

manatt

2049 Century Park East, Suite 1700
Los Angeles, California 90067-3101
Telephone: (310) 312-4000
Fax: [REDACTED]
Tax ID No. [REDACTED]

LIMITED LIABILITY PARTNERSHIP

Albany, N.Y. Boston
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State of New Jersey Governor's Office
[REDACTED]
Contract Administrator
69 So. Warren Street, 7th Floor
Trenton, NJ 08625

Bill Date: 07/09/20
Bill Pro: C Mann
Client No: 66630-030
Invoice No: 503130

RE: Long-Term Care Facilities Resilience Assessment
PO # 8839048

Fees for professional services for July 2020

\$ 575,000.00

Balance now due:

\$ 575,000.00

*approved
JP
7/15/2020*

PAYMENT DUE WITHIN 20 DAYS OF INVOICE

You may find it convenient to wire your payment to us. For that purpose our wiring instructions are as follows:

For credit to the General Account of:
Manatt, Phelps & Phillips
Comerica Bank
Account # [REDACTED]
Routing # [REDACTED]

SWIFT Code [REDACTED] (for international clients only)

Addendum to Manatt Invoice for Purchase Order #88390408**Background**

In May 2020, the State of New Jersey Department of Health (DOH) engaged Manatt Health Strategies, LLC ("Manatt") to undertake a rapid review focused on the state's nursing home facilities and develop a set of recommendations that address outstanding immediate and near-term issues; the licensing, oversight and monitoring of nursing home facilities at both the state and federal levels; and other reforms that can improve safety, quality and preparedness over time, including an eye toward system transformation, to improve the resilience of New Jersey's nursing homes. This quick turnaround (three-week) project distilled lessons learned and actionable recommendations for DOH and other agencies of the State. The fee for consulting services for the Long-Term Care Facilities' Resilience project was set at \$500,000, with fees for additional work undertaken to be paid at an hourly rate of \$511.25.

Basis for fees in excess of \$500,000.

The project fee was negotiated based on a set of assumptions developed in response to a request for proposal solicitation from the State of New Jersey and the information available to us over the short response timeframe. This estimate was developed through a reasonable estimation of personnel and time projected to complete the activities outlined in the workplan included in Manatt's proposal and the associated project deliverables. Manatt provided a discounted blended professional rate in recognition of New Jersey's status as a public sector client in an emergency period.

During the course of the engagement, DOH and the Governor's Office requested additional stakeholder interviews and briefings that were not contemplated in development of the scope or described in our statement of work as well as a companion deliverable on legislative and regulatory changes. In addition, given the unpredictable and non-standardized nature of COVID-19 related surveillance and incidence tracking data, additional data work was required. The additional work is detailed below.

Summary of Additional Workplan Activities

Summary of Additional Work Completed Beyond What Was Anticipated in Original Proposal	<ul style="list-style-type: none"> ☒ Interviews with 47 stakeholder groups (include of over 100 persons) plus additional briefings/interviews with legislators and governor's office representatives at the request of DOH, DHS and the Governor's office rather than the 8-10 proposed interviews ☒ Additional stakeholder briefing sessions and associated preparation ☒ Separate companion legislative and regulatory changes deliverable ☒ Expanded data analyses and complexity of assessing state to state data with non-uniform underlying methodologies; re-run of data assessments to LTC staff inclusion in original LTC facility case and death counts provided by state; and need to review new data sets by CDC and CMS that were released during course of engagement
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Fees

Manatt invested well over 150 hours on these expanded activities and thus requests pursuant to our agreement an additional fixed engagement fee of \$75,000 (inclusive of the activities described above), which we understand is the upper limit of the allowable fee.

May 18, 2020

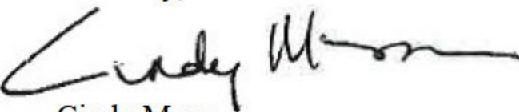
Dear New Jersey Department of Health Procurement Officials:

Per your request, please see below for the budget agreed upon by the New Jersey Department of Health and Manatt Health Strategies, LLC:

- The renegotiated fee for consulting services for the Long-Term Care Facilities' Resilience project will be \$500,000, with fees for any additional work set by an hourly rate agreed upon by both parties.
- The hourly rate for this engagement will be \$511.25 per hour for a project expected to take 978 collective hours to complete.

Please contact me at [REDACTED] or [REDACTED] if you have any questions or need any additional information.

Sincerely,


Cindy Mann

**State of New Jersey – Long-Term Care Facilities
Resilience Assessment Proposal
May 3, 2020**

ENGAGEMENT OBJECTIVE

The impact of COVID-19 on the residents and staff of nursing home facilities licensed and operating in New Jersey has been severe. Accordingly, the State of New Jersey Department of Health (DOH) seeks quick-turnaround consulting and advisory support to provide DOH with a set of actionable recommendations aimed at improving the quality, resilience and safety of the State's long-term care delivery system now and for the future. In response to this proposal, and as described below, Manatt Health Strategies, LLC ("Manatt Health") will undertake a rapid review focused on the state's nursing homes and develop a set of recommendations that address outstanding immediate-term issues; the potential for further limited-scale or isolated COVID-19 outbreaks; the licensing, oversight and monitoring of nursing homes at both the state and federal levels; and other reforms that can improve safety, quality and preparedness over time. This quick-turnaround project will distill lessons learned and emerging trends from other states and leading experts that are applicable to New Jersey; analyze and synthesize federal actions and their implications for New Jersey; and identify opportunities for short- and near-term action at the facility, state and federal levels.

The State seeks recommendations across four dimensions:

- Recommendations for immediate interventions to better reduce and manage risk among residents and staff in the facilities.
- Short-term recommendations to improve quality, safety and staffing.
- Intermediate recommendations to improve the State and Federal regulatory framework to strengthen accountability, transparency, management and oversight of the facilities.
- Long-term recommendations to support future-looking system transformation.

This work will be completed within three weeks, concluding in a final report to DOH and briefings to select stakeholders (which are expected to occur after the three-week review). Manatt Health's understanding in developing this proposal is that the primary focus of this work will be on skilled nursing/nursing facilities licensed by the State of New Jersey rather than the full range of congregate care settings that may be operating. Further, this proposal assumes that DOH and other state offices will quickly make available to Manatt Health all relevant data, analyses and assessments developed or collected by the State of New Jersey and any experts/consultants it has engaged in response to the COVID-19 pandemic. Finally, we assume that in light of the very rapid nature and urgency of this project that, while the report we produce will offer thoughtful, grounded and actionable recommendations in each of the areas outlined in the State's Scope of Work, further work is likely to be needed to refine and prioritize such recommendations.

APPROACH & DELIVERABLES

Following is a summary of our proposed major areas of focus and work effort:

- 1. Week One – Key Activities:** *Kick-off meeting, interviews, data review and ongoing dialogue with State leaders and the State's COVID-response consultants, scan of emerging best practices from other states, and initiation of regulatory review. We will brief DOH on week one work on or around day 7.*

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- Kick-off Meeting: DOH will arrange and facilitate a kick off meeting with the Manatt Health team to take place as soon as possible upon execution of contract. Manatt Health will also work with DOH to establish a briefing schedule and communications cadence.
 - DOH will provide a primary project management contact(s) who will identify and facilitate access to stakeholders determined by DOH and Manatt Health and facilitate timely provision of and access to data and information.
- Interviews: As part of our survey and assessment of NJ's LTC landscape, Manatt Health anticipates conducting 7-10 interviews. We anticipate 4-6 stakeholder interviews with individuals on the front lines of the NJ's COVID response efforts and 2-3 interviews with officials in other states—including Pennsylvania and New York, if possible—to complement other work undertaken in this project on lessons learned from those states' responses to COVID outbreaks in LTCs, to the extent those can be facilitated during the brief project window. In addition, we will conduct 2-3 interviews with experts in this field who are specifically focused on LTC COVID response and/or system transformation. If additional frontline interviews can be scheduled and accommodated in the brief projected timeline, we would be happy to discuss them as options with DOH.
 - Manatt Health will rely on DOH to identify and facilitate timely access to state official interview candidates, and to suggest other in-state interviewees including but not limited to:
 - Representatives from skilled nursing facilities, including for-profit and not-for-profit, and those who appear to have had successful infection control procedures and those where outbreaks have occurred
 - State LTC association (if appropriate)
 - Workforce representatives
 - Consumer representatives/advocates
 - For out-of-state and industry expert interviews, Manatt Health will leverage its existing relationships, where possible, to identify and outreach to candidates; however, we will welcome suggestions from DOH.
- Data Review: Manatt Health will review available data and analyses of such data, to be provided by the State at or as near as possible to the start of the engagement. We will supplement the State-provided data with publicly available data (such as a review of CMS Star ratings, foundation analyses, federal reports on variations across for-profit and non-profit SNFs, and other publicly available data, though we note that comprehensive electronic datasets for LTC are severely lacking in the industry).
 - DOH and the NJ State team will provide available data, drawing on standard reports and recent analyses to the extent possible to ensure timely access. To the extent available, the following types of information (among others) will be helpful:

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- List of facilities, licensure and ownership
 - Number of beds at each skilled nursing facility listed by type/unit:
 - Long-term care
 - Short stay/rehab
 - Memory care/dementia
 - TBI
 - Ventilator
 - Other
 - Occupancy rates
 - Staffing – by type and count and whether full-time or part-time
 - Staffing ratios (if known)
 - Retention/turnover rates by skilled nursing facility
 - Current compensation and benefits by skilled nursing facilities
 - Financial information, including revenue and payer mix across for-profit and not-for-profit providers
 - Percentage of patients with respiratory conditions (pre-COVID/trend), by facility, if available
 - Any information on intake, transfers and patient flows (*we are also happy to interview a few facilities if agreed to with the State and it is able to be quickly arranged*)
 - Unions and unionized workforce by location
 - Infection data and reports submitted by LTCs to the State
 - Any maps or other relevant surveillance data
 - Copies of statement of deficiencies issued to SNFs in the last three years related to infection controls. To the extent possible, please provide a sample from a variety of SNFs so that we can evaluate any differences between for-profit versus not-for-profit; large census versus smaller census; those associated with large health systems versus free-standing facilities.
 - Expenditures and utilization of facility-based care versus HCBS.
- In addition, the State will connect Manatt Health with the appropriate COVID-19 response leaders and/or consultants to share information regarding the overall state infection trends, broader delivery system capacity and hot spots, and, at a high level, broader state response efforts, technology investments and protocols (such as dashboards, hospital reporting, regional hub strategies, etc.).

