheduled to continue in a term of service may either be placed in another program, where feasible, or if the member has completed at least 15% of the service hour requirement, a member may receive a pro-rated education award.

6. **Member Exit.** In order for a member to receive an education award from the National Service Trust, the grantee must certify to the National Service Trust that the member satisfactorily and successfully completed the term of service, and is eligible to receive the education benefit. The grantee (and any individual or entity acting on behalf of the grantee) is responsible for the accuracy of the information certified on the end-of-term certification.

D. SUPERVISION AND SUPPORT

1. **Planning for the Term of Service.** The grantee must develop member positions that provide for meaningful service activities and performance criteria that are appropriate to the skill level of members. The grantee is responsible for ensuring that the positions do not include or put the AmeriCorps member in a situation in which the member is at risk for engaging in any prohibited activity (see 45 CFR § 2520.65), activity that would violate the non-duplication and non-displacement requirements (see 45 CFR § 2540.100), or prohibited fundraising activity (see 45 CFR §§ 2520.40-.45). The grantee must accurately and completely describe the activities to be performed by each member in a position description. Position descriptions must be provided to CNCS upon request. The grantee must ensure that each member has sufficient opportunity to complete the required number of hours to qualify for an education award. In planning for the member's term of service, the grantee must account for holidays and other time off, and must provide each member with sufficient opportunity to make up missed hours.

2. **Member Service Agreements.** The grantee must require that each member sign a member service agreement that includes, at minimum, the following:

- a. Member position description;
- b. The minimum number of service hours (as required by statute) and other requirements (as developed by the grantee) necessary to successfully complete the term of service and to be eligible for the education award;
- c. The amount of the education award being offered for successful completion of the terms of service in which the individual is enrolling;
- d. Standards of conduct, as developed by the grantee or subgrantee;
- e. The list of prohibited activities, including those specified in the regulations at 45 CFR § 2520.65 (see paragraph 3, below);
- f. The text of 45 CFR §§ 2540.100(e)-(f), which relates to Non-duplication and Nondisplacement;
- g. The text of 45 CFR §§ 2520.40-.45, which relates to fundraising by members;
- h. Requirements under the Drug-Free Workplace Act (41 U.S.C. § 701 *et seq.*);
- i. Civil rights requirements, complaint procedures, and rights of beneficiaries (see Section V.F.);
- j. Suspension and termination rules;
- k. The specific circumstances under which a member may be released for cause;
- l. Grievance procedures; and
- m. Other requirements established by the grantee.

The grantee should ensure that the service agreement is signed before commencement of service so that members are fully aware of their rights and responsibilities.

3. **Prohibited Activities.** While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or CNCS, staff and members may not engage in the following activities (see 45 CFR § 2520.65):

- a. Attempting to influence legislation;
- b. Organizing or engaging in protests, petitions, boycotts, or strikes;
- c. Assisting, promoting, or deterring union organizing;
- d. Impairing existing contracts for services or collective bargaining agreements;
- e. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- f. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;



- g. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- h. Providing a direct benefit to—
 - i. A business organized for profit;
 - ii. A labor union;
 - iii. A partisan political organization;
 - iv. A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
 - v. An organization engaged in the religious activities described in paragraph 3.g. above, unless CNCS assistance is not used to support those religious activities;
- i. Conducting a voter registration drive or using CNCS funds to conduct a voter registration drive;
- j. Providing abortion services or referrals for receipt of such services; and
- k. Such other activities as CNCS may prohibit.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-CNCS funds. Individuals should not wear the AmeriCorps logo while doing so.

4. Supervision. The grantee must provide members with adequate supervision by qualified supervisors consistent with the approved application. The grantee must conduct an orientation for members, including training on what activities are prohibited during AmeriCorps service hours, and comply with any pre-service orientation or training required by CNCS. The grantee must ensure that it does not exceed the limitation on member service hours spent in education and training set forth in 45 CFR § 2520.50.

5. Performance Reviews. The grantee must conduct and keep a record of at least a midterm and an end-of-term written evaluation of each member's performance for Full and Half-Time members and an end-of-term written evaluation for less than Half-time members. The end-of-term evaluation should address, at a minimum, the following factors:

- a. Whether the member has completed the required number of hours;
- b. Whether the member has satisfactorily completed assignments; and
- c. Whether the member has met other performance criteria that were clearly communicated at the beginning of the term of service.

6. Timekeeping. The grantee is required to ensure that time and attendance recordkeeping is conducted by the AmeriCorps member's supervisor. This time and attendance record is used to document member eligibility for in-service and post-service benefits. Time and attendance records must be signed and dated both by the member and his/her supervisor.

If a Professional Corps program wants to follow the timekeeping practices of its profession and certify that members have completed the minimum required hours, excluding sick and vacation days, it must get advance written approval from CNCS.

7. Member Death or Injury. The grantee must immediately report any member deaths or serious injuries to the designated CNCS Program Officer.

E. CHANGES IN MEMBER TERMS OF SERVICE OR PROGRAM SLOTS

1. Changes that Require CNCS Approval. Circumstances may arise within a program that necessitate changing the type of unfilled AmeriCorps member positions awarded to a grantee or subgrantee, or changing the term of service of a currently enrolled member. Note that once a member is exited with a partial education award, the remaining portion of that education award is not available for use. The following changes require written approval from CNCS's Office of Grants Management as well as written approval and concurrence from the State Commission or National Direct grantee:

- a. A change in the number of member service year positions in the grant; and/or
- b. A change in the funding level of the grant.



2. **Changing Slot Types (unfilled positions).** Except for Full-cost and Professional Corps Fixed Amount grants, grantees or subgrantees may change the type of slots awarded to their program if:
- The change does not increase the total MSYs authorized in the Notice of Grant Award (e.g. one half-time position cannot be changed to one full-time position); and
 - The change does not increase the value of the education award.

All changes to slot type are subject to availability of funds in the Trust, must be Trust neutral, and must comply with all assumptions on which Trust prudence and continued solvency are predicted. Changes in slot type may be made by the grantee directly in the My AmeriCorps Portal.

3. **Changing a Term of Service (currently enrolled positions).** Changes in terms of service may not result in an increased number of MSYs for the program. With the exception of Education Award only grants, grantees with Fixed Amount grants may not convert members to less-than-full-time slots.
- Full-time.** State Commissions and National Direct Organizations may authorize or approve occasional changes of currently enrolled full-time members to less than full-time members. Impact on program quality should be factored into approval of requests. CNCS will not cover health care or childcare costs for less than full-time members. It is not allowable to transfer currently enrolled full-time members to a less than full-time status simply to provide a less than full-time education award.
 - Less than Full-time.** CNCS discourages changing less than full-time members to full-time because it is very difficult to manage, unless done very early in the member's term of service. State Commissions and National Direct Parent Organizations may authorize or approve such changes so long as their current budget can accommodate such changes. Programs must keep in mind that a member's minimum 1700 hours must be completed within 12 months of the member's original start date.
 - Refilling Slots.** With the exception of grantees whose awards have special grant conditions under 45 CFR § 2543.14 or § 2541.120, AmeriCorps State and National programs that have fully enrolled their awarded member slots are allowed to replace any member who terminates service before completing 30 percent of his/her term provided that the member who is terminated is not eligible for and does not receive a pro-rated education award. Programs may not refill the same slot more than once.

