

NYSID MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT (the "Agreement") is entered into by and between NEW YORK STATE INDUSTRIES FOR THE DISABLED, INC., (hereinafter, "NYSID") a New York not-for-profit corporation maintaining its principal offices at 11 Columbia Circle Drive, Albany, New York 12203 and _____, (hereinafter, the "MEMBER" or "CHARITABLE NON-PROFIT"), a New York not-for-profit corporation serving individuals with severe disabilities, pursuant to Article XI, Section 162 of the New York State Finance Law maintaining its principal offices at _____, in accordance with the following terms and conditions:

WHEREAS, pursuant to Article XI, Section 162 (and other relevant sections and provisions) of the New York State Finance Law (hereinafter, the "FINANCE LAW"), the public policy of the State of New York is to afford priority, viz., preferred source status, to qualified not-for-profit charitable agencies serving people with disabilities, and additionally to qualified private vendors, in the procurement of goods and/or services by or for the State, governmental agencies within or political subdivisions of the State, or public benefit corporations within the State (hereinafter, "PURCHASERS"); and

WHEREAS, as provided for by the FINANCE LAW, NYSID has been appointed by the New York State Commissioner of Education as the not-for-profit agency to facilitate the distribution of orders for the procurement of goods and/or services by or for a PURCHASER among qualified and approved not-for-profit charitable agencies serving the severely disabled other than the blind, and among qualified and approved private vendors; and

WHEREAS, the NYS Department of Education, Office of Adult Career and Continuing Education Services - Vocational Rehabilitation (hereinafter, "ACCES-VR") has approved the CHARITABLE NON-PROFIT for NYSID membership, designation as a Preferred Source, and participation in the Preferred Source Program as authorized in the New York State Finance Law, as amended; and

WHEREAS, the CHARITABLE NON-PROFIT has requested to join NYSID as a member agency;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, NYSID and the MEMBER agree as follows:

I. Terms and Conditions of Membership:

A. NYSID membership is open to not-for-profit, charitable organizations in New York State serving people with disabilities, as defined by ACCES-VR, or a successor entity thereof, and duly certified and approved as a Preferred Source by the New York State Commissioner of Education. The certification determination turns upon factors including the MEMBER's not-for-profit status, its mission and purpose, and maintenance of disabled employment standards. The MEMBER must maintain such certification as a Preferred Source for the duration of its Membership.

B. On an annual basis, the MEMBER must continue and renew its NYSID Membership by completing a NYSID Annual Member Certification, and by providing its most recent audited Financial Statement. If a recent audited Financial Statement is not available, the MEMBER shall provide its most recent tax return. Failure to remit one of these documents may result in the reduction of membership privileges up to and including suspension of Membership.

C. In accordance with NYSID's Bylaws, this Agreement and membership in NYSID may be immediately terminated by NYSID by delivery of notice to the MEMBER (i) upon decertification of the MEMBER as a Preferred Source by ACCES-VR, (ii) upon the occurrence of any other action by the MEMBER that is not in the best interest of NYSID, or (iii) upon breach by the MEMBER of any material provision of this Agreement.

D. In order to participate in Preferred Source procurement on behalf of people with disabilities, the MEMBER agrees to comply with all pertinent provisions of the FINANCE LAW, Federal and State labor laws, as well as any relevant statutes and related regulations or guidelines issued by governmental oversight agencies and/or NYSID.

II. Relationship of the Parties:

A. Pursuant to the FINANCE LAW, the MEMBER is the Preferred Source, and NYSID is the facilitator of orders. However, the MEMBER understands that, in order for NYSID to fulfill its statutory role as a facilitator of orders, NYSID assumes the role of "contractor of record" on all contracts that it facilitates pursuant to the FINANCE LAW, and that, upon written authorization by NYSID to perform work on such contracts, and upon the MEMBER's acceptance of the terms of such authorization, the MEMBER becomes a subcontractor of NYSID.

B. All personnel used to fulfill the contracts facilitated by NYSID on the MEMBER's behalf shall be employees or agents of the MEMBER only, and shall have no employment relationship with NYSID. NYSID's retained rights, as described below (II C, D) are solely for the purpose of monitoring compliance with its contractual and statutory obligations under the FINANCE LAW, and are not for the purpose of exercising supervision, control or oversight over the MEMBER's day-to-day employment practices or work.

C. As the contractor of record, NYSID retains the following rights in regard to such contracts, including, but not limited to, the right to:

1. review MEMBER's commodity and service contract applications for adherence to sound business practices and compliance with applicable statutes and regulations, and to reject any such applications deemed by NYSID to be inappropriate;
2. monitor MEMBER's performance relative to contract terms, value added labor, and other relevant concerns;
3. invoice and collect all payments from PURCHASERS for commodities or services provided by the MEMBER under such contracts;
4. perform any lawful act which, in NYSID's sole judgment, is consistent with its role as contractor, including supporting the MEMBER's rights and remedies related to PURCHASERS; and
5. reapportion, reassign or terminate such contracts, as it deems necessary.