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- Given the timeline for this project, we will rely upon existing data and analysis and do not anticipate requesting facility-level data beyond what is available from the state or publicly available; we also do not plan to conduct customized data mining via large-scale state databases, such as claims data or other.
- Emerging Lessons from Other States and Industry Best Practices: In parallel with efforts to quickly assess the NJ landscape and specific issues (including variations between for-profit and not-for-profit owned facilities), Manatt Health will summarize industry-wide best practices and emerging practices in response to COVID-19 from other states. The focus of this effort will be to inform options particularly related to immediate response needs and potential localized outbreaks.
 - This work will begin at the start of the engagement, drawing on Manatt Health's existing knowledge and current work with states as well as our extensive tracking of LTC developments across states and our monitoring of federal emergency waivers and other relevant federal action during the pandemic, and will continue into weeks two and three. (I.e., we will not conduct a 50-state survey.)
 - Areas of focus for review will include:
 - Protocols for identifying, cohorting and treating patients with COVID-19
 - Resident and staff coronavirus testing
 - Access to and sufficiency of PPE
 - Hospital surge capacity planning and patient triage options
 - Intake and transfer protocols
 - Resident, family and caregiver communication
 - Staffing levels and turnover
 - Salaries and benefits
 - Temporary staff/protocols
 - Efforts to limit cross-facility staff during emergency periods
 - Workforce preparation, training and education
 - State reporting
 - Regulatory oversight
 - Reimbursement
 - Roles and relationship with home care
 - How some states are leveraging PHE federal waivers and flexibilities
 - Use of technology as part of response efforts

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- **Regulatory Review:** The Manatt Health team members focusing on regulatory/monitoring/oversight will review state and federal requirements related to SNF staffing, infection control, reporting, facility planning and emergency preparation, as well as federal and state permissible and required oversight obligation. This work will begin in week one and continue into week two.
 - DOH and/or NJ State officials as identified by DOH will provide a briefing on issues they have identified relating to current regulations and potential executive actions, enforcement actions and other activities currently under consideration in response to COVID-19.
 - DOH and/or NJ State will facilitate introductions to most appropriate regulatory and legal contacts for follow-up.
- 2. Week Two – Key Activities:** *Ongoing data review, development of preliminary options for regulatory/monitoring/oversight enhancement and deeper dives on facility practices, consider implications of federal flexibilities and emerging developments. We provide two briefings/check-ins with DOH on or around day 10 and day 14.*
 - **Ongoing Data Review:** We will continue to review data provided by the State and relevant federal/publicly available information,
 - **Regulatory Analysis:** This work will deepen in week two and likely continue into week three and will include:
 - Reviewing historical oversight of these facilities at the state and federal level by reviewing a sampling of survey- and complaint-related investigations, including corrective action submission, and interviews of staff, if possible.
 - We anticipate going deeper in our analysis of NJ SNFs to focus on key factors, e.g. those with high/low infection and death rates, for profit, non-profit, large census, small census, part of a health system or not, and those with dedicated units for Alzheimer's and ventilator dependent patients. We will also focus our review on the SNFs that experience high and low infection and death rates associated with COVID-19.
 - As part of this review and recommendations, we will also consider how changes to reimbursement may improve infection control practices and outcomes in a virus outbreak or pandemic.
 - With respect to ongoing oversight and monitoring, we will review existing monitoring reports and activities and consider how they may be enhanced or better leveraged.
 - **Assess Federal Developments:** We will assess federal developments including waivers, planned oversight developments and potential federal legislative initiatives. We will also review task force developments and consider implications for NJ, if any.
- 3. Week Three – Key Activities:** *Crafting, documenting and refining recommendations, with a focus on interim and long-term recommendations. Participate in a briefing with DOH on or around day 19 and will submit a final report on day 21.*

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- Final report recommendations will be delivered in a PowerPoint format.
- Manatt Health will also participate in two follow-on briefings with select stakeholders at direction of DOH. Based on discussions with DOH, Manatt Health will develop targeted PowerPoint presentations based on the final report recommendations for these briefings.

High level anticipated/draft timeline:

	Week 1							Week 2							Week 3						
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Kick off meeting with DOH																					
Briefing calls with DOH on preliminary findings*																					
Briefing & submission of draft recommendations																					
Submission of final report																					
Data and reports from State to consultants																					
State gov stakeholder & "on the ground" stakeholder interviews																					
Additional Interviews																					
State and Industry Best Practice Assessment																					
Follow up on specific facility questions/issues																					
Deeper dive on other states on specific issues																					
Regulatory review																					
Federal waivers and authorities review																					
Refine recommendations																					

In addition, Manatt will participate in two briefings on final report to other state policymakers as determined by DOH

TEAM

Cindy Mann and **Carol Raphael** will serve as leads and strategic advisors for the engagement with **Brenda Pawlak** as the overall project/deliverable director and **Mindy Lipson** as the project manager.

The core project team will be organized into functional/focus areas as follows:

Operational, Facility & Process Improvements and Industry Best Practices:

- Shannon Lorbiecki, Director – Team Lead
- Carol Raphael, Senior Advisor

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- Brenda Pawlak, Managing Director

Regulatory Oversight and Monitoring:

- Randi Seigel, Partner – Team Lead
- Michael Hermann, Associate – Lead Associate
- 1-2 additional associates are expected to provide limited time supporting discrete issues

Lessons and Emerging Practices from Other States:

- Alixandra Gould, Manager – Team Lead
- Stephanie Anthony, Senior Advisor

Federal Actions:

- Mindy Lipson, Director – Team Lead
- Julian Polaris, Associate

Cross-team subject matter supports:

- Emily Carrier, MD – Clinical
- Tucker Leary, Senior Advisor – Facilities
- Jared Augenstein, Director – Digital Health
- Kevin McAvey, Senior Manager and Devin Stone, Manager – Data and Analytics

Manatt Health will also leverage 1-2 project managers/consultants to support document and deliverable creation and provider overall project support.

The core team will also draw from Manatt Health's COVID-19 Resource Center, which has been actively monitoring and analyzing federal and state actions and guidance related to the public health emergency across all care delivery, oversight and reimbursement vectors. Depending on specific questions or issues that may arise during the course of developing recommendations for New Jersey, the core team may draw upon the knowledge and experience of additional Manatt Health policy, clinical, operations, legal and regulatory subject matter experts.

PROFESSIONAL FEES

Manatt Health will undertake this engagement on a fixed-fee basis, beginning on a mutually agreed date in May 2020 and submitting a PowerPoint report within 21 days, followed up by two anticipated briefings to select stakeholders at the direction of DOH. The fees for the engagement will be \$643,600. This rate is all-inclusive. Manatt Health does not anticipate any additional out-of-pocket expenses or travel for this engagement; meetings will be conducted virtually.

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Manatt Health has estimated it will require 978 hours of time across 18 personnel (with varying roles and time expectations, centering around a core team supplemented with specific subject matter contributions) at a blended hourly rate of \$658.

Please note, we have used our best judgment to prepare this proposal and make every effort to develop a comprehensive approach aligned with your needs as we understand them from the solicitation document. However, this proposal is based on limited interaction with DOH and we recognize that there may be alternative ways to organize this scope of work. Therefore, we welcome the opportunity to discuss the project approach with you, and to jointly consider adjustments to this proposal, which may include narrowing or expanding the scope, accelerating or extending the project timeline and utilizing an alternative approach.

Team Member	% time
Cindy Mann – Partner	30%
Carol Raphael – Senior Advisor	50%
Stephanie Anthony – Senior Advisor	45%
Randi Seigel – Partner	67%
Brenda Pawlak – Managing Director	88%
Shannon Lorbiecki – Director	100%
Mindy Lipson – Director	100%
Alixandra Gould – Manager	75%
Michael Hermann – Associate	75%
Rebecca Gerr – Manager	25%
Julian Polaris – Associate	20%
CJ Rundell – Associate	13%
Danielle Newman – Associate	8%
Kevin McAvey – Senior Manager, Data & Analytics	10%
Devin Stone – Manager, Data & Analytics	38%
Emily Carrier, MD – Senior Manager, Subject Matter Expert – Clinical	30%
Jared Augenstein – Director, Subject Matter Expert – Digital Health	7%
Tucker Leary – Senior Advisory, Subject Matter Expert – Facilities	6%

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ASSUMPTIONS

- Manatt Health’s review, recommendations and regulatory analysis will focus on New Jersey skilled nursing facilities, rather than all types of long-term care settings, which are subject to the State’s licensure and oversight.
- To the extent that data or information requested in this proposal is not available to the State or cannot be provided to Manatt Health, our analysis and deliverables that are reliant on such data or information will be modified accordingly.
- The State will provide data and reports and respond to follow-on data requests within 48 hours (or sooner) of Manatt Health’s request; the State will arrange for interviews to be conducted within 48 hours (or sooner) of Manatt Health’s request. Delays may affect the timing of deliverables.
- The State will provide a single contact for administrative coordination and 1-2 point persons for navigating state resources.
- DOH will be engaging Manatt Health Strategies, LLC. To the extent that Manatt attorneys are participating on the project team, they are doing so in an advisory capacity as consultants with regulatory and policy expertise and are not providing legal advice to the State of NJ.
- In order to proceed with this engagement, Manatt Health Strategies, LLC and Manatt, Phelps & Phillips, LLP will need written confirmation from the State, either in the contract between the DOH and Manatt Health Strategies or in a side letter, that confirms that:
 - the services to be performed by Manatt Health Strategies, LLC are consulting, not legal, services;
 - no attorney-client relationship shall exist by virtue of the contract between the State and Manatt Health Strategies, LLC;
 - the New Jersey Department of Health is Manatt Health Strategies, LLC’s sole client for this engagement;
 - the contract between the DOH and Manatt Health Strategies will not prevent or limit in any way Manatt, Phelps & Phillips, LLP from being engaged by clients for representation in any matters before or adverse to New Jersey State departments or instrumentalities.

TEAM BIOS

Cindy Mann, Partner, is a national expert on Medicaid financing and delivery systems. An attorney with more than 30 years of experience in federal and state health policy, she works with clients to develop and implement strategies around federal and state health reform, Medicaid, the Children’s Health Insurance Program, and delivery and payment system transformation including with respect to long-term services and supports. Her clients include states, providers, plans, consumer organizations and foundations. Before joining Manatt Health, Cindy was deputy administrator at the Centers for Medicare & Medicaid Services and director of the Center for Medicaid and CHIP Services. Cindy led the administration of Medicaid, CHIP and the Basic Health Program for more than five years during the

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implementation of the Affordable Care Act. She set federal policy relating to all aspects of the Medicaid program including long-term services and supports, and oversaw all Medicaid policy development relating to LTSS. Throughout her time at CMS, she was also deeply involved in supporting state program implementation and innovation relating to acute care and LTSS, and coordinating policy and program operations with the Marketplace.