As a fail-safe mechanism to ensure that resources are available in the National Service Trust to finance all earned education awards, CNCS will suspend refilling if either:

- Total AmeriCorps enrollment reaches 97 percent of awarded slots; or
- The number of refills reaches five percent of awarded slots.

4. **Formula and State Competitive Grant Slot Transfers.** State commissions are allowed to transfer slots among their state formula and competitive subgrantees in order to maximize enrollment and cost effectiveness without prior approval. State commissions may not transfer slots between competitive and formula subgrantees, or vice-versa. State commissions may not transfer funds among their competitive subgrantees. Slots eligible for refill are not allowed to be transferred.

5. **Notice to Childcare and Healthcare Providers.** The grantee must immediately notify CNCS's designated agents, in writing, when a member's status changes in a manner that affects eligibility for childcare or healthcare. See Section IV.G. 6.

F. RELEASE FROM PARTICIPATION

Grantees may release members from participation for two reasons: (a) for compelling personal circumstances; and (b) for cause. See 45 CFR § 2522.230 for requirements. Whether the reason for the release amounts to circumstances beyond the member's control is determined by the grantee, consistent with the criteria listed in 45 CFR § 2522.230(a). Failure to follow the requirements set forth in regulation (e.g., releasing an individual for compelling personal circumstances when the individual is leaving to go to school) is considered non-compliance with grant requirements and may result in disallowed costs and other remedies for non-compliance. In addition to the regulations, the following applies:

No Automatic Disqualification if Released for Cause: A release for cause covers all circumstances in which a member does not successfully complete his/her term of service for reasons other than compelling personal circumstances. Therefore, it is possible for a member to receive a satisfactory performance review and be released for cause. For example, a member who is released for cause from a first term—e.g. the individual has decided to take a job offer—but who, otherwise, performed well, would not be disqualified from enrolling for a subsequent term as long as the individual received a satisfactory performance evaluation for the first period of service.



G. LIVING ALLOWANCES, OTHER IN-SERVICE BENEFITS, AND TAXES

1. **Living Allowance Distribution.** A living allowance is not a wage. Grantees must not pay a living allowance on an hourly basis. Grantees should pay the living allowance in regular increments, such as weekly or bi-weekly, paying an increased increment only on the basis of increased living expenses such as food, housing, or transportation. Payments should not fluctuate based on the number of hours served in a particular time period, and must cease when the member's service ceases.

If a member serves all required hours and is permitted to conclude his or her term of service before the originally agreed upon end of term, the grantee may not provide a lump sum payment to the member. Similarly, if a member is selected after the program's start date, the grantee must provide regular living allowance payments from the member's start date and may not increase the member's living allowance incremental payment or provide a lump sum to make up any missed payments. Education Award Program Fixed-Amount grants (EAPs) may provide a living allowance or other in-service benefits to their members, but are not required to do so. Full-cost and other Fixed Amount grantees must provide a living allowance to their members.

2. **Waiving the Living Allowance.** If a living allowance is paid, a member may waive all or part of the payment of a living allowance if he or she believes his or her public assistance may be lost or decreased because of the living allowance. Even if a member waives his or her right to receive the living allowance, it is possible—depending on the specific public assistance program rules—that the amount of the living allowance that the member is eligible to receive will be deemed available. A member who has waived the living allowance may revoke the waiver at any time and may begin receiving the living allowance going forward from the date the individual revoked the waiver. A member may not receive any portion of the living allowance for the period of time the living allowance was waived.

3. **Taxes and Insurance.** Requirements related to member living allowances and benefits are in 45 CFR §§ 2522.240 and 2522.250. In addition, grantees must ensure that the following procedures are followed:

- a. **Liability Insurance Coverage.** The grantee is responsible for ensuring adequate general liability coverage for the organization, employees and members, including coverage of members engaged in on- and off-site project activities.
- b. **FICA (Social Security and Medicare taxes).** Unless the grantee obtains a ruling from the Social Security Administration or the Internal Revenue Service that specifically exempts its AmeriCorps members from FICA requirements, the grantee must pay FICA for any member receiving a living allowance. The grantee also must withhold 7.65% from the member's living allowance.
- c. **Income Taxes.** The grantee must withhold Federal personal income taxes from member living allowances, requiring each member to complete a W-4 form at the beginning of the term of service and providing a W-2 form at the close of the tax year. The grantee must comply with any applicable state or local tax requirements.
- d. **Worker's Compensation.** Some states require worker's compensation for AmeriCorps members. Grantees must check with State Departments of Labor or state commissions to determine worker's compensation requirements. If worker's compensation is not required, grantees must obtain Occupational, Accidental, and Death and Dismemberment coverage for members to cover in-service injury or incidents.

4. **Healthcare Coverage.** Except for EAPs, Professional Corps, or members covered under a collective bargaining agreement, the grantee must provide, or make available, healthcare insurance to those members serving a 1700-hour full-time term who are not otherwise covered by a healthcare policy at the time the member begins his/her term of service. The grantee must also provide, or make available, healthcare insurance to members serving a 1700-hour full-time term who lose coverage during their term of service as a result of service or through no deliberate act of their own. CNCS will not cover healthcare costs for dependent coverage.

Less-than-full-time members who are serving in a full-time capacity for a sustained period of time (e.g. a full-time summer project) are eligible for healthcare benefits. Programs may provide health insurance to less-than-full-time members serving in a full-time capacity, but they are not required to do so. For purposes of this provision, a member is serving in a full-time capacity when his/her regular term of service will involve performing service on a normal full-time schedule for a period of six weeks or more. A member may be serving in a full-time capacity without regard to whether his/her agreed term of service will result in a full-time Segal AmeriCorps Education Award.

Minimum Benefits. When required to provide healthcare insurance coverage, the grantee may obtain healthcare from any provider. Coverage provided by the grantee must be provided for a period of no more than 364 days, and cannot be renewed or extended beyond that period. Coverage must include the following minimum benefits:

- a. Physician services for illness or injury



- b. Hospital room and board
- c. Emergency room
- d. X-ray and laboratory
- e. Prescription drugs
- f. Limited mental/nervous disorders
- g. Limited substance abuse coverage
- h. An annual deductible of no more than \$250 charges per member
- i. No more than \$1,000 total annual out-of-pocket per member
- j. A 20% co-pay or a comparable fixed fee with the exception of a 50% co-pay for mental and substance abuse care
- k. A maximum benefit of at least \$50,000 per occurrence or cause

5. Administration of Childcare Payments. In general, CNCS will provide for childcare payments, which will be administered through an outside contractor. Requirements and eligibility criteria are in the AmeriCorps regulations, 45 CFR § 2522.250. Grantees that choose to provide childcare as a match source (as approved in their budget) may contact the childcare contractor for technical assistance. Grantees can contact the AmeriCorps hotline at 1-800-942-2677 with questions regarding childcare. The criteria for member eligibility are contained in 45 CFR § 2522.250. Members who are excluded from healthcare coverage solely on the basis of serving in a Professional Corps, or because they are covered under a collective bargaining agreement are not excluded from receiving childcare benefits on that basis. Members serving in EAPs are not eligible for the childcare benefit. CNCS will not cover childcare costs for family members or for members who served on a less than full-time basis, or who have ceased serving. Programs may provide child care to less-than-full-time members serving in a full-time capacity, but they are not required to do so. Also see the FAQs (http://www.americorps.gov/for_organizations/manage/index.asp) for more detailed information on administering childcare and healthcare benefits.