D. As NYSID's subcontractor, the performing MEMBER agrees to accept the following responsibilities:

1. defend, indemnify and hold NYSID harmless from and against any and all claims, liability or costs, including attorney fees, arising as a consequence of (1) any act or omission of the MEMBER, its agents, employees, servants, or independent contractors; or (2) any claim by an employee or agent of the MEMBER based on an alleged employer/employee relationship between NYSID and the MEMBER's employee/agent.
2. maintain, and have any and all subcontractors maintain, minimum insurance coverage as defined below, during the term of contracts, or as further defined by a contract and/or NYSID, naming NYSID as an additional insured party and certificate holder on all coverage except Workers Compensation. Coverage shall be primary and non-contributory. MEMBER waives its right to subrogation against NYSID. Minimum required insurance coverage is as follows:

- a. General Liability
 - i. General Aggregate \$2,000,000
 - ii. Products/Completed Operations \$2,000,000
 - iii. Any One Person or Organization \$1,000,000
 - iv. Any One Occurrence \$1,000,000

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| b. Errors and Omissions or Cyber Insurance | \$2,000,000* |
| c. Automobile Liability | \$1,000,000 |
| d. Commercial Excess Liability “Umbrella” | \$3,000,000 |
| e. Workers Compensation & Employer’s Liability | |
| Reported on a C-105.2 or U26.3 certificate | |
| | NYS Statutory Limits |
| f. Disability | |
| Reported on a BDB 120.1 certificate | |
| | NYS Statutory Limits |
3. maintain and make available for review by NYSID a file for each individual with a disability performing work on NYSID commodity or service contracts, which file shall include a written report prepared by an appropriate credentialed professional reflecting the nature and extent of the disability that qualifies the individual as disabled. While not required to substantiate a finding of disability, NYSID recommends that each individual’s file be documented and updated, at least annually, with a statement reflecting any supports, accommodations, and/or services being provided for said individual(s) to remain employable;
4. maintain and make available for review by NYSID appropriate records documenting work performed on each NYSID commodity or service contract, including the names, disability status (disabled or non-disabled), direct labor hours, and wages and benefits paid to any individual performing work under such contracts, as well as any other information required to be maintained by NYSID. Records for NYSID service contracts should be job coded by contract and records for NYSID commodity contracts should be coded by product number. Such records shall be maintained for not less than six (6) years;
5. participate in NYSID’s Technical Assistance and Quality Management program, and other mandatory training programs for MEMBERS, including an orientation program for all new MEMBERS within six (6) months of becoming a MEMBER and prior to receiving a NYSID contract;
6. participate in the NYSID warehousing and distribution system for all non-food and apparel commodities;
7. perform authorized services and otherwise comply with all of the terms of NYSID’s contract with the PURCHASER;

*For those MEMBERS engaged in services related to Protected Health Information (“PHI”) or private or confidential information as those terms are defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the New York State Information Breach Security Act or other state or federal security laws.

8. fulfill authorized commodity orders in a timely manner, in accordance with the PURCHASER'S commodity specifications, the NYSID catalog, and any other relevant provisions of the PURCHASER'S order;
9. notify NYSID immediately in the event that it is unable to fully perform on NYSID contracts;
10. obtain written approval from NYSID prior to engaging any subcontractor on NYSID contracts;
11. authorize NYSID to deduct a fee (added to the MEMBER's total costs, and included in the contract price) from all payments received for goods and services supplied by the MEMBER; and

E. **Warranty.** The MEMBER shall provide its services and meet its obligations in a timely and workmanlike manner and will provide a standard of care equal to, or superior to, care used by service providers similar to the MEMBER on similar projects.

F. The MEMBER is an independent contractor. None of the MEMBER's employees, agents, consultants or subcontractors shall be considered to be NYSID's employee or agent for any purpose. The MEMBER shall be solely responsible for payment of any disability benefits, unemployment insurance, workers' compensation, and for withholding income taxes and social security with respect to the MEMBER's employees, consultants or subcontractors. None of the MEMBER's employees, consultants or contractors shall be entitled to receive any benefits provided by NYSID to NYSID's employees.

III. Miscellaneous

1. **Dispute Resolution.** In the event of a material disagreement between the MEMBER and NYSID related to the terms of, or performance under, this Agreement, the MEMBER may appeal to NYSID's Board of Directors for resolution. Decisions of the Board of Directors shall be final and binding.

2. **Entire Agreement.** This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Agreement. This Agreement supersedes any prior written or oral agreements between the parties.

3. **Severability.** If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

4. **Amendment.** This Agreement may be modified or amended in writing, signed by NYSID and the MEMBER.

5. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of New York.

6. **Notice.** Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

7. **Assignment.** The MEMBER may not assign or transfer this Agreement without the prior written consent of NYSID.

8. **Confidential Information.** In accordance with subparagraphs 3 and 4 of Section II.D., MEMBER is required to disclose or make available to NYSID certain information including, but not limited to, a file for each individual with a disability performing work as well as the names, disability status (disabled or non-disabled), direct labor hours, and wages and benefits paid to any individual performing work under NYSID commodity or service contracts (“Confidential Information”). NYSID agrees to use appropriate safeguards in its handling of such Confidential Information and further agrees to limit use of the Confidential Information for its intended purpose and disclosure only as necessary to fulfill its responsibilities under this Agreement and the New York State Education Department Preferred Source Designation Letter.

DATED: _____

**NEW YORK STATE INDUSTRIES
FOR THE DISABLED, INC.**

BY: _____
Ronald P. Romano, President and CEO

Sworn to before me this ____ day of _____, 20____.

Notary Public

DATED: _____

MEMBER

Member Agency

BY: _____
Signature

Print Name

Title

Sworn to before me this ____ day of _____, 20____.

Notary Public