Carol Raphael, Senior Advisor, is as a recognized national expert on post-acute care and long-term services and supports (LTSS) policy, payment, workforce and technology. She served the chief executive officer and president of the Visiting Nurse Service of New York (VNSNY), the largest nonprofit home health agency in the United States, for over 20 years. Under her leadership, the organization launched innovative models of care and health plans for complex populations with chronic illness and functional impairments. Prior to joining VNSNY, Carol held executive positions at Mt. Sinai Medical Center and was Executive Deputy Commissioner of the Human Resources Administration in charge of the Medicaid and Public Assistance programs in New York City. She also served as board chair of AARP, and is currently is the chair of the Long-Term Quality Alliance, an alliance of payers, providers, consumers and policymakers working to strengthen and better integrate the LTSS system. She was the chair and remains a board member of the New York eHealth Collaborative, a public-private partnership building a health information exchange platform. She helped launch a Commonwealth Fund project to spur the development of high-performing integrated health plans for a dually eligible population. Carol has served on numerous commissions, including the Medicare Payment Advisory Commission (MedPAC), the Federal Bipartisan Commission on Long-Term Care, the Age-Friendly Commission and several Institute of Medicine committees. She chaired the National Quality Forum's Post-Acute, Long-Term Care and Hospice Workgroup, co-chaired its Attribution Committee and is a member of its Admissions and Readmissions Committee. She chairs the CMS Technical Expert Panel for Quality Measure Development for Dual Eligibles and Medicaid Beneficiaries Using Home and Community Based Services and Managed Long-Term Care.

Brenda Pawlak, Managing Director, leads Manatt Health's health provider-focused COVID response and funding resource team. Brenda is an experienced strategist with over 18 years of experience, working with safety net providers (including hospitals and clinics), academic medical centers/health systems, children's hospitals, and large provider organizations around enterprise strategic planning, clinical integration, clinical affiliation planning, funds flow, health IT enabled care delivery reforms, care management strategy, post-acute care integration strategies, home care strategy development, and regional network development. She often leads complex, multi-stakeholder planning engagements, including state-level efforts. She has also led projects focused on how Medicaid regulations and policies may need to change to accommodate new care models and advances in population health efforts. She frequently leads engagements related to clinical program planning, service line development, alternate setting of care strategies and new clinical business ventures. Prior to joining Manatt Health, she led strategy and market development efforts with The Advisory Board Company and National Geographic and best practice assessment and implementation for a division of News Corporation.

Randi Seigel, Partner, advises long-term and post-acute care providers, health systems, physician practices, national and regional Medicare and Medicaid Advantage plans, healthcare startups and other healthcare stakeholders. She provides regulatory and strategic guidance across a variety of critical areas,

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including COVID response, the Health Insurance Portability and Accountability Act (HIPAA) and state privacy laws, Medicare and Medicaid conditions of participation and billing, fraud and abuse, compliance program requirements, and other regulatory and enforcement matters. Randi has also provided guidance to a number of states regarding building or strengthening their oversight capabilities and COVID response. Randi came to Manatt Health from the Visiting Nurse Service of New York (VNSNY), where she was head compliance officer and privacy officer for VNSNY's family of corporations, including certified and licensed home care service agencies, hospice, behavioral health providers, a captive professional corporation, New York State Medicaid managed long-term care plan, and a health home. In that role, she created and implemented an enterprise-wide compliance program that improved oversight, engagement and reporting. In addition, she advised on regulatory constraints and risks associated with strategic objectives and reorganizations, including partnerships with hospitals and ACOs.

Stephanie Anthony, Senior Advisor, is a veteran of state and federal healthcare administrations with experience in program design and implementation focusing particularly on long-term services and supports. Stephanie is providing strategic guidance to several states on responding to the COVID crisis in their long-term care systems. Stephanie also provides research, analysis and advisory services on health policy and health law to public and private sector clients. Before joining Manatt Health, Stephanie was with the University of Massachusetts Medical School's (UMMS's) Center for Health Law and Economics, where she helped Massachusetts become the first state to implement a demonstration program of integrated care for individuals with dual eligibility for Medicare and Medicaid. Stephanie oversaw strategic planning, policy development and analysis, program design, data analytics, and stakeholder engagement efforts. She was also the lead consultant providing analytic and staff support to Massachusetts' Long-Term Care Financing Advisory Committee. Prior to UMMS, Stephanie was deputy Medicaid director in the Massachusetts Executive Office of Health and Human Services. A member of the executive management team, she worked with the federal Medicaid oversight agency and was integral to the development and implementation of the Commonwealth's landmark healthcare reform law. Stephanie also oversaw CHIP and the MassHealth 1115 Waiver, the primary financing mechanism for the publicly funded healthcare reform coverage expansions.

Shannon Lorbiecki, Director, has more than 30 years of experience in healthcare leadership and strategy roles. Her consulting practice focuses on transformational change in the health care system. With over 15 years of healthcare consulting experience advising providers and regulatory agencies on issues around delivery system transformation, clinical integration, and system optimization, Shannon is uniquely positioned to guide clients through the care delivery, financial and operational challenges facing the health care system today. Her approach to applying critical thinking and analysis to problem solving results in adaptable and innovative solutions to challenging situations. Before joining Manatt Health, Shannon directed strategic consulting projects and managed consulting teams for a major healthcare consulting firm. Her efforts included advising health care providers and regulatory organizations on service configuration optimization, population health, network integration, and system transformation. In her prior work, she has experience in the New Jersey healthcare market and regulatory environment. Shannon has also served in both operational and strategy roles in an integrated health system that includes a robust service services and long-term care network.

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Mindy Lipson, Director, provides policy analysis and development, research, analytics, project management, and strategic business services to states, healthcare providers, foundations, and other healthcare organizations on a broad range of issues, including Medicaid reform, healthcare delivery transformation, payment reform, and health information technology. Mindy publishes frequently on topics related to national Medicaid waiver activity and payment and delivery system reform initiatives. Prior to joining Manatt Health, Mindy was a health research analyst at Mathematica Policy Research, where she was responsible for conducting quantitative and qualitative data analyses on a wide array of issues, including state and federal health policy and public health programs. She also provided technical assistance to state health programs on data collection, reporting, and interpretation.

Alixandra Gould, Manager, provides policy analysis, operational, research and project management support to the full spectrum of healthcare stakeholders—providers, payers, foundations, and federal and state governments—with a focus on vulnerable populations, including individuals with I/DD or physical disabilities and justice-involved populations. Alixandra has extensive experience providing strategic support to post-acute and long-term care providers and working with states to implement long-term care delivery system reform initiatives. Alixandra has also helped develop and facilitate multiple state learning collaboratives for CMS on Medicaid coverage and eligibility issues.

Additional Manatt Health Subject Matter Experts

Jared Augenstein, Director, advises health systems on digital health and telehealth strategies, delivery system transformation, population health, and provider markets. Jared has extensive experience assisting health systems and care delivery organizations, including post-acute care, with strategic planning, organizational design, and digital health and telehealth infrastructure development. He leads Manatt Health's 50 state telehealth regulatory monitoring. He also advises healthcare startups on business planning strategies. He is supporting many stakeholders evaluate and implement digital health strategies in response to the COVID-19 pandemic.

Emily Carrier, MD, Senior Manager, completed her emergency medicine residency and chief residency at Bellevue Hospital/New York University before completing a medicine and public health research fellowship with New York University. She is working with several organization on COVID-19 tracking, response and policy and protocol development. Prior to joining Manatt Health, Emily served as a division director in the Seamless Care Models Group in the Center for Medicare & Medicaid Innovation at the Centers for Medicare & Medicaid Services where she led the development of CMMI and Medicare alternate payment models (APMs). Prior to that, she was a senior health researcher at the Center for Studying Health System Change and Mathematica Policy Research. Her primary research interests focused on the fragmentation and coordination of care, emergency care, and the future of safety-net providers under health reform.

Rebecca Gerr, Manager, supports states and provider with payment and delivery system transformation; healthcare reform implementation; and provider operations/strategy. Prior to joining Manatt Health, Rebecca received her M.B.A. from Georgetown University's McDonough School of Business and her M.P.P from Georgetown University's McCourt School of Public Policy. While at Georgetown, she received an innovation award to improve health insurance literacy and served as an intern for a biopharmaceutical company, a venture fellow for a capital market company and a summer

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intern for the Department of Health and Human Services in the Center for Consumer Information and Insurance Oversight. She also previously worked for the Advisory Board as a consultant, leading research studies for hospital executives.

Michael Herrmann, Associate, focuses on complex healthcare transactions as well as governance, compliance and regulatory matters, including in the long-term care space. He supports transactions involving nonprofit and for-profit hospitals and health systems and LTC providers and advises clients on a variety of compliance issues, including anti-kickback, Stark and HIPAA.

Tucker Leary, Senior Advisor, is a senior healthcare executive with a record of achievement over 30 years' experience in clinical program development, physician recruiting and service line management with experience in heart and vascular care, organ transplantation, trauma and digestive diseases, cancer, and other specialties. He also leads financial performance assessment and evaluations of service line contribution margins. He has led successful efforts to expand physician networks, improve patient outcomes and hospital financial performance in these clinical disciplines. He also has extensive managed care and ambulatory care experience. He served as Vice President at Yale New Haven Hospital and has experience evaluating many sites of care, facilities, and care transition protocols.

Kevin McAvey, Senior Manager, has deep experience in economics and quantitative methods. Working with clients and client leads to collect, manage and analyze large datasets, Kevin builds and implements models to predict the impact of health reform initiatives on coverage, payment, utilization and stakeholders' costs. He also advises clients on research projects and analyses by identifying the best available data sources, applying appropriate methodologies and interpreting results. Prior to joining Manatt Health, Kevin supported the establishment of an independent Massachusetts state agency to provide healthcare cost transparency through the use of data. Under Kevin's management, the agency brought the Massachusetts' All Payer Claims Database (APCD) online for ongoing analytic use and first-in-the-nation reporting. Kevin served as the agency's business representative in a multiagency national effort to develop a standardized APCD technical and business specification. He worked to ensure file data completeness and accuracy across 16 payers' private commercial, Medicaid and Medicare Advantage lines of business.

Danielle Newman, Associate, is a litigation associate in the firm's New York office. Her broad-based practice includes matters involving complex commercial litigation, white collar investigations, arbitrations and regulatory matters. During law school, Danielle interned in the Labor Bureau for the Office of the New York State Attorney General.