6. Notice to Childcare and Healthcare Providers. The grantee must immediately notify CNCS's designated agents in writing, when a member's status changes in a manner that affects the member's eligibility for childcare or healthcare. Examples of changes in status include: changes to a member's scheduled service so that he/she is no longer serving on a full-time basis, terminating or releasing a member from service, and suspending a member for cause for a lengthy or indefinite time period. Program directors should contact the childcare provider on childcare related changes, and their healthcare benefit provider about healthcare benefit related changes.

H. MEMBER RECORDS AND CONFIDENTIALITY

1. Recordkeeping. The grantee must maintain records, including the position description, sufficient to establish that each member was eligible to participate and that the member successfully completed all program requirements. A program may store member files electronically if the program can ensure that the validity and integrity of the record is not compromised. CNCS will recognize electronically stored files where:

The electronic storage procedures and system provide for the safe-keeping and security of the records, including:

- a. Sufficient prevention of unauthorized alterations or erasures of records;
- b. Effective security measures to ensure that only authorized persons have access to records;
- c. Adequate measures designed to prevent physical damage to records; and
- d. A system providing for back-up and recovery of records; and

The electronic storage procedures and system provide for the easy retrieval of records in a timely fashion, including:

- a. Storage of the records in a physically accessible location;
- b. Clear and accurate labeling of all records; and
- c. Storage of the records in a usable, readable format. Where there is a requirement for a signature on a record, electronically stored records must include an image of the original signature; records without signatures, when required, are considered incomplete.

2. Verification of Eligibility. The grantee must obtain and maintain documentation as required by 45 CFR § 2522.200(c). CNCS does not require programs to make and retain copies of the actual documents used to confirm age or citizenship eligibility requirements, such as a driver's license, or birth certificate, as long as the grantee has a consistent practice of identifying the documents that were reviewed and maintaining a record of the review.

Enrolling in the My AmeriCorps portal requires members to certify their high school status. Such certification fulfills the grantee's verification requirement to obtain and maintain documentation from the member relating to the member's high school education.



If the member is incapable of obtaining a high school diploma or its equivalent, as determined by an independent evaluation, the grantee must retain a copy of the supporting evaluation.

3. Confidential Member Information. The grantee must maintain the confidentiality of information regarding individual members. The grantee must obtain the prior written consent of all members before using their names, photographs and other identifying information for publicity, promotional or other purposes. Grantees may release aggregate and other non-identifying information, and are required to release member information to CNCS and its designated contractors. The grantee must permit a member who submits a written request for access to review records that pertain to the member and were created pursuant to this grant.

4. National Service Criminal History Check. The specific requirements of the National Service Criminal History Check, including the timing and recordkeeping requirements, are specified at 45 CFR §§ 2540.200 - .207. You must retain a record of the NSOPW search and associated results either by printing the screen(s) or by some other method that retains paper or digital images of the NSOPW checks, inclusive of the date record for when the search was performed. Inability to demonstrate that you conducted an NSOPW or the required criminal history check, as specified in the regulations, may result in sanctions, including disallowance of costs.

I. BUDGET AND PROGRAMMATIC CHANGES

1. Programmatic Changes. The grantee must first obtain the prior written approval of the AmeriCorps Program Office before making any of the following changes (a-c):

- a. Changes in the scope, objectives or goals of the program, whether or not they involve budgetary changes;
- b. Substantial changes in the level of participant supervision;
- c. Entering into additional subgrants or contracts for AmeriCorps activities funded by the grant, but not identified or included in the approved application and grant budget.

Upon notification to the AmeriCorps Program Office, grantees may make programmatic changes due to, or in response to, an officially-declared state or national disaster without written approval from CNCS. As soon as practicable, grantees making disaster-related programmatic changes must discuss the recordkeeping, member activities, performance measure adjustments, and other AmeriCorps grant requirements with the AmeriCorps Program Office. While written approval from CNCS is not required before making disaster-related programmatic changes, CNCS reserves the right to limit or deny disaster-related programmatic changes.

2. Program Changes for Formula Programs. State Commissions are responsible for approving the above changes for state formula programs.

3. Budgetary Changes. The grantee must obtain the prior written approval of CNCS's Office of Grants Management before deviating from the approved budget in any of the following ways:

- a. Specific Costs Requiring Prior Approval before Incurrence under OMB Circulars A-21 (2 CFR Part 220), A-87 (2 CFR Part 225), or A-122 (2 CFR Part 230). For certain cost items, the cost circulars require approval of the awarding agency for the cost to be allowable. Examples of these costs are overtime pay, rearrangement and alteration costs, and pre-award costs.
- b. Purchases of Equipment over \$5,000 using grant funds, unless specified in the approved application and budget.
- c. Unless the CNCS share of the award is \$100,000 or less, changes to cumulative and/or aggregate budget line items that amount to 10 per cent or more of the total budget must be approved in writing in advance by CNCS. The total budget includes both the CNCS and grantee shares. Grantees may transfer funds among approved direct cost categories when the cumulative amount of such transfers does not exceed 10 percent of the total budget.

4. Approvals of Programmatic and Budget Changes. CNCS's Grants Officers are the only officials who have the authority to alter or change the provisions or requirements of the grant. The Grants Officers will execute written amendments, and grantees should not assume approvals have been granted unless documentation from the Grants Office has been received. Programmatic changes also require final approval of CNCS's Office of Grants Management after written recommendation for approval is received from the Program Office.

5. Exceptions for Fixed Amount Grants. Grantees with Fixed Amount grants are not subject to the requirements in Section 3, Budgetary Changes.



J. REPORTING REQUIREMENTS

This section applies only to the grantee. The grantee is responsible for timely submission of periodic financial and progress reports during the project period and a final financial report and for setting submission deadlines for its respective subgrantees that ensure the timely submission of grantee reports.

1. **Grantee Progress Reports.** The grantee shall complete and submit progress reports in eGrants to report on progress toward achievement of its approved performance targets.

Due Date Reporting Period Covered

April 30 Start of grant through March 31

October 31 April 1 – September 30

2. **Financial Reports.** The grantee shall complete and submit financial reports in eGrants (Financial Status Reports on menu tree) to report the status of all funds. The grantee must submit timely cumulative financial reports in accordance with CNCS guidelines according to the following schedule:

Due Date Reporting Period Covered

April 30 Start of grant through March 31

October 31 April 1 – September 30

A grantee must set submission deadlines for its respective subgrantees that ensure the timely submission of grantee reports. Cost reimbursement National Professional Corps grantees submit one financial report per year.

All grantees including Fixed Amount grants must submit the Federal Financial Report (FFR) - Cash Transactions Report on a quarterly basis to the Department of Health and Human Services Payment Management System per the Electronic Funds Transfer Agreement.

3. **Reporting Other Federal Funds.** The grantee shall report the amount and sources of federal funds, other than those provided by CNCS, claimed as matching funds. This includes other federal funds expended by subgrantees and operating sites and claimed as match. This information shall be reported annually on the financial report due October 31st or at the time the final financial report is submitted if the final report is due prior to October 31st. Fixed Amount grantees are not required to report this information.

4. **Requests for Extensions.** Each grantee must submit required reports by the given dates. Extensions of reporting deadlines will be granted only when 1) the report cannot be furnished in a timely manner for reasons, in the determination of CNCS, legitimately beyond the control of the grantee, and 2) CNCS receives a request explaining the need for an extension before the due date of the report.

Extensions of deadlines for financial reports may only be granted by the Office of Grants Management, and extensions of deadlines for progress reports may only be granted by the AmeriCorps Program Office.