Julian Polaris, Associate, focuses on a variety of regulatory and transactional matters for healthcare stakeholders, including providers, LTC, public health plans and private insurers. He provides guidance on a range of health law issues, including Medicaid regulations, fraud and abuse, the Affordable Care Act, and state licensure laws. He leads the firm's efforts to track and analyze federal and state 1135 waivers in response to the COVID-19 public health emergency and other federal flexibilities. Prior to joining Manatt Health, Julian served as a law clerk to the Honorable Susan L. Carney of the U.S. Court of Appeals for the Second Circuit, as well as to the Honorable Nicholas G. Garaufis of the U.S. District Court for the Eastern District of New York.

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Christopher (CJ) Rundell, Associate, focuses his practice on complex healthcare transactions as well as governance, compliance and regulatory matters. Before joining Manatt Health, CJ worked as a healthcare associate for a large national law firm where he advised clients on healthcare-related mergers and acquisitions and corporate governance matters. In this role, he also drafted hospice agreements and HIPAA-related agreements, as well as provided counsel on compliance policies and procedures.

Devin Stone, Manager, supports analytics related to payment and delivery system reform, redesign and innovation, as well as health reform implementation for health care providers states and local communities. Prior to joining Manatt Health, Devin worked as an economist in the Centers for Medicare & Medicaid Services' Office of the Actuary. There, he developed economic models to quantify the financial impacts of bundled payment demonstrations and served as co-lead for the 2016-25 National Health Expenditure projections. Devin's experience in using Medicare, Medicaid and private health insurance claims databases allows him to tackle complicated research questions such as quantifying the impact of self-selection in the Bundled Payments for Care Improvement demonstration, comparing Medicare prices to other payers, and identifying trends in the Medicare program. Before the Office of the Actuary, Devin worked as an associate for The Moran Company, where his research and analysis of Medicare payment systems and claims data helped healthcare providers to make informed decisions. Prior to that he was an economist and associate director for the National Community Pharmacists Association.

MANATT HEALTH QUALIFICATIONS

As a practice that focuses on health with a diverse array of clients, Manatt Health understands long-term care services—the beneficiaries, the marketplace and the workforce—from many different perspectives. Our experience in long-term care includes advising long-term care providers on business strategy, operations and innovation, working with health plans that have taken on risk for long-term care services; providing regulatory counsel and advice to health plans, employer plans, health systems, and pharmacy plans seeking to partner with or cover long-term care services and long-term care providers; and engagements with national and local labor organizations that represent long-term care workers. Our engagements in these areas are available upon request. Below we provide a more focused look at four aspects of our work most relevant to this engagement: (1) engagements relating specifically the COVID-19 crisis; (2) engagements relating specifically to long-term care reforms and improvements; (3) work with states focusing on health care payment and delivery system reforms (including some relating specifically to long-term care); and (4) thought leadership work on a range of health reform topics.

1) COVID-19-Related Engagements

In light of the pandemic, Manatt Health has developed multiple initiatives to help states, providers and health plans address current COVID-19 challenges, as well as future emergency preparedness and planning. Manatt Health is engaged in enhancing access to telemedicine, reducing risk for both LTC beneficiaries and providers, identifying funding opportunities to support provider sustainability, easing regulatory barriers that may inhibit access to public coverage of critical benefits, and providing

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assistance with maintaining service capacity and quality while protecting and incentivizing the essential health care workforce.

Central to our technical assistance support to states during the COVID-19 crisis are our understanding of and sensitivity to state needs and pressures, and our ability to think strategically and creatively to provide actionable policy and operational ideas and support during times of crisis. We have provided below examples of our ongoing COVID-19-related work with clients:

Various States: Responding to the COVID Crisis (current). Manatt Health is actively working with **Montana, North Carolina, Virginia and Washington** on various aspects of their COVID-related responses to protect and support Medicaid program beneficiaries, providers, and health plans during the COVID-19 crisis and post-pandemic. Manatt Health is working with these states to identify and request federal and state regulatory and programmatic flexibilities, as well as funding and reimbursement opportunities, to ensure streamlined access to facility-based and community-based services; access to alternative sites of care to support hospital surge capacity and hospital discharges and transitions; and expand and protect the workforce across the long-term care continuum. This work has included drafting federal waiver requests, providing technical assistance on operationalizing flexibilities, developing telehealth policies, identifying best practices from other states, and advising on health information exchange opportunities.

New York City: COVID-19 Resource Center (current). Manatt Health is staffing a COVID-19 resource center for New York City, and working with the NYC Office of Management and Budget and NYC Health + Hospitals, to provide guidance and technical assistance to the City, safety net hospitals, long-term care providers, behavioral health providers, and human service organizations. Through the resource center, Manatt Health is providing ongoing guidance on variety of pertinent issues, such as federal funding and regulatory flexibilities, compliance issues, and operational strategies for responding to COVID-19 (e.g., telehealth). The work includes rapid response engagement with City leadership and providers through learning collaboratives and webinars, as well as developing other resources such as regulatory flexibilities guidance for long-term care providers, federal funding prioritization frameworks for hospitals, and a recovery playbook series for safety net providers.

The SCAN Foundation: COVID-19 and the LTSS System (current). Manatt is conducting a comprehensive assessment of how states are deploying federal and state COVID-19 flexibilities and related authorities to address the COVID crisis. Manatt's assessment will analyze the impact of state changes on beneficiaries, providers and the LTSS system. Manatt also is working with the SCAN Foundation to draft and publish an article to raise public awareness about the critical role that LTSS is playing in response to COVID and ways the LTSS system can be strengthened to support future outbreaks. As part of this work, Manatt will develop strategic guidance for the SCAN Foundation on advancing and supporting state activity on LTSS-related COVID response and post-pandemic planning.

Robert Wood Johnson Foundation: State Health & Value Strategies (current). Since 2011, Manatt Health has been providing technical assistance to states on a range of coverage and delivery system issues through the RWJF's State Health & Value Strategies Program. As the COVID-19 pandemic emerged, SHVS recognized the need for a consolidated and easily accessible source of information, analysis, and tools for state health officials. Manatt Health supported SHVS in conceptualizing and standing up a COVID-19 resource page and a suite of state technical assistance products and tools within

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days of the federal disaster declaration. For SHVS's COVID-19 resource for states, Manatt Health serves as a core technical assistance provider focused on Medicaid, CHIP and coverage and access for the uninsured and other vulnerable populations. Informed by our knowledge and expertise on these critical programs and our understanding of the challenges and opportunities confronting states, we are monitoring federal and state actions – e.g., legislation, regulations, policy guidance, funding announcements – and curating the most relevant content and state promising practices for dissemination through the resource page. Manatt Health is offering webinars and short explainers to review key authorities and options and distill key policy and implementation for states related to responding to and mitigating the impact of COVID-19. The COVID-19 resource page is available at <https://www.shvs.org/covid19/>.

Robert Wood Johnson Foundation/Lucile Packard Foundation for Children's Health: Examining the Impact of COVID-19 on Children (current). Manatt Health is helping states, pediatricians, and child advocates respond to the immediate and longer-term impacts of the COVID-19 pandemic on children, including children with special healthcare needs. Manatt Health is currently working in partnership with the Robert Wood Johnson Foundation and the Lucile Packard Foundation for Children's Health to ensure children's access to Medicaid coverage and healthcare services, sustain the pediatric provider workforce, and support low-income families throughout and in the wake of the public health crisis. We will identify promising Medicaid state policy and operational strategies as well as pediatric-specific provider strategies that can help support children and families and their healthcare providers for both a selected state level audience and for national dissemination.

Teacher's Health Trust: COVID-19 Recovery Plan (current). Clark County, Nevada is home to 73% of the state's residents and the fifth largest school district in the United States, with 360 schools, more than 41,000 employees and 320,000 students. Manatt Health is supporting the Teachers Health Trust, the largest self-administered public school health plan in the country, and the Clark County School District (CCSD), along with a coalition of medical and community stakeholders, in their efforts to fund and further advance a comprehensive initial plan for robust coronavirus testing and symptom monitoring, risk stratifying (taking into a sophisticated matrix of factors), connecting to resources, informing back to school protocols and supporting ongoing monitoring and furthering this work as a playbook that can be replicated in other states/communities.

2) Long-Term Care Reform and Improvements

New York State Coalition of Managed Long-Term Care/PACE Plans (current). Manatt Health founded and provides legislative and regulatory advocacy services to the New York State Coalition of Managed Long-Term Care and PACE Plans, a consortium of 18 nonprofit, provider-sponsored managed care organizations that coordinate care of chronically ill, nursing home-eligible New Yorkers. As part of our engagement, we helped design and secure approval of a proposed rule to mandate enrollment in a managed long-term care plan if they require more than 120 days of community-based long-term care services; the rule became the centerpiece of the state's Medicaid Redesign of long-term care services. We also assisted with the implementation of the new initiative as well as the development of a new, capitated model for managing the care of dual eligibles.

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Blue Cross Blue Shield of Massachusetts Foundation: MassHealth Long-Term Services and Supports Reform (2016). For the Massachusetts Medicaid Policy Institute, a program of the Blue Cross Blue Shield of Massachusetts Foundation, Manatt Health conducted a three-part project to advance the state discourse around reform of MassHealth’s (Massachusetts Medicaid) long-term services and supports (LTSS) delivery system and purchasing approach. The project included conducting a comprehensive literature review and data analysis of the MassHealth and state-funded LTSS landscape, preparing a robust MassHealth LTSS primer and data chart pack, and developing a final report detailing key challenges facing the LTSS system and actionable recommendations for reform. Recommended areas for reform included care integration at the provider level, quality improvement, workforce development, streamlined access to services and data-driven decision-making. As part of this engagement, Manatt Health also supported a public forum around MassHealth LTSS reform, identifying local, national and international speakers, as well as substantively supported a wrap-up discussion with state policymakers on lessons learned from the event and next steps.

Center for Health Care Strategies: LTSS in a New Policy Environment (2018). With support from the SCAN foundation and the Millbank Memorial fund, Manatt Health co-authored with the Center for Health Care Strategies, Inc., a “State Medicaid LTSS Reform Tool Kit.” The project provided a menu of LTSS reform strategies focused around expanding access to home and community-based services and integrating LTSS with other services that states are pursuing, and assessed promising administrative avenues (e.g., waivers, State Plan Amendments changes, etc.) that are available to support state efforts to strengthen and ensure patient-centered LTSS for Medicaid eligible beneficiaries, including those dually eligible for both Medicare and Medicaid. The toolkit detailed strategies and best practices for advancing LTSS in the new federal/state policy environment across several reform areas.

The New Jewish Home: Feasibility Study/Business Plan for Institute (2017). Manatt Health helped The New Jewish Home (TNJH) to inform its internal decision-making when considering whether it should create a premier research, training and educational institute (the Institute) by developing a feasibility study for the Institute and a business plan for its formation. Manatt Health assisted TNJH in its decision-making through two distinct planning phases.

- Phase I: Feasibility Study. The objective of the first phase of work was to evaluate TNJH’s current capabilities and competitive environment to assess whether forming the Institute is a feasible idea and, if so, to generate recommendations for the Institute’s mission and structure.
- Phase II: Business Plan. The objective of the second phase of work was to build upon the feasibility assessment developed in Phase I to shape a business plan that will provide concrete guidance for the implementation of the Institute, specifically around the Institute’s design and structure, governance, staffing and budget.

Metropolitan Jewish Health System: Strategy and Analysis (2016). Manatt Health provided Metropolitan Jewish Health System (MJHS) with services intended to build upon the organization’s current strategies relating to its health plans and provider business units (hospice and palliative care, home care and nursing home). This included assessing the viability of existing Medicare and Medicaid managed care plans and leading a sharpening of MJHS’s current strategic plan with input from stakeholders across corporate leadership, employees and board members. This “strategic sharpening”

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involved analysis of market trends; an assessment of the organization's strengths, weaknesses, opportunities and threats; and the development and evaluation of strategic options. It will also include a review of MJHS's Foundation with the goal of assessing its ability to meet the priorities identified through the strategic sharpening process.

Coalition of New York State Public Health Plans (PHP Coalition): MMCOR Website and Data Analysis (2016). Manatt Health redeveloped and expanded the Coalition of New York State Public Health Plans (PHP Coalition) Medicaid health plan operating report (MMCOR) data website. As part of an update of this website that was first developed by Manatt Health in 2008, the Manatt Health team expanded the website to add six other New York State Medicaid managed care reports (over 300 additional reports) covering multiple types of long-term care plans (Managed Long-Term Care, Mutual Aid Plan, Programs of All-Inclusive Care for the Elderly), Affordable Care Act Marketplace essential plans, HIV special needs plans, and Fully Integrated Duals Advantage Plans. In addition, the website update improved the backend database and procedures used to process and manage data for the site, and modernized the user interface to improve the user experience.

Leading Major Academic Health System in the Northeast: Post-Acute Care Strategy (2014). [Client anonymous by request]. Manatt Health supported a large health system in developing a post-acute care (PAC) strategy. As part of the engagement, the team conducted a local, regional and national PAC landscape assessment, developed a high-level PAC strategy framework, and recommended short-term care transition improvements.

3) State Delivery System and Payment Reforms

State of North Carolina: Medicaid Redesign (current). Manatt Health has supported the state of North Carolina since 2016 to successfully transform its Medicaid delivery system into high-performing Medicaid managed care plans for the state's general Medicaid population and its high-need behavioral health populations. Manatt Health has advised the state on key strategic issues related to its Medicaid transformation, including potential approaches to long-term care delivery and community integration, care management models and processes, reimbursement approaches and methodologies, including value-based payments, and behavioral health in a Medicaid managed care environment. Manatt Health's work has spanned a number of complex work streams and has included: strategic advice, technical assistance in developing managed care procurement requirements, facilitation of design work groups and key stakeholder meetings, development of comprehensive stakeholder engagement plans, statutory and regulatory gap analyses and drafting proposed statutes and regulations; facilitating Section 1115 waiver negotiations with CMS; and data analyses to inform policy and design decisions.

California Department of Health Care Services: CALAim (current). Manatt Health is supporting the California Department of Health Care Services ("DHCS") on policy development and implementation strategy related to California's planned delivery and payment transformation for its Medi-Cal program (referred to as CalAIM). We are supporting the DHCS to shape and operationalize strategies that will enable the state to adopt a whole-person care and population health approach to providing services that will improve outcomes for people enrolled in Medi-Cal generally and certain particularly vulnerable populations. Manatt Health is working with California on three components of the CalAIM initiative: a

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central aspect of the initiative known as “enhanced care management” (ECM); care related to justice-involved individuals, and health information technology.

New Hampshire Department of Health and Human Services - Medicaid Managed Care RFP Support (2018). Manatt Health assisted the New Hampshire Department of Health and Human Services (DHHS) with the re-procurement of the state’s Medicaid managed care program. Through the development of the request for proposal (RFP) and draft model contract, Manatt Health established the groundwork for a successful program and set the course for broader delivery system reforms. To accomplish these goals, Manatt Health conducted interviews with key stakeholders; drew from our previous national knowledge; stewarded the RFP release and bidder support; and proposed an enhanced, data-driven oversight structure for the health plans.

Louisiana Department of Health and Hospitals: Louisiana Cancer Research Consortium of New Orleans (2018). Manatt Health assisted the Louisiana Secretary of Health in designing and implementing the Taking Aim at Cancer in Louisiana Collaborative, a multiyear collaborative that brought together the state’s biggest payers and providers to improve cancer outcomes in Louisiana by expanding all residents’ access to cancer prevention, screening, diagnosis, and standard-of-care treatment and follow-up care. Manatt Health consultants interviewed a wide range of in-state and national stakeholders and conducted a landscape analysis to identify clinical priorities and initiative opportunities. We then worked with a steering committee comprising leaders from payers, providers and advocacy groups to build alignment around a structure for these parties to work together in addressing common goals. Manatt Health developed and secured commitment from these stakeholders and their respective organizations for the statewide collaborative agreement. We later developed bylaws for the TACL organization and supported the kickoff of the associated board of directors.

California Health Care Foundation (CHCF): CHCF Advances the Development of Medi-Cal Delivery System Reform (2015). For the CHCF, Manatt Health prepared a report on “Developing a Path to Delivery System Reform in Medi-Cal.” The objective of the engagement was to develop an actionable vision and path for how the state, health plans and providers could accelerate efforts to move the Medi-Cal program (California’s Medicaid program) into a sustainable value-based model – one that delivers high-quality, value-driven care for the close to 13 million Californians enrolled. As part of the engagement, Manatt Health undertook a thorough landscape assessment to analyze the program’s current strengths and challenges, and conducted interviews with a broad array of thought leaders and Medi-Cal stakeholders, including Medi-Cal officials, hospital and medical group representatives, Medi-Cal managed care plans, and consumer groups. Manatt Health also participated in report dissemination activities with CHCF.

Massachusetts Medicaid Policy Institute: Key MassHealth Issues Policy Paper (2014). In a report prepared for the Massachusetts Medicaid Policy Institute (MMPI), a program of the Blue Cross Blue Shield of Massachusetts Foundation, Manatt Health highlighted key issues for MassHealth, a nearly \$14 billion Medicaid program that provides insurance coverage to more than 1.5 million residents of the Commonwealth. Working with MMPI, Manatt Health conducted over 40 in-person and telephone interviews with a range of healthcare stakeholders regarding the major opportunities and challenges for the MassHealth program that face the incoming Administration. The report reviewed the issues, opportunities and policy options for MassHealth and specifically identifies five critical priorities that

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required the Governor’s urgent attention to ensure the long-term prosperity of the MassHealth program.

4) Health Reform Thought Leadership

Robert Wood Johnson Foundation & Packard Foundation: Medicaid for Children with Special Needs (2018-2019). For the Robert Wood Johnson Foundation and the Lucile Packard Foundation for Children’s Health, Manatt Health identified policies and practices that cause variations in care and services for children with special healthcare needs by (i) conducting a literature review; (ii) cataloging federal statutes, regulations and guidance; (iii) analyzing states’ current policies; (iv) conducting a cross-state data analysis of use of services; and (v) interviewing key informants. The project culminated in recommended practical strategies that can be used by Medicaid agencies, family and community advocates, and other stakeholders (e.g., the American Academy of Pediatrics) to improve access and health for children with special healthcare needs. The project’s findings and recommendations were memorialized and disseminated through an issue brief that included an easy-to-follow checklist of action steps and a webinar.

Robert Wood Johnson Foundation: Taxonomy of Local Initiatives Targeting SUD and SMI (2017). The Robert Wood Johnson Foundation engaged Manatt Health to develop a taxonomy of city- and county-led initiatives that address the impact that individuals with serious mental illness (SMI) and substance use disorders (SUD) have on local communities. The taxonomy described each initiative’s objective, intervention approach, financing strategy and any evidence of success. Based on a comprehensive literature review, interviews and site visits with key stakeholders, and input from an Advisory Committee comprised of experts and local leaders, the Manatt Health team prepared a report highlighting the issues faced by local communities and provided a taxonomy of initiatives that addressed the local impact of individuals with SUD and SMI.

The Commonwealth Fund: Emerging Issues in Medicaid Payment and Delivery Reform: Observations From New York’s DSRIP Implementation (2015-2016). Manatt Health was engaged by the Commonwealth Fund to examine New York’s early experience implementing its DSRIP waiver, focusing on emerging issues in areas such as governance, data-sharing and analytics, social determinants of health, and value-based payments (VBPs). The report informed Medicaid’s stakeholders’ efforts in designing, planning for and implementing Medicaid-led transformations. Through stakeholder interviews, the report provided a comprehensive analysis of the New York approach to the DSRIP waiver, assessing the early successes and challenges and identifying how New York’s experiences can influence new state payment and delivery system reform initiatives.

Kaiser Commission on Medicaid and the Uninsured: Key Themes from Delivery System Reform Incentive Payment (DSRIP) Waivers in 4 States (2014). Manatt Health professionals coauthored a report with Robin Rudowitz, associate director, and Alexandra Gates, policy analyst, of the Kaiser Commission on Medicaid and the Uninsured titled “Key Themes from Delivery System Reform Incentive Payment (DSRIP) Waivers in 4 States.” The report provided an early look at the impact of DSRIP waivers on Medicaid payment and delivery systems. Building on an earlier brief that provides an overview of DSRIP waivers, it identified emerging trends and themes based on interviews with stakeholders—including

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state officials, providers and advocates—in three states that had adopted Medicaid expansion (California, Massachusetts and New York) and one that had not adopted expansion (Texas).

The Commonwealth Fund: Addressing the Social Determinants of Health (2013). The Commonwealth Fund and the Skoll and Pershing Square Foundations asked Manatt Health to prepare two papers building the case for incorporating social supports into emerging payment and delivery models that hold providers accountable for patient outcomes and costs as well as population health. These papers evaluated the impact of social determinants of health on both outcomes and costs, highlighted successful demonstrations that connected patients to social supports, and built the case for integrating these interventions into emerging clinical practice and payment models. The work included a literature review, interviews with more than 20 experts in the field, and a cost benefit analysis to enunciate a business case for including interventions that address social determinants of health into clinical settings.