5. **Final Financial Reports.** A grantee must submit, in lieu of the last semi-annual financial report, a final financial report. This final report is due no later than 90 days after the end of the project period

6. **Final Project Reports.** A grantee must submit, in addition to the last semi-annual project report, a final project report. This final report is due no later than 90 days after the end of the project period.

7. **Financial Reports for Fixed Amount Grants.** Fixed Amount grantees are not required to submit financial reports to CNCS, including the final financial report.

K. GRANT PERIOD AND INCREMENTAL FUNDING

For the purpose of the grant, a project period is the complete length of time the grantee is proposed to be funded to complete approved activities under the grant. A project period may contain one or more budget periods. A budget period is a specific interval of time for which Federal funds are being provided to fund a grantee's approved activities and budget.

Unless otherwise specified, the grant covers a three-year project period. In approving a multi-year project period, CNCS generally makes an initial award for the first year of operation. Additional funding is contingent upon satisfactory performance, a



grantee's demonstrated capacity to manage a grant and comply with grant requirements, and the availability of Congressional appropriations. CNCS reserves the right to adjust the amount of a grant award, or elect not to continue funding for subsequent years. The project period and the budget period are noted on the award document.

V. GENERAL PROVISIONS

A. RESPONSIBILITIES UNDER GRANT ADMINISTRATION

1. **Accountability of the Grantee.** The grantee has full fiscal and programmatic responsibility for managing all aspects of the grant and grant-supported activities, subject to the oversight of CNCS. The grantee is accountable to CNCS for its operation of the AmeriCorps program and the use of CNCS grant funds. The grantee must expend grant funds in a judicious and reasonable manner, and it must record accurately the service activities and outcomes achieved under the grant. Although grantees are encouraged to seek the advice and opinion of CNCS on special problems that may arise, such advice does not diminish the grantee's responsibility for making sound judgments and does not shift the responsibility for operating decisions to CNCS.

2. **Subawards.** A grantee may make subgrants in accordance with the requirements set forth in 45 CFR Part 2541 or 2 CFR Part 215 and 45 CFR Part 2543. The grantee must have and implement a plan for oversight and monitoring to ensure that each subgrantee and service site has agreed to comply, and is complying, with grant requirements. This includes oversight and monitoring to ensure that AmeriCorps members are not engaging in prohibited activities in 45 CFR § 2520.65.

3. **Notice to CNCS.** The grantee will notify the appropriate CNCS Program or Grants Officer immediately of any developments or delays that have a significant impact on funded activities, any significant problems relating to the administrative or financial aspects of the grant, or any suspected misconduct or malfeasance related to the grant or grantee. The grantee will inform the CNCS official about the corrective action taken or contemplated by the grantee and any assistance needed to resolve the situation.

B. FINANCIAL MANAGEMENT STANDARDS

1. **General.** The grantee must maintain financial management systems that include standard accounting practices, sufficient internal controls, a clear audit trail, and written cost allocation procedures, as necessary. Financial management systems must be capable of distinguishing expenditures attributable to this grant from expenditures not attributable to this grant. The systems must be able to identify costs by program year and by budget category, and to differentiate between direct and indirect costs, or administrative costs. For further details about the grantee's financial management responsibilities, refer to OMB Circular A-102 and its implementing regulations (45 CFR Part 2541) or A-110 (2 CFR Part 215) and its implementing regulations (2 CFR Part 205 and 45 CFR Part 2543), as applicable.

2. **Consistency of Treatment.** To be allowable under an award, costs must be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization. Furthermore, the costs must be accorded consistent treatment in both federally financed and other activities, as well as between activities, supported by different sources of federal funds.

3. **Audits.** Grantee organizations that expend \$500,000 or more in total federal awards in a fiscal year shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act, as amended, 31 U.S.C. 7501, et seq., and OMB Circular A-133. If the grantee expends federal awards under only one federal program, it may elect to have a program specific audit, if it is otherwise eligible. A grantee that does not expend \$500,000 in Federal awards is exempt from the single audit requirements of OMB Circular A-133 for that year. However, it must continue to conduct financial management reviews of its subgrantees, and records must be available for review and audit.

A recipient of a Federal grant that is a pass-through entity is required, in accordance with paragraph 400(d) of OMB Circular A-133, to do the following with regard to its subrecipients: (1) identify the Federal award and funding source; (2) advise subrecipients of all requirements imposed on them; (3) monitor subrecipient activities and compliance; (4) ensure subrecipients have A-133 audits when required; (5) issue decisions and ensure follow-up on audit findings in a timely manner; (6) where necessary, adjust its own records and financial statements based on audits; and (7) require subrecipients to permit access by the pass-through entity and auditors to records and financial statements, as necessary, for the pass-through entity to comply with A-133.

C. THE OFFICE OF INSPECTOR GENERAL

CNCS's Office of Inspector General (OIG) conducts and supervises independent and objective audits, evaluations, and investigations of CNCS's programs and operations. Based on the results of these audits, reviews, and investigations, the OIG



recommends policies to promote economy and efficiency and to prevent and detect fraud, waste, and abuse in CNCS's programs and operations.

The OIG conducts and supervises audits of CNCS grantees, as well as legislatively mandated audits and reviews. The legislatively mandated audits include the annual financial statement audit, and fulfilling the requirements of the Government Information Security Reform Act and its successor, the Federal Information Security Management Act. A risk-based approach, along with input received from CNCS management, is used to select grantees and grants for audit. The OIG hires audit firms to conduct some of its audits. The OIG audit staff is available to discuss its audit function, and can be reached at (202) 606-9390.

The OIG is available to offer assistance to AmeriCorps grantees that become aware of suspected criminal activity in connection with the AmeriCorps program. Grantees should immediately contact the OIG when they first suspect that a criminal violation has occurred. The OIG investigative staff is available to provide guidance and ensure that the appropriate law enforcement agency is notified, if required. The OIG may be reached by email at hotline@cncsig.gov or by telephone at (800) 452-8210.

D. PROGRAM INCOME

1. **General.** Income, including fees for service earned as a direct result of the grant-funded program activities during the award period, must be retained by the grantee and used to finance the grant's non-CNCS share.

2. **Excess Program Income.** Program income earned in excess of the amount needed to finance the grantee share must follow the appropriate requirements of 45 CFR § 2541.250, 45 CFR § 2543.24 or 2 CFR § 215.24, 2 CFR Part 225, 2 CFR Part 215, or 2 CFR Part 220 and be deducted from total claimed costs. Grantees that earn excess income must specify the amount of the excess in the comment box on the financial report.

3. **Fees for Service.** When using assistance under this grant, the grantee may not enter into a contract for or accept fees for service performed by members when:

- a. The service benefits a for-profit entity,
- b. The service falls within the other prohibited activities set forth in these grant provisions, or
- c. The service violates the non-displacement provisions of 45 U.S.C. § 12637.

4. **Full-Cost and Professional Corps Fixed Amount Grants.** The grantee must notify its Grants Officer if it earns program income in excess of the amounts needed to cover all expenditures under the grant. The Grants Officer will determine the disposition of the excess program income.

E. SAFETY

The grantee must institute safeguards as necessary and appropriate to ensure the safety of members. Members may not participate in projects that pose undue safety risks.