ABOUT MANATT HEALTH

Manatt Health integrates consulting and legal expertise to better serve the complex needs of clients across the healthcare system. Manatt Health has extensive experience working in post-acute and home care settings across strategy, policy development and legal/regulatory issues, supporting states and post-acute and long-term care providers with strategic planning, transformation initiatives, and new opportunities and models to meet the challenges of the rapidly changing healthcare environment.

Our team works hand-in-hand with senior leadership to define the critical issues facing states, assessing strategic imperatives and their implications collaboratively; defining a new forward-looking vision; and developing implementation plans.

Combining legal excellence, first-hand experience in shaping public policy, sophisticated strategy insight, and deep analytic capabilities, Manatt Health provides uniquely valuable professional services to the full range of health industry players. Our diverse team of more than 160 attorneys and consultants from Manatt, Phelps & Phillips, LLP and its consulting subsidiary, Manatt Health Strategies, LLC, is passionate about helping our clients advance their business interests, fulfill their missions, and lead healthcare into the future.

For more information, visit <https://www.manatt.com/Health> or the Manatt COVID-19 resource center at: www.manatt.com/COVID-19.



**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY**

**33 WEST STATE STREET, P.O. BOX 230
TRENTON, NEW JERSEY 08625-0230**

State of New Jersey Standard Terms and Conditions

(Rev: 10/21/19)

1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's Proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.

1.1 CONTRACT TERMS CROSSWALK

NJSTART Term	Equivalent Statutory, Regulatory and/or Legacy Term
Bid/Bid Solicitation	Request For Proposal (RFP)/Solicitation
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order (Blanket P.O.)	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor	Bidder/Contractor

2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of

\$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

2.2 ANTI-DISCRIMINATION

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions Contracts (Exhibit B and Executive Order 151, August 28, 2009, attached) as appropriate.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.3 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

2.4 AMERICANS WITH DISABILITIES ACT

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.5 MACBRIDE PRINCIPLES

The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.6 PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;

- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

2.7POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

2.8STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;

No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.10 COMPLIANCE - LAWS

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.11 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

2.12 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES

The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;

- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
 1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
 2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
 3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.4 BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.6 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a

required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.7BUY AMERICAN

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

3.8DIANE B. ALLEN EQUAL PAY ACT

Pursuant to N.J.S.A. 34:11-56.14, a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

4.INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

The contractor’s liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
- B. The contractor’s indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2INSURANCE

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days’ written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor’s insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description

of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at:

ccau.certificate@treas.nj.gov

The insurance to be provided by the contractor shall be as follows:

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;
- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
- C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
 2. \$1,000,000 DISEASE EACH EMPLOYEE; and
 3. \$1,000,000 DISEASE AGGREGATE LIMIT.
 - A. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the Director; and
 - B. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

5.TERMS GOVERNING ALL CONTRACTS

5.1CONTRACTOR IS INDEPENDENT CONTRACTOR

The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2CONTRACT AMOUNT

The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.

5.3CONTRACT TERM AND EXTENSION OPTION

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the

extension, all terms and conditions of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.5 CHANGE IN LAW

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Vendor {Contractor} of the final adjusted contract price.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- A. For Convenience:
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
- B. For Cause:
 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director

may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and

2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
 - D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING OR ASSIGNMENT

- A. Subcontracting: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws; and
- B. Assignment: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE

Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

5.10 MERGERS, ACQUISITIONS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- c. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14 CONTRACT AMENDMENT

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 MAINTENANCE OF RECORDS

The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless a longer period is required by law. Such records shall be made available to the State, including the Comptroller, for audit and review.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
 - 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
 - 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

6. TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and documentation.

6.2 TAX CHARGES

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS

- a. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;
- b. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;
- c. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and
- d. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

6.4 OPTIONAL PAYMENT METHOD: P-CARD

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section 7 of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 PROCUREMENT OF RECOVERED MATERIALS

To the extent that the scope of work or specifications in the contract requires the contractor to provide any of the following items, this Section 7.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:
 - 1. Paper and paper products listed in 40 C.F.R. 247.10;
 - 2. Certain vehicular products as listed in 40 CFR 247.11;
 - 3. Certain construction products listed in 40 C.F.R. 247.12;
 - 4. Certain transportation products listed in 40 C.F.R. 247.13;
 - 5. Certain park and recreation products, 40 C.F.R. 247.14;
 - 6. Certain landscaping products listed in 40 C.F.R. 247.15;
 - 7. Certain non-paper office products listed in 40 C.F.R. 247.16; and
 - 8. Other miscellaneous products listed in 40 C.F.R. 247.17.
- B. As defined in 40 CFR 247.3, "recovered material" means:
 - 1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
 - 2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:
 - a. Postconsumer materials such as --
 - i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
 - ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
 - b. Manufacturing, forest residues, and other wastes such as --

- i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - ii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
 - iii. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
 - iv. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
 - v. Fibers recovered from waste water which otherwise would enter the waste stream.
- C. For contracts in an amount greater than \$ 100,000, at the beginning of each contract year, contractor shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts subject to this Section 7.1 of the Standard Terms and Conditions, at the conclusion of each contract year, contractor shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

7.2 EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about,

discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7.3 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

7.4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

7.5 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit

Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7.6 CLEAN AIR ACT, 42 U.S.C. 7401-7671q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Contracts and subgrants of amounts in excess of \$ 150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7.7 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

7.8 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

Contractors that apply or bid for an award exceeding \$ 100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

EXHIBIT A**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)N.J.A.C. 17:27 et seq.**GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to **N.J.A.C. 17:27-1 et seq.**

EXHIBIT B**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)N.J.A.C. 17:27-1.1 et seq.**CONSTRUCTION CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
- (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
 - (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
 - (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
 - (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
 - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
 - (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - (i) The contractor or subcontractor shall interview the referred minority or women worker.
 - (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith

determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov>/<http://NJ.gov/JobCentralNJ>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.

State of New Jersey Standard Terms and Conditions

(Rev: 10/21/19)

**I HEREBY ACCEPT THE TERMS AND CONDITIONS OF
THIS CONTRACT**

DocuSigned by:

Richard Adam

Signature

Richard W. Adam, Associate General Counsel

Print Name and Title

Manatt Health Strategies, LLC

Print Name of Contractor

May 8, 2020

Date

**WAIVERED CONTRACTS SUPPLEMENT TO THE
STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS**
(Rev. 6/14/2018)

- A. WAIVERED CONTRACTS SUPPLEMENT TO THE STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS** - This Supplement to the State of New Jersey Standard Terms and Conditions ("Supplement") shall apply to all contracts or purchase agreements made with the State of New Jersey ("State") under N.J.S.A. 52:34-9 or -10 ("Waivered Contracts"). The terms in this Supplement modify the terms of the New Jersey Division of Purchase and Property's Standard Terms and Conditions as may be updated from time to time ("Standard Terms and Conditions"). The combined terms of the Standard Terms and Conditions and this Supplement, in addition to the terms and conditions set forth in the Request for Proposal, Request for Quotation, and/or other agency request ("Solicitation"), if applicable, shall prevail over any conflicts set forth in or incorporated by reference into a contractor's proposal submitted in response to a Solicitation including any standard license, service or other agreement ("Contractor Standard Form Agreement").

The "Contract" shall consist of this Supplement, the Standard Terms and Conditions, the Solicitation, and the proposal submitted by the contractor.

The Standard Terms and Conditions are hereby incorporated by reference. Section numbering of the changes and additions enumerated below continue the number scheme of the Standard Terms and Conditions.

- B. CHANGES/ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR ALL GOODS, SERVICES, AND INFORMATION TECHNOLOGY WAIVERED CONTRACTS:**

2.13 OWNERSHIP DISCLOSURE

Pursuant to N.J.S.A. 52:25-24.2, in the event the contractor is a corporation, partnership or limited liability company, the contractor must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted proposal. A contractor's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as non-responsive and preclude the award of a Contract to said contractor unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the receipt of the proposal. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the proposal.

In the alternative, to comply with this section, a contractor with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

2.14 PROHIBITED INVESTMENT IN IRAN

Pursuant to N.J.S.A. 52:32-58, the contractor must utilize this Disclosure of Investment Activities in Iran form to certify that neither the contractor, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the contractor, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the contractor is unable to so certify, the contractor shall provide a detailed and precise description of such activities as directed on the form.

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2.15 STATE'S RIGHT TO INSPECT CONTRACTOR'S FACILITIES

The State reserves the right to inspect the contractor's establishment before making an award, for the purposes of ascertaining whether the contractor has the necessary facilities for performing the Contract.

The State may also consult with clients of the contractor to assist the State in making a contract award that is most advantageous to the State.

2.16 STATE'S RIGHT TO REQUEST FURTHER INFORMATION

The Director reserves the right to request all information which may assist him or her in making a contract award, including factors necessary to evaluate the contractor's financial capabilities to perform the Contract. Further, the Director reserves the right to request a contractor to explain, in detail, how the proposal price was determined.

2.17 DELIVERY TIME AND COSTS

Unless otherwise noted elsewhere in the Solicitation, all delivery times are 30 calendar days after receipt of order (ARO) and prices for items in proposals shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days ARO/F.O.B.). The contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's Using Agency or designated purchaser. Thirty calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on the receiving platform of the Using Agency at any destination in the State of New Jersey unless otherwise specified.

No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the contractor's convenience when a single shipment is ordered.

The weights and measures of the State's Using Agency receiving the shipment shall govern.

2.18 COLLECT ON DELIVERY (C.O.D) TERMS

C.O.D. terms will not be accepted.

2.19 CASH DISCOUNTS

The contractor is encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts.

Should the contractor choose to offer cash discounts the following shall apply:

- A. Discount periods shall be calculated starting from the next business day after the Using Agency has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest; and
- B. The date on the check issued by the State in payment of that invoice shall be deemed the date of the State's response to that invoice.

2.20 CLAIMS AND REMEDIES

- A. All claims asserted against the State by the contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

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- B. Nothing in this Contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.
- C. In the event that the contractor fails to comply with any material Contract requirements, the Director may take steps to terminate this Contract in accordance with the Standard Terms and Conditions, authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

2.21 NEWS RELEASES & ADVERTISING

- A. The contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this Contract without the prior written consent of the Director.
- B. The contractor shall not use the State's name, logos, images, or any data or results arising from this Contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

2.22 ORGAN DONATION

As required by N.J.S.A. 52:32-33.1, the State encourages the contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

3.8 PERFORMANCE SECURITY

If performance security is required, such security must be submitted with the bid in the amount listed in the Solicitation. N.J.A.C. 17:12-2.5. Acceptable forms of performance security are as follows:

- 1. A properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey,
- 2. A certified or cashier's check drawn to the order of "Treasurer, State of New Jersey," or
- 3. An irrevocable letter of credit issued by a federally insured financial institution and naming "Treasurer, State of New Jersey," as beneficiary.

The Performance Security must be submitted to the State within 30 days of the effective date of the Contract award and cover the period of the Contract and any extensions thereof. Failure to submit performance security may result in cancellation of the Contract for cause and nonpayment for work performed.

Although the performance bond is required for the full term of the Contract, the Director recognizes that the industry practice of sureties is to issue a one (1) year performance bond for goods and services contracts. Thus, the contractor is permitted to submit a one (1) year performance bond for the amount required under the Contract and, on each succeeding anniversary date of the Contract, provide a continuation or renewal certificate to evidence that the bond is in effect for the next year of the Contract. This procedure will remain in place for each year of the Contract thereafter until the termination of the Contract. Failure to provide such proof on the anniversary date of the Contract shall result in suspension of the Contract, and possibly, termination of the Contract.

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For performance bonds based on a percentage of the total estimated Contract price. On each anniversary of the effective date of the Contract, the amount of the required performance bond, unless otherwise noted, is calculated by applying the established RFQ performance bond percentage to the outstanding balance of the estimated amount of the Contract price to be paid to the contractor.

In the event that the Contract price is increased by a Contract Amendment, the contractor may be required to provide, within 30 calendar days of the effective date of the Contract Amendment, performance bond coverage for the increase in Contract price. The required increase in the performance bond amount is calculated by applying the established bond percentage set forth above to the increase in Contract price. Failure to provide such proof to the Director of this required coverage may result in the suspension of payment to the contractor until such time the contractor complies with this requirement.

3.9 RETAINAGE

If retainage is required on the Contract as stated in the Solicitation, the state and/or agency will retain the stated percentage or retainage from each invoice. Payment of retainage will be authorized after satisfactory completion and submission of all services, deliverables or work products by the contractor and acceptance by the agency of all services, deliverables or work products required by the Contract.

For ongoing contracts, the agency will retain the stated percentage of each invoice submitted. At the end of the three (3) month period after payment of each invoice, the agency will review the contractor's performance and if performance has been satisfactory, the agency will release the retainage for the preceding three (3) month period. Following the expiration of the Contract, retained fees will be released to the contractor after certification by the agency's project manager, if any, that all services have been satisfactorily performed.

3.10 SUBCONTRACTOR UTILIZATION PLAN

A contractor that will subcontract any of the work or services to be provided under the Contract shall submit to the agency along with its proposal a Subcontractor Utilization Plan located at the following webpage: <http://www.state.nj.us/treasury/purchase/forms/subcontracting.pdf>. See also Section 5.8 of the Standard Terms and Conditions.

5.17 CONFIDENTIALITY

- a. The State's obligation to maintain the confidentiality of the contractor's confidential information provided to the State under the Contract is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena.
- b. By virtue of the Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the Contract. The contractor's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Contractor Confidential Information"). Notwithstanding the previous sentence, the contractor acknowledges the terms and pricing of the Contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
- c. The State's Confidential Information shall consist of all information or data in any form whatsoever supplied by the State, any information or data gathered by the contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not).
- d. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public

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domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

- e. The parties agree to hold each other's Confidential Information in confidence, using at least the same degree of care in doing so that it uses to protect its own confidential information.
- f. In the event that the State receives a request for Contractor Confidential Information related to the Contract pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide the contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. The contractor shall take any action it deems appropriate to protect its documents and/or information.
- g. In addition, in the event the contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, the contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and the contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the contractor of its obligation to take action to protect such information if the contractor is aware of a legal reason to do so.
- h. Notwithstanding the requirements of nondisclosure described in this Section 5.17, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and the contractor does not exercise its rights as described in subsection (f), or if the contractor is unsuccessful in defending its rights as described in subsection (f), or (iv) in the case of the contractor, if the contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection (g), or if the State is unsuccessful in defending its rights as described in subsection (g).

C. CHANGES/ADDITIONS TO THE STANDARD TERMS AND CONDITIONS APPLICABLE TO SERVICES AND INFORMATION TECHNOLOGY WAIVERED CONTRACTS:

4.2 INSURANCE

The following paragraph D is added to section 4.2 of the Standard Terms and Conditions:

- D. Professional Liability Insurance: When it is common to the contractor's profession to do so, the contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the contractor from any liability arising out the professional obligations performed pursuant to the requirements of the Contract. The insurance shall be in the amount of not less than \$5,000,000 and in such policy forms as shall be approved by the State. If the contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

5.18 OWNERSHIP

Capitalized terms used but not defined are defined in Subsection D of this Supplement, below.

- a. Contractor Intellectual Property; COTS and Customized Software – The contractor retains ownership of all Contractor Intellectual Property, and any modifications thereto and derivatives thereof, that the contractor supplies to the State pursuant to the Contract. The contractor grants the State a non-exclusive, perpetual royalty-free license to use Contractor Intellectual Property delivered to the State for the purposes contemplated by the Contract.

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- b. Third Party Intellectual Property – Unless otherwise specified in the Solicitation that the State, on its own, will acquire and obtain a license to Third Party Intellectual Property, the contractor shall secure on the State's behalf, in the name of the State and subject to the State's approval, a license to Third Party Intellectual Property sufficient to fulfill the business objectives, requirements and specifications identified in the Contract at no additional cost to the State beyond that in the bid price. Under no circumstances will the State accept a license for Third Party Intellectual Property that contains terms and conditions that conflict with the terms and conditions of the Contract. If the contractor uses Third Party Intellectual Property, the contractor must indemnify the State for infringement claims with respect to the Third Party Intellectual Property. The contractor agrees that its use of Third Party Intellectual Property shall be consistent with the license for the Third Party Intellectual Property, whether supplied by the contractor, secured by the State as required by the Solicitation, or otherwise supplied by the State.
- c. Work Product; Custom Software – The State owns all Custom Software which shall be considered "work made for hire", i.e., the State, not the contractor, subcontractor, or third party, shall have full and complete ownership of all such Custom Software. To the extent that any Custom Software may not, by operation of the law, be a "work made for hire" in accordance with the terms of the Contract, contractor, subcontractor, or third party hereby assigns to the State, or the contractor shall cause to be assigned to the State, all right, title and interest in and to any such Custom Software and any copyright thereof, and the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.
- d. Work Product; Services – The State owns all Deliverables developed for the State in the course of providing Services under the Contract, including but not limited to, all data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the Contract, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the Services required under the Contract.
- e. State Intellectual Property – Data and Background Information. The State owns all State Intellectual Property and State data and background information provided to the contractor pursuant to the Contract. The State's data and background information shall include, without limitation, all data, technical information, and materials provided to the contractor by the State to facilitate performance of the Contract, including but not limited to all reports, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents. The items described in the preceding sentence shall be delivered or returned to the State of New Jersey upon thirty (30) days' notice by the State or thirty (30) days after the expiration or termination of the Contract. Only to fulfill the purposes of the Contract does the State grant the contractor a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of State Intellectual Property and State data and background information. Notwithstanding anything to the contrary contained in the Terms and Conditions or this Supplement, no part of the State's data will be disclosed, sold, assigned, leased or otherwise disposed of to any person or entity other than the State unless specifically directed to do so in writing by the Contract Manager. The State's license to the contractor is limited by the term of the Contract and the confidentiality obligations set forth in Section 5.17 of this Supplement.
- f. No Rights – Except as expressly set forth in the Contract, nothing in the Contract shall be construed as granting to or conferring upon the contractor any right, title, or interest in State Intellectual Property or any intellectual property that is now owned or licensed to or subsequently owned by or licensed by the State. Except as expressly set forth in the Contract, nothing in the Contract shall be construed as granting to or conferring upon the State any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by the contractor. Except as expressly set forth in the Contract, nothing in the Contract shall be construed as granting to or conferring upon the State any right, title, or interest in any Third Party Intellectual Property that is now owned or subsequently owned by a Third Party.

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D. CHANGES/ADDITIONS TO THE STANDARD TERMS AND CONDITIONS FOR ALL INFORMATION TECHNOLOGY WAIVERED CONTRACTS:

1.2 DEFINITIONS

The following definitions shall apply to information technology contracts:

- i. The term "Acceptance" means the written confirmation by an Agency that the contractor has completed a Deliverable according to the specified requirements.
- ii. The term "Contractor Intellectual Property" means any intellectual property that is owned by the contractor and contained in or necessary for the use of the Deliverables or which the contractor makes available for the State to use as part of the work under the Contract. Contractor Intellectual Property includes COTS or Customized Software owned by the contractor, the contractor's technical documentation, and derivative works and compilations of any Contractor Intellectual Property.
- iii. The term Commercial Off the Shelf Software ("COTS") means Software provided by the contractor that is intended for general use.
- iv. The term "Custom Software" means Software and Work Product that is developed by the contractor at the request of the Agency to meet the specific requirements of the Agency and is intended for its use.
- v. The term "Customized Software" means COTS that is adapted by the contractor to meet specific requirements of the Agency that differ from the standard requirements of the base product.
- vi. The term "Deliverable" means the goods, products, Services and Work Product that the contractor is required to deliver to the State under the Contract;
- vii. The terms "goods" and "products" shall be deemed to include, without limitation, Software and Hardware.
- viii. The term "Hardware" shall be deemed to include computer equipment and any Software provided with the Hardware that is necessary for the Hardware to operate.
- ix. The term "Information Technology Contract" shall mean, notwithstanding any definition in New Jersey Statutes, a Contract for one or more of the following: Hardware, Software, Services, telecommunication goods and services, and all related goods.
- x. The terms "Services" shall be deemed to include, without limitation (i) Information Technology ("IT") professional services; (ii) Software and Hardware-related services, including without limitation, installation, configuration, and training and (iii) Software and Hardware maintenance and support and/or Software and Hardware technical support services.
- xi. The term "Software" means, without limitation, computer programs, source codes, routines, or subroutines supplied by the contractor, including operating software, programming aids, application programs, application programming interfaces and software products, and includes COTS, Customized Software and Custom Software, unless the context indicates otherwise.
- xii. The term "State Intellectual Property" means any intellectual property that is owned by the State. State Intellectual Property includes any derivative works and compilations of any State Intellectual Property.
- xiii. The term "Third Party Intellectual Property" means any intellectual property owned by parties other than the State or the contractor and contained in or necessary for the use of the Deliverables. Third Party Intellectual Property includes COTS owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.
- xiv. The term "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, Software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by the contractor or the contractor's subcontractors or a third party engaged by the contractor or its subcontractor pursuant to the Contract. Notwithstanding anything to the contrary in the preceding sentence, Work Product does not include State Intellectual Property, Contractor Intellectual Property or Third Party Intellectual Property.