F. NON-DISCRIMINATION PUBLIC NOTICE AND RECORDS COMPLIANCE

1. **Public Notice of Non-discrimination.** The grantee must notify members, community beneficiaries, applicants, program staff, and the public, including those with impaired vision or hearing, that it operates its program or activity subject to the non-discrimination requirements of the applicable statutes. The notice must summarize the requirements, note the availability of compliance information from the grantee and CNCS, and briefly explain procedures for filing discrimination complaints with CNCS.

Sample language is:

This program is available to all, without regard to race, color, national origin, disability, age, sex, political affiliation, or, in most instances, religion. It is also unlawful to retaliate against any person who, or organization that, files a complaint about such discrimination. In addition to filing a complaint with local and state agencies that are responsible for resolving discrimination complaints, you may bring a complaint to the attention of the Corporation for National and Community Service. If you believe that you or others have been discriminated against, or if you want more information, contact:

*(Name, address, phone number – both voice and TTY, and preferably toll free – FAX number and email address of the grantee)
or*

*Office of Civil Right and Inclusiveness
Corporation for National and Community Service
1201 New York Avenue, NW*



Washington, DC 20525
(800) 833-3722 (TTY and reasonable accommodation line)
(202) 565-3465 (FAX); eo@cns.gov (email)

The grantee must include information on civil rights requirements, complaint procedures and the rights of beneficiaries in member service agreements, handbooks, manuals, pamphlets, and post in prominent locations, as appropriate. The grantee must also notify the public in recruitment material and application forms that it operates its program or activity subject to the nondiscrimination requirements. Sample language, in bold print, is **This program is available to all, without regard to race, color, national origin, disability, age, sex, political affiliation, or, in most instances, religion.** Where a significant portion of the population eligible to be served needs services or information in a language other than English, the grantee shall take reasonable steps to provide written material of the type ordinarily available to the public in appropriate languages.

2. Records and Compliance Information. The grantee must keep records and make available to CNCS timely, complete and accurate compliance information to allow CNCS to determine if the grantee is complying with the civil rights statutes and implementing regulations. Where a grantee extends federal financial assistance to subgrantees, the subgrantees must make available compliance information to the grantee so it can carry out its civil rights obligations.

3. Obligation to Cooperate. The grantee must cooperate with CNCS so that CNCS can ensure compliance with the civil rights statutes and implementing regulations. The grantee shall permit access by CNCS during normal business hours to its books, records, accounts, staff, members, facilities, and other sources of information as may be needed to determine compliance.

G. GRANT PRODUCTS

1. Sharing Grant Products. To the extent practicable, the grantee agrees to make products produced under the grant available at the cost of reproduction to others in the field.

2. Acknowledgment of Support. Publications created by members or grant-funded staff must be consistent with the purposes of the grant. The AmeriCorps logo shall be included on such documents. The grantee is responsible for assuring that the following acknowledgment and disclaimer appears in any external report or publication of material based upon work supported by this grant:

"This material is based upon work supported by the Corporation for National and Community Service (CNCS) under AmeriCorps Grant No. _____. Opinions or points of view expressed in this document are those of the authors and do not necessarily reflect the official position of, or a position that is endorsed by, CNCS or the AmeriCorps program."

H. SUSPENSION OR TERMINATION OF GRANT

Regulations related to CNCS's authority to suspend or terminate this grant are contained in 45 CFR § 2540.400. In addition, a grantee may suspend or terminate assistance to one of its subgrantees, provided that such action affords the subgrantee, at a minimum, the notice and hearing rights described in 45 CFR § 2540.400.

I. FIXED AMOUNT GRANTS

Fixed Amount grants are not subject to the Federal Cost Principles. For Education Award programs (EAP), the fixed federal assistance amount of the grant is based on the approved and awarded number of full-time (MSYs) members specified in the award. For full-cost and Professional Corps Fixed Amount grants, the fixed federal assistance amount of the grant is based on the approved and awarded numbers of full-time members and their completion of their terms of service.

For EAPs, the final amount of grant funds that the grantee may retain is dependent upon the grantee's notifying CNCS's National Service Trust of the members that it has enrolled. All EAP members must carry out activities to achieve the specific project objectives as approved by CNCS. At closeout, CNCS will calculate the final amount of the grant based on Trust documentation. CNCS will recover any amounts drawn down by the grantee in excess of the final grant amount allowed based on member selection documentation in the Trust.

For all other Fixed Amount grants, the grantee may draw funds from the HHS Payment Management System based on the number of members who complete a full term of service or if the member leaves before completing service, a pro-rated amount based on hours served.



Full-cost and Professional Corps programs may draw up to 20% of the funds within the first two months to cover start-up costs (recruitment and application, training, criminal history checks, etc.); however, total funds drawn should be based on the number of members on board at the time and the percentage of hours completed. Annually and at closeout, CNCS will calculate the final amount of the grant for the year or entire project period (at closeout) based on the number of successful completions of terms of service (as certified by the program) as well as the hours served in terms of service which were not certified as successfully completed.

J. TRAFFICKING IN PERSONS

This grant is subject to requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104).

1. Provisions applicable to a recipient that is a private entity.
 - a. You as the grantee and your employees may not:
 - i. Engage in severe forms of trafficking in persons during the period of time that the grant is in effect;
 - ii. Procure a commercial sex act during the period of time that the grant is in effect; or
 - iii. Use forced labor in the performance of the grant.
 - b. We as the federal awarding agency may unilaterally terminate this grant, without penalty, if it,
 - i. Is determined you have violated a prohibition in paragraph (a.) of this grant term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the grant to have violated a prohibition in paragraph (a.) of this grant term through conduct that is either:
 - (a.) Associated with performance under this grant; or
 - (b.) Imputed to you using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR Part 2200.
2. Provisions applicable to a grantee other than a private entity. We as the federal awarding agency may unilaterally terminate this grant, without penalty, if it –
 - a. Is determined to have violated an applicable prohibition of paragraph (1.)(a.) of this grant term; or
 - b. Has an employee who is determined by the agency official authorized to terminate the grant to have violated an applicable prohibition in paragraph (1.)(a.)(i.) of this grant term through conduct that is –
 - i. Associated with performance under this grant; or
 - ii. Imputed to you using the standards and due process for imputing conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR Part 2200.
3. Provisions applicable to any grantee.
 - a. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (1.)(a.) of this grant term.
 - b. Our right to terminate unilaterally that is described in paragraph (1.) and (2.) of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this grant.
 - c. You must include the requirements of paragraph (1.)(a.) of this grant term in any sub-grant you make to a private entity.
4. Definitions. For purposes of this grant term:
 - a. "Employee" means either:
 - i. An individual employed by you or a subgrantee who is engaged in the performance of the project or program under this grant; or
 - ii. Another person engaged in the performance of the project or program under this grant and not compensated by you including, but not limited to, a volunteer or individual whose service are contributed by a third part as an in-kind contribution toward cost sharing or matching requirements.
 - b. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - c. "Private entity":



- i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25.
- ii. Includes:
 - (a.) A nonprofit organization, including any non-profit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
 - (b.) A for-profit organization.
- d. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

K. CENTRAL CONTRACTOR REGISTRATION (CCR) and UNIVERSAL IDENTIFIER REQUIREMENTS

1. Requirement for Central Contractor Registration (CCR): Unless you are exempted from this requirement under 2 CFR § 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
2. Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:
 - a. Must notify potential subrecipients that no entity (see definition in paragraph 3. of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
 - b. May not make a subaward to an entity unless the entity has provided its DUNS number to you.
3. Definitions. For purposes of this award term:
 - a. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at <http://www.ccr.gov>).
 - b. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
 - c. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - i. A Governmental organization, which is a State, local government, or Indian Tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization; and
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
 - d. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ----.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
 - e. Subrecipient means an entity that:
 - i. Receives a subaward from you under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.