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2.10 COMPLIANCE - LAWS

The following is added to section 2.10 of the Standard Terms and Conditions:

COMPLIANCE – DATA AND PRIVACY LAWS – The contractor must comply with all State and Federal data and privacy laws, rules and regulations applicable to both the contractor and the State under the Contract.

4.1 INDEMNIFICATION

Section 4.1 of the Standard Terms and Conditions is deleted in its entirety and replaced with the following:

INDEMNIFICATION AND LIMITATION OF LIABILITY:

1. INDEMNIFICATION - The contractor's liability to the State and its employees in third party suits shall be as follows:
 - a) The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State and its officers, agents, servants and employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
 - i. For or on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under the Contract or the order; and
 - ii. For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of the Contract; and
 - iii. The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in these Standard Terms and Conditions.
 - b) In the event of a claim or suit involving third-party Intellectual Property Rights, the contractor, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties. The State will (1) promptly notify the contractor in writing of the claim or suit; (2) the contractor shall have control of the defense and settlement of any claim that is subject to subsection (a); provided, however, that the State must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceedings relating to the alleged claim and confer with the contractor at its expense. Furthermore, neither the contractor nor any attorney engaged by the contractor shall defend the claim in the name of the State of New Jersey or any Agency, nor purport to act as legal representative of the State of New Jersey or any Agency, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP. The State of New Jersey may, at its election and expense, assume its own defense and settlement.
 - c) Notwithstanding the foregoing, the contractor has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from: (1) the State's unauthorized combination, operation, or use of a product supplied under the Contract with any product, device, or Software not supplied by the contractor; (2) the State's unauthorized alteration or modification of any product supplied under the Contract; (3) the contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides the contractor with such designs, specifications, requests, or instructions, the contractor reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the State nonetheless directs the contractor to proceed with one or more designs, specifications, requests or instructions that

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- present potential issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update or modification to the product provided by the contractor.
- d) The contractor will be relieved of its responsibilities under subsection (a)(i) and (ii) for any claims made by an unaffiliated third party that arise solely from the actions or omissions of the State, its officers, employees or agents.
 - e) This section states the entire obligation of the contractor and its suppliers, and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and the contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.
 - f) The provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in the Contract, nor shall they be construed to relieve the contractor from any liability, nor preclude the State from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.
 - g) The contractor agrees that any approval by the State or Using Agency of the work performed and/or reports, plans or specifications provided by the contractor shall not operate to limit the obligations of the contractor assumed in the Contract.
 - h) The State of New Jersey will not indemnify, defend or hold harmless the contractor. The State will not pay or reimburse for claims absent compliance with Section 4.1(2) of this Supplement and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

2. STATE RESPONSIBILITIES

Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the State will be responsible for any cost or damage arising out of actions or inactions of the State, its employees or agents under Section 4.1(1)(a)(i) and (ii) of this Supplement which results in an unaffiliated third party claim. This is the contractor's exclusive remedy for these claims.

3. LIMITATION OF LIABILITY

- a) The contractor's liability to the State for actual, direct damages resulting from the contractor's performance or non-performance of, or in any manner related to, the Contract for any and all claims, shall be limited in the aggregate to 200% of the fees paid to the contractor for the products or Services giving rise to such damages, except that such limitation of liability shall not apply to the following:
 - i. The contractor's indemnification obligations as described in Section 4.1(1) of this Supplement; and
 - ii. The contractor's breach of its obligations of confidentiality described in Section 5.17 of this Supplement; and
- b) The contractor shall not be liable for consequential or incidental damages.

5.11 CONTRACTOR PERFORMANCE WARRANTIES

Section 5.11 of the Standard Terms and Conditions is deleted in its entirety and replaced with the following:

1. COTS and Customized Software

- a. Unless the Contractor Standard Form Agreement provides greater coverage as determined by the State, in its sole discretion, the contractor warrants that COTS and Customized Software products licensed to the State shall operate in all material respects as described in the Solicitation and/or contractor technical documentation for ninety (90) days after Acceptance. The State shall

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notify the contractor of any COTS or Customized Software product deficiency within ninety (90) days after Acceptance. For a Contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized Software or Custom Software shall be deemed a notice that triggers the warranty provisions in both Section 5.11(a) and 5.11(b) of this Supplement.

- b. Except for the portion of the contractor's COTS or Customized Software product that intentionally contains one or more of the following for the purpose of anti-virus protection, the contractor warrants that, at the time of delivery and installation of the COTS or Customized Software provided pursuant to the Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the COTS or Customized Software, collect unlawful personally identifiable information on users, or prevent the COTS or Customized Software from performing as required under the Contract.
- c. In the event of any breach of this warranty, the contractor shall correct the product errors that caused the breach of warranty, or if the contractor cannot substantially correct such breach in a commercially reasonable manner, the State may end its usage and recover the fees paid to the contractor for the license and any unused, prepaid, technical support fees paid. Under no circumstances does this warranty provision limit the contractor's obligation in the event of a breach of confidentiality.
- d. The contractor does not warrant that COTS or Customized Software is error-free or that it will operate uninterrupted.

2. Custom Software

- a. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, the contractor warrants that Custom Software Deliverables shall operate in all material respects as described in the applicable specification documentation for one hundred and eighty (180) days after Acceptance. The State shall notify the contractor of any Custom Software deficiency within one hundred and eighty (180) days after Acceptance of the Custom Software Deliverable (the "Notice Period"). Where the contractor is providing multiple Custom Software Deliverables over the term of the Contract, the Notice Period shall begin to run after the Acceptance of the final Custom Software Deliverable under the Contract. At that time, the State may assert defect claims relating to any and all of the Custom Software Deliverables provided under the Contract; however, the State may also assert claims earlier, in its discretion, without waiving the Notice Period.
- b. For a Contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized Software or Custom Software shall be deemed a notice that triggers the warranty provisions in both Section 5.11(a) and 5.11(b) of this Supplement.
- c. The contractor warrants that, at the time of Acceptance of the Custom Software Deliverable provided pursuant to the Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Custom Software, collect unlawful personally identifiable information on users, or prevent the Custom Software from performing as required under the Contract. Under no circumstances does this warranty provision limit the contractor's obligation in the event of a breach of confidentiality.
- d. In the event of any breach of this warranty, the contractor shall correct the Custom Software errors that caused the breach of warranty, or if the contractor cannot substantially correct such breach in a commercially reasonable manner, the State may recover a portion of the fees paid to the contractor for the Custom Software with the uncorrected defect or in the event that the Custom Software is still deemed, by the State in its sole discretion, to be usable by the State even with the uncorrected defect, the State may recover a portion of the fees paid to the

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contractor for the Custom Software (up to the total amount of such charges for such Custom Software) to reflect any reduction in the value of the Custom Software Deliverable as a result of the uncorrected defect. Under no circumstances does this warranty provision limit the contractor's obligations in the event of a breach of confidentiality.

- e. The contractor does not warrant that Custom Software is error-free or that it will operate uninterrupted.

3. IT Services

- a. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, the contractor warrants that all Services will be provided in a professional manner consistent with industry standards. The State shall notify the contractor of any Services warranty deficiencies within ninety (90) days from performance of the deficient Services.
- b. In the event of any breach of this warranty, the contractor shall re-perform the deficient Services, or if the contractor cannot substantially correct a breach in a commercially reasonable manner, the State may end the relevant Services and recover the fees paid to the contractor for the deficient Services.

4. Hardware

- a. Unless the Contractor Standard Form Agreement provides greater coverage, as determined by the State, in its sole discretion, the contractor warrants that the equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. The contractor warrants that all equipment supplied to the State and operated by electrical current is UL listed where applicable.
- c. The contractor warrants that all new machines are to be guaranteed as fully operational for one (1) year from time of Acceptance by the State. For the avoidance of doubt, Acceptance with respect to Hardware in this subsection (d) shall occur no later than sixty (60) days after delivery, as evidenced by a signed delivery receipt. The contractor shall render prompt service without charge, regardless of geographic location.
- d. The contractor warrants that sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
- e. The contractor warrants that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
- f. The contractor warrants that all Software included with the Hardware shall perform substantially in accordance with specifications, for one (1) year from the time of Acceptance. The contractor warrants that Software media will be free from material defects in materials and workmanship for a period of one (1) year from the date of Acceptance.
- g. In the event of any breach of this warranty, the contractor shall promptly repair, replace or refund the purchase price of product rejected for failure to conform with the contractor's product specifications.

- 5. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND THE CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

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5.19 AUDIT NOTICE AND DISPUTE RESOLUTION

To the extent the contractor's proposal or Standard Form Agreement permits the contractor to conduct periodic audits of the State's usage of the Contractor Intellectual Property provided thereunder, such provision is amended to include the following audit notice and dispute resolution process:

- a. **AUDIT NOTICE** – Notwithstanding anything to the contrary in the contractor's proposal or Standard Form Agreement, in the event that the contractor seeks to exercise a right in its proposal or Standard Form Agreement to audit the State's use of Contractor Intellectual Property, the contractor shall deliver simultaneous written notice, no less than thirty days in advance of the audit start date (unless the contractor's notice provides a longer notice period), to the:
 - i. Director of the New Jersey Department of Treasury, Division of Purchase and Property:
Procurement Bureau, Technology Unit
P.O. Box 230
Trenton, NJ 08625-0230
 - ii. Chief of Staff of the New Jersey Office of Information Technology:
Office of the Chief Technology Officer
300 Riverview Plaza
Trenton, NJ 08625
 - iii. State Contract Manager.

The notice shall reference the specific audit provision(s) in the contractor's proposal or Standard Form Agreement being exercised and include copies of same, specify the means by which the contractor will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.

- b. **AUDIT DISPUTE RESOLUTION** -- If the State, in good faith, provides the contractor with written notice of an alleged error in the amount of underpaid fees due the contractor as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the Contract while they endeavor to resolve the dispute under this paragraph.
- c. **STATE NOT LIABLE FOR AUDIT COSTS** -- Notwithstanding anything to the contrary in the contractor's proposal or Standard Form Agreement, the State will not reimburse the contractor for any costs related to an audit.
- d. **NO AUDIT RIGHT CREATED** -- In the event that the contractor's proposal or Standard Form Agreement does not permit audits of the State's usage of Contractor Intellectual Property, Section 5.19 of this Supplement shall not be interpreted to provide such an audit right.

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**I HEREBY ACCEPT THE TERMS AND CONDITIONS
OF THIS CONTRACT**

DocuSigned by:

Richard Adam

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Signature

May 8, 2020

Date

Richard W. Adam, Associate General Counsel

Print Name and Title

Manatt Health Strategies, LLC

Print Name of Contractor