L. TRANSPARENCY ACT REQUIREMENTS (for Grants and Cooperative Agreements of \$25,000 or More)

Reporting Subawards and Executive Compensation:

1. Reporting of first-tier subawards.
 - a. Applicability. Unless you are exempt as provided in paragraph 4, below, you must report each action that obligates \$25,000 or more in Federal funds for a subaward to an entity (see definitions in paragraph 5. of this award term).
 - b. Where and when to report.
 - i. You must report each obligating action described in paragraph 1.a. of this award term to <http://www.fsr.gov>.



- ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- c. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.frs.gov> specify.

2. Reporting Total Compensation of Recipient Executives.

- a. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if--
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received--
 - (a.) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR §170.320 (and subawards); and
 - (b.) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR §170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- b. Where and when to report. You must report executive total compensation described in paragraph (2.)a.) of this award term:
 - i. As part of your registration profile at <http://www.ccr.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.

3. Reporting of Total Compensation of Subrecipient Executives.

- a. Applicability and what to report. Unless you are exempt as provided in paragraph 4. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if--
 - i. in the subrecipient's preceding fiscal year, the subrecipient received--
 - (a.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and
 - (b.) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- b. Where and when to report. You must report subrecipient executive total compensation described in paragraph 3.a. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

4. Exemptions. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- a. Subawards, and
- b. The total compensation of the five most highly compensated executives of any subrecipient.

5. Definitions. For purposes of this award term:



- a. Entity means all of the following, as defined in 2 CFR Part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- b. Executive means officers, managing partners, or any other employees in management positions.
- c. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --- .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- d. Subrecipient means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
- e. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax-qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.



Appendix 5

Attachment D Payment & Reporting Terms & Conditions

(Revised October 2012)

- This Contract is funded with non-Federal funds only
- This contract is funded in whole or in part with Federal funds (see Appendix A3, Paragraph 14, for federal audit information)
- OCFS has determined that the Contractor IS NOT a Subrecipient
- OCFS has determined that the Contractor IS a Subrecipient
- The Federal funds for this contract are from Catalog of Federal Domestic Assistance (CFDA Number(s):

I. EXECUTIVE ORDER NUMBER 38

Executive Order Number 38 sets Limits on State-Funded Administrative Costs & Executive Compensation. Contracts, payment requests and reporting must comply with this Executive Order. The Order is printed at the end of this document, and can be found at the following website address: <https://www.governor.ny.gov/executiveorder/38>

II. PAYMENT TERMS AND CONDITIONS

In consideration of the services to be performed by the Contractor pursuant to this AGREEMENT, the Office of Children and Family Services (OCFS) agrees to pay and the Contractor agrees to accept a sum not to exceed the amount specified on the face page of this AGREEMENT for the initial AGREEMENT period and, for subsequent periods, the amount specified in Appendix X for that period. All payments shall be in accordance with the budget contained in Appendix B for the applicable period. Payment under this AGREEMENT is conditional upon the continued availability of funds. Should funds become unavailable, the Contractor shall be relieved of any obligation to continue this project beyond the period for which funds were available. Payments and future funding are contingent on the availability of funding for the activities to be conducted in accordance with this AGREEMENT.

Funds cannot be expended until the contract is approved by the Office of the State Comptroller (OSC). Expenditures cannot precede the contract start date. If the Contractor makes expenditures subsequent to the contract start date, but prior to OSC approval of the contract, they do so at their own risk.

See Appendix A-2 for any additional program-specific Payment Terms and Conditions applicable to this AGREEMENT. To the extent that there is a conflict between any Payment Terms and Conditions set forth in this Appendix and in Appendix A-2, the Payment Terms and Conditions in Appendix A-2 will supersede the Payment Terms and Conditions in Appendix C.

Contractor shall provide complete and accurate billing invoices to the Office in order to receive payment. Billing invoices submitted to the Office must contain all information and supporting documentation required by this AGREEMENT, the Office and the Office of the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner of the Office, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the Office of the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Office of the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this AGREEMENT if it does not comply with the Office of the State Comptroller's electronic payment procedures, except where the Commissioner of the Office has expressly authorized payment by paper check as set forth above.



III. ADVANCE PAYMENT AND RECOUPMENT

- a. To the extent permitted by applicable laws and regulations, OCFS may, at its own discretion, make advance payment(s) to the Contractor, up to twenty-five percent (25%) of the annual period amount, upon the submission by the Contractor of sufficient justification therefor. Any advance may be eligible for payment only upon approval of this AGREEMENT by the Attorney General and by OSC and upon the submission to OCFS by the Contractor of a properly executed State of New York Claim for Payment (Ac3253-S), or on-line claim submitted through the OCFS Contract Management System (CMS), in a form acceptable to OCFS and to OSC.
- b. Recoupment of any advance payment(s) shall be recovered by crediting 33 1/3 percent of the advance against the 2nd, 3rd and 4th Quarterly Expenditure Report or as otherwise specified in Appendix A-2. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims will be reduced until the advance is fully recovered. Any unexpended advance balance at the end of the AGREEMENT period will be refunded by the Contractor to OCFS. In the event either party terminates the AGREEMENT prior to its expiration, the Contractor agrees to refund to OCFS immediately any advance balance then outstanding.
- c. An initial advance, if determined to be payable to the contractor, shall be payable thirty days from the start date of services within the contract period or thirty days from the submission of a properly executed State of New York Claim for Payment, or on-line claim submitted through CMS, in a form acceptable to the Office and to the Comptroller of the State of New York, whichever is later.
- d. For purposes of interest determinations pursuant to Article XI-B of the State Finance Law, claims for payment of advances are payable 30 days from the start date of services within the contract period if deemed acceptable by OCFS and the Office of the State Comptroller. If the Contractor's claim or on-line claim submitted through CMS is not received within 30 calendar days of the contract becoming fully executed no additional interest shall accrue after such thirtieth day.

IV. CLAIMS FOR REIMBURSEMENT

- a. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of OCFS under this AGREEMENT within fifteen (15) days after the end of each quarterly claiming period or as otherwise specified in Appendix A-2.
- b. The Contractor shall submit a New York State Claim for Payment or on-line claim submitted through CMS and a New York State Financial Claim Report within fifteen (15) days after the end of each claiming period as identified in Appendix A-2. The Contractor shall also submit the appropriate supporting fiscal documentation for the expenses claimed. The final claim shall be submitted within thirty (30) days after the expiration of each annual contract period or the early termination of this AGREEMENT or as otherwise specified in Appendix A-2
- c. OCFS agrees to pay the Contractor for expenses incurred in behalf of fulfilling this AGREEMENT, according to the budget contained in Appendix B and upon the submission of a properly executed State of New York Standard Voucher, or on-line claim submitted through CMS, in a form acceptable to OCFS and to OSC and the submission of required Program reports. OCFS agrees to submit each approved claim to OSC for payment, unless it shall have notified the Contractor of its disapproval of payment, in writing, together with a justification therefor.
- d. Claims other than those for payment of advances are payable on the 45th day after the end of the claiming period (monthly or quarterly as defined in this agreement) if deemed acceptable by OCFS and the Office of the State Comptroller, and if the Contractor's claim or on-line claim submitted through CMS is received within 15 days after the end of said period. If the Contractor's claim or on-line claim submitted through CMS is received later than 15 days after the end of said period, then the claim will be payable 30 days after receipt if deemed acceptable by OCFS and the Office of the State Comptroller."
- e. For purposes of interest determinations pursuant to Article XI-B of the State Finance Law, claims or on-line claims submitted through CMS other than those for the payment of advances are payable 30 days after the end of the claiming period (monthly or quarterly as defined in this agreement) if deemed acceptable by OCFS and the Office of the State Comptroller. If the Contractor's claim or on-line claim submitted through CMS is not received within 30 calendar days of the contract becoming fully executed no additional interest shall accrue after such thirtieth day.
- f. OCFS reserves the right to withhold up to ten percent (10%) of the total amount of the contract as security for the faithful completion of services under this AGREEMENT. OCFS will or will not withhold up to 10% of the total amount of this contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under this AGREEMENT. The amount withheld will be paid to the Contractor upon the receipt of all required reports, including the final programmatic and fiscal reports, all products of the project as provided in the AGREEMENT as detailed in Appendix D, a final claim or on-line claim submitted through CMS, the accounting for any advance payment(s) made pursuant to this AGREEMENT, and upon certification by the Contractor that it has completed its obligations and duties under this AGREEMENT.
- g. OCFS will not be liable for payments on any contract, grant or agreement made pursuant to an appropriation if insufficient monies are available, pursuant to Section 99-d(3) of the State Finance Law.



- h. The Contractor shall require any and all subcontractors to submit all financial claims for services rendered and required supporting documentation and reports necessary to complete the financial claim and expense report as referenced in Section III.a. above in sufficient time for said information to be received by the Contractor no later than ten (10) days following the final day of the claiming period. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information and/or are not received by the Contractor by said due date. Subcontractors shall be paid on a timely basis after submitting the required reports and vouchers for reimbursement of services.
- i. Subcontracts should not be signed by Contractor prior to OCFS approving the subcontract and OSC approving the contract. Subcontracts cannot have start dates prior to the contract start date. If Contractor obtains signature on a subcontract subsequent to the start date, but prior to OSC approval of the contract, they do so at their own risk.
- j. Payment for travel costs and related expenses incurred by the Contractor's staff, employees and consultants shall be made at no greater than the prevailing New York State rates established for travel costs and related expenses for State employees as set by OSC and listed at the following internet website <http://www.osc.state.ny.us/agencies/travel/travel.htm>
- k. OCFS may specifically request the return of any equipment purchased pursuant to this AGREEMENT. At the discretion of OCFS, the Contractor may retain custody of such equipment, provided it continues to be used for the children, family, and youth services outlined in the AGREEMENT. No equipment purchased with OCFS funds may be transferred or disposed of without written permission from OCFS. Equipment items purchased and claimed must be listed in the approved contract budget. Any changes in the equipment listed in the budget must have prior approval by OCFS in writing before implementing the change.
- l. If the Contractor receives funds under this AGREEMENT to construct, renovate or improve the property it occupies, then the improved property will be used for the children, family and youth services outlined in this AGREEMENT for the period set forth in Appendix A-2 of this AGREEMENT
- m. All obligations must be incurred prior to the end date of the contract. The Contractor has up to 90 days after the contract end date to make expenditures as long as the obligation was made prior to the contract end date.
- n. Any goods or services ordered by the Contractor prior to the contract start date must be received and paid for during the contract period in order for the cost of such goods and/or services to be reimbursed to the contractor using funds from this AGREEMENT. Should the contractor order goods and/or services prior to Office of the State Comptroller's approval of the contract, the contractor does so at their own risk and OCFS will not reimburse the contractor for the cost of such goods and/or services if such goods and/or services were received or paid for prior to the commencement of the contract period.

V. BUDGET REVISIONS

- a. The Contractor may make revisions to the budget contained in Appendix B up to ten percent (10%) of the total contract value without prior approval of OCFS except that any budget revisions that affect changes in the workplan contained in Appendix D shall require prior written approval of OCFS unless otherwise specified in Appendix A-2. The Contractor agrees to submit any and all revisions made pursuant to this subparagraph to the Designated Payment Office identified in Appendix A-2 within ten (10) days of implementing such revisions or as an attachment to any claims for reimbursement that may be associated with such revisions, whichever is the earlier date..
- b. Budget revisions in excess of ten percent (10%) of the total contract value or which affect changes in the workplan as contained in Appendix D shall be submitted in writing to the Designated Payment Office identified in Appendix A-2 for approval, accompanied by justification therefor. The OCFS Project Officer shall notify the Contractor, in writing, of OCFS' approval of such budget revisions, or shall, in writing, notify the Contractor of OCFS' disapproval and identify the reasons for such disapproval.
- c. Any proposed modification to the contract which results in a change of greater than ten percent (10%) of the total contract value must be submitted by OCFS to OSC for approval, and must be approved by OSC prior to its implementation.

VI. AUDIT AND RECORDS RETENTION

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this AGREEMENT (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. OSC, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this AGREEMENT, 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; (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. If the Records are in any way relevant to audit findings, litigation or claims and the audit findings, litigation, or claims are not resolved within a period of six (6) years after the end or termination of this AGREEMENT, the Contractor will retain such records until notified in writing by OCFS to dispose of them.

VII. REFUNDS

In the event that the contractor must make a refund to OCFS for contract related activities (repayment of an advance, an audit disallowance, or for any other reason), payment must be made in the form of a check or money order payable to "New York State Office of Children and Family Services". The contractor must include with the payment a brief explanation of why the refund is being made and reference the contract number. Refund payments must be submitted to:

NYS Office of Children and Family Services
Attention: Contract Cash Receipts/Bureau of Contract Management
Capital View Office Park
52 Washington Street - South Building, Room 202
Rensselaer, NY 12144

VIII. BUDGET REVISIONS

Instructions for completing budget revisions can be found in the most current issue of the AmeriCorps Fiscal Manual. The Contractor must obtain the prior written approval of OCFS before deviating from its approved budget. The following require approval from the Corporation:

- a. **Specific costs requiring prior approval before incurrence** under OMB Circulars A-21, A-87 or A-122. For certain cost items, the cost circulars require approval of the awarding agency for the cost to be allowable. Examples of these costs are overtime pay, rearrangement and alteration costs, and pre-award costs.
- b. **Purchase of Equipment over \$5,000** using Grant funds, unless specified in the approved application and budget.
- c. **Any proposed modification to the contract** which results in any change of greater than ten percent (10%) to any budget category must be submitted by the Office of the State Comptroller (OSC) for approval.

IX. PROGRAMMATIC AND FINANCIAL REPORTING

The Contractor shall submit programmatic and financial reports to OCFS. Additionally, all required AmeriCorps member information will be maintained per AmeriCorps Regulations.

NCS Expenditure Report

The Contractor must submit this report and all required supporting documentation by the dates provided by NCS. Reporting schedule is attached. The PER must be submitted up to six times each contract period, no later than 30 days following the end of each reporting period.

- a. **Progress Reports** – The Contractor will submit two mandatory Program Reports reflecting activity occurring in the six months associated with the report. The final Program Report reflecting activity occurring in the final three months of the contract is optional. Reporting Schedule is attached.
- b. **Late Program and Financial Reports** - When a report is 5 days overdue, the Contractor will be sent a letter from OCFS stating the reporting requirements of the grant have not been met. OCFS may suspend reimbursement to Contractor until the late report is submitted to and accepted by OCFS.

In addition to the periodic reports stated above, the Contractor shall, prior to receipt of final payment under this AGREEMENT, submit a final program report satisfactory to OCFS no later than thirty (30) days following the termination of this contract or the completion of expenditures, whichever is sooner or as otherwise specified in Appendix A-2.

X. REPORTING SCHEDULE

All periodic reports as identified in Appendix A-2 shall be submitted in accordance with the schedule provided unless otherwise designated in writing by the Program Officer. All periodic reports must be submitted no later than fifteen (15) days after the end of the reporting period or as otherwise specified in Appendix A-2.

XI. DESIGNATED PAYMENT OFFICE

Designated Payment Office information is contained in Appendix A-2.



NEW YORK STATE 2014-15 AMERICORPS REPORTING SCHEDULE

EXPENDITURE REPORTS	
Reporting Period	Report Due Date
Program Start - 11/30/14	12/31/14
12/1/14 - 2/28/15	3/31/15
3/1/14 - 5/31/15	6/30/15
6/1/14 - 8/31/15	9/30/15
9/1/14 - 11/30/15	12/31/15
12/1/14 - 12/31/15	1/31/16

PROGRAM REPORTS	
Reporting Period	Report Due Date
Program Start - 2/28/15	3/31/15
Program Start - 9/30/15	10/31/15
Program Start - 12/31/15	1/31/16

NOTE: AmeriCorps Contracts are for 15-month periods that fall within that statewide reporting schedule. The contract period is stated in the Contract Management System and the SFS 424 Application face Sheet. So while the initial claim period may be "Contract start - 11/30/14" and the final claim period may be "9/1/15 - 12/31/15" - no AmeriCorps contract may extend beyond 15-months, and no AmeriCorps contractor will be reimbursed for expenditures outside that 15-month contract period.



APPENDIX 6

Attachment M/WBE

Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures

(Revised July 2012)

I. General Provisions

- a. The Office of Children and Family Services ("OCFS") is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value: **1)** in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing **or; 2)** in excess of \$100,000 for real property renovations and construction.
- b. 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 OCFS, to fully comply and cooperate with OCFS 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 ("MWBE"). 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. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors 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.
- d. 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 VIII of this Appendix, or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- a. For purposes of this Contract, OCFS hereby establishes an overall goal of 22.5% for MWBE participation, 9.5% for Minority-Owned Business Enterprises ("MBE") participation and 13% for Women-Owned Business Enterprises ("WBE") participation (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 Contract Goals established in Section II.a. hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>
Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development (DMWBD) to discuss additional methods of maximizing participation by MWBEs on the Contract. DMWBD contact numbers: (518) 292-5250; (212) 803-2414; or (716) 846-8200.
- c. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OCFS for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

[OCFS-3460 – MWBE – Equal Employment Opportunity Policy Statement](#)

- a. Contractor agrees to be bound by and comply with the provisions of Article 15-A and the MWBE Regulations promulgated by the DMWBD. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. Contractor shall comply with the following provisions of Article 15-A.
- b. Contractor and Subcontractors shall undertake or continue existing Equal Employment Opportunity (EEO) programs to ensure that minority group members and women are afforded employment opportunities without discrimination 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. 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.

- c. The Contractor shall submit an EEO Policy Statement to OCFS within 3 (three) business days after the notice of award by OCFS to the Contractor.
- d. If Contractor or Subcontractor does not have an existing EEO Policy Statement, OCFS may provide a model Policy Statement [OCFS-3460 – MWBE – Equal Employment Opportunity Policy Statement](#)
- e. The Contractor's EEO Policy Statement shall include the following language:
 - i. The Contractor and/or Subcontractor will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest; 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.
 - ii. The Contractor and/or Subcontractor 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 (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.
 - iii. The Contractor and/or Subcontractor 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 (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; and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - iv. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and Subcontractor 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.
 - v. The Contractor and/or Subcontractor will include the above-noted language provisions outlined in numbers i. through iv., which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements in the language will be binding upon each subcontractor as to work in connection with the Contract.

IV. Project Staffing Plan Form

[OCFS-4629 - Project Staffing Plan Form](#)

- a. To ensure compliance with the Equal Employment Opportunity (EEO) Section above, the Contractor shall submit a Project Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal.
- b. Once a contract has been awarded, and during the term of Contract, Contractor will, on a quarterly basis, submit to OCFS any modifications or changes to the Project Staffing Plan Form. The Contractor's Project Staffing Plan Form will only include workforce data for staff utilized on the prime contract, and should not include data on staff performing work under any subcontracts. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Project Staffing Form and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Project Staffing Form and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.



V. Subcontracting/Suppliers Utilization Form

[OCFS-4631 – Subcontracting/Suppliers Utilization Form](#)

- a. The Contractor represents and warrants that Contractor has submitted a Subcontracting/Supplier Utilization Form prior to the execution of the contract.
- b. Contractor agrees to use such Subcontracting/Supplier Utilization Form for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II.a. of this Appendix.
- c. Contractor further agrees that failure to submit and/or use such Subcontracting/Suppliers Utilization Form may constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OCFS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. MWBE Subcontractors & Suppliers Letter of Intent to Participate Forms

[OCFS-4630 - Subcontractors and Suppliers Letter of Intent to Participate Form](#)

The OCFS-4630 Subcontractor and Suppliers Letter of Intent to Participate Form is to be completed by the proposed M/WBE Subcontractor/Supplier. It is to be submitted prior to the execution of the contract, attached to the OCFS-4631 Subcontracting/Suppliers Utilization Form, for each certified Minority or Women-Owned Business Enterprise the Bidder proposes to utilize as subcontractors, service providers or suppliers. If the MBE or WBE proposed for a portion of this Contract is a part of a joint venture or other temporarily-formed business arrangement, the name and address of the joint venture or the temporarily formed business entity should be indicated.

VII. Waivers

[OCFS-4442 - MWBE Request for Waiver Form](#)

For Waiver Requests, Contractor should use the OCFS-4442 MWBE Request for Waiver Form.

- a. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit an OCFS-4442 MWBE Request for Waiver Form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, OCFS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- b. If OCFS, upon review of the OCFS-4631 Subcontracting/Suppliers Utilization Form and updated OCFS-4441 MWBE Quarterly Reports, determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, OCFS 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.

VIII. MWBE Quarterly Report

[OCFS-4441 - MWBE Quarterly Report Form](#)

Contractor is required to submit an MWBE Quarterly Report to OCFS with 10 days following the end of each applicable reporting quarter over the term of the Contract, documenting the progress made towards achievement of the MWBE goals.

IX. Liquidated Damages - MWBE Participation

- a. Where OCFS determines that the Contractor is not in compliance with the requirements of the Contract concerning participation by minority and women-owned business enterprises, and that such failure to comply was willful and intentional, or that Contractor refused to comply with such requirements after being notified by OCFS of non-compliance with such requirements, Contractor shall be obligated to pay liquidated damages to OCFS.
- b. Such liquidated damages shall be calculated up to amount equaling the difference between:
 - i. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - ii. 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 Contractor pay liquidated damages and the identified sums of liquidated damages has not been withheld by the OCFS from any payments due to the Contractor, the Contractor shall pay such liquidated damages as have not been withheld to the OCFS within sixty (60) days after the Contractor is notified by the OCFS that the Contractor is required to pay such damages unless, prior to the end of the sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development (Director) pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable within 30 days after issuance of Director's decision if the Director renders a decision in favor of the OCFS.

