



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

# 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 not-for-profit charitable agencies serving the severely disabled other than the blind, and among qualified 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; 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, 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, 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 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 |
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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 at least once every three (3) years by an appropriate credentialed professional reflecting the nature and extent of the disability that qualifies the individual as disabled, the impact the disability has on the individual’s employment functions or capabilities, and a statement of employment supports and provided services;
  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. Such records shall be maintained for not less than six (6) years;
  5. participate in NYSID orientation, quality management, 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;
  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;

\*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.

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
12. comply with the attached "HIPAA Addendum," which is incorporated within this Agreement and made a part hereof.

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.

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

**MEMBER**

\_\_\_\_\_  
Name of Member Agency

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

Attachment: HIPAA Addendum

# HIPAA ADDENDUM

## RECITALS:

WHEREAS, in the provision of services to NYSID or to a PURCHASER, MEMBER may receive Protected Health Information ("PHI") from NYSID or the PURCHASER related to Treatment, Payment or Health Care Operations; and

WHEREAS, the parties desire to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Final Rule for Standards for Privacy of Individually Identifiable Health Information adopted by the United States Department of Health and Human Services and codified at 45 C.F.R. Part 160 and Part 164, Subparts A & E (the "Privacy Rule"), the HIPAA Security Rule, codified at 45 C.F.R. Part 164 Subpart C (the "Security Rule") and Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH") including 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316.

NOW THEREFORE, the parties hereby agree as follows:

1. Definitions. Terms used, but not otherwise defined, in this Addendum or the Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, 164.304, 164.501 and 164.502.
2. Obligations and Activities of MEMBER.

MEMBER agrees to not use or further disclose PHI other than as permitted or required by this Addendum, as required by law or as permitted by law, provided such use or disclosure would also be permissible by law, by NYSID or the PURCHASER.

- a. MEMBER agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Addendum. MEMBER agrees to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards ("Safeguards") that reasonably and appropriately protect the confidentiality, integrity and availability of PHI as required by the Security Rule, including those safeguards required pursuant to 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316.
- b. MEMBER agrees to mitigate, to the extent practicable, any harmful effect that is known to MEMBER of a use or disclosure of PHI by MEMBER in violation of the requirements of this Addendum, or of any Security Incident of which it becomes aware.

- c. MEMBER agrees to report to NYSID any use or disclosure of the PHI not provided for by this Addendum.
- d. MEMBER agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created by MEMBER on behalf of NYSID, agrees to the same restrictions and conditions that apply throughout this Addendum to MEMBER with respect to such information.
- e. MEMBER agrees to provide access, at the request of NYSID and in the time and manner designated by NYSID, to PHI in a Designated Record Set, to NYSID or, as directed by NYSID, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- f. MEMBER agrees to make any amendment(s) to PHI in a Designated Record Set that NYSID directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of NYSID or an Individual, and in the time and manner designated by NYSID.
- g. MEMBER agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, created or received by MEMBER on behalf of NYSID available to NYSID, or at the request of NYSID to the Secretary of Health and Human Services (“Secretary”), in a time and manner designated by NYSID or the Secretary, for the purposes of the Secretary determining NYSID’s compliance with the Privacy Rule and Security Rule.
- h. MEMBER agrees to document such disclosures of PHI and information related to such disclosures as would be required for NYSID to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.
- i. MEMBER agrees to provide to NYSID or an Individual, in a time and manner designated by NYSID, information collected in accordance with this Agreement, to permit NYSID to respond to a request by an individual for an accounting of disclosures for PHI in accordance with 45 C.F.R. §164.528.
- j. If MEMBER accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information (as defined in HITECH), it shall, following the discovery of a breach of such information, promptly notify NYSID of such breach. Such notice shall include: a) the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by MEMBER to have been accessed, acquired or disclosed during such breach; b) a brief description of what



happened, including the date of the breach and discovery of the breach; c) a description of the type of Unsecured Protected Health Information that was involved in the breach; d) a description of the investigation into the breach, mitigation of harm to the individuals and protection against further breaches; e) the results of any and all investigation performed by MEMBER related to the breach; and f) contact information of the most knowledgeable individual for NYSID to contact relating to the breach and its investigation into the breach.

- k. MEMBER agrees that it will not receive remuneration directly or indirectly in exchange for PHI without authorization unless an exception under Section 13405(d) of the HITECH Act applies.
- l. MEMBER agrees that it will not receive remuneration for certain communications that fall within the exceptions to the definition of Marketing under 45 C.F.R. §164.501 unless permitted by the HITECH Act.
- m. MEMBER hereby agrees to comply with state laws applicable to PHI and personal information of individuals' information it receives from NYSID, including the Massachusetts Data Security Regulations, 201 CMR 17.00 during the term of the Agreement.
  - i. MEMBER agrees to: (a) implement and maintain appropriate physical, technical and administrative security measures for the protection of personal information as required by any state law, including 201 CMR 17.00; including, but not limited to: (i) encrypting all transmitted records and files containing personal information that will travel across public networks, and encryption of all data containing personal information to be transmitted wirelessly; (ii) prohibiting the transfer of personal information to any portable device unless such transfer has been approved in advance; and (iii) encrypting any personal information to be transferred to a portable device; and (b) implement and maintain a Written Information Security Program as required by any state law, including 201 CMR 17.00.
  - ii. The safeguards set forth in this Addendum shall apply equally to PHI, confidential and "personal information." Personal information means an individual's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such individual: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's financial account; provided, however, that

"personal information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

3. Permitted Uses and Disclosures by MEMBER.

- a. Except as otherwise limited in this Addendum, MEMBER may use or disclose PHI to perform functions, activities, or services for, or on behalf of NYSID, as specified in an agreement with the PURCHASER, provided that such use or disclosure would not violate the Privacy Rule if done by NYSID or the PURCHASER or the minimum necessary policies and procedures of NYSID or the PURCHASER required by 45 C.F.R. §164.514(d).
- b. Except as otherwise limited in this Addendum, MEMBER may use PHI for the proper management and administration of the MEMBER or to carry out the legal responsibilities of the MEMBER.
- c. Except as otherwise limited in this Addendum, MEMBER may disclose PHI for the proper management and administration of the MEMBER, provided that disclosures are required by law, or MEMBER obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the MEMBER of any instances of which it is aware in which the confidentiality of the information has been breached.
- d. Except as otherwise limited in this Addendum, MEMBER may use PHI to provide Data Aggregation services to NYSID or to the PURCHASER as permitted by 45 C.F.R. §164.504 (e)(2)(i)(B).
- e. MEMBER may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1).

4. Obligations of NYSID.

- a. NYSID shall notify MEMBER of any limitation(s) in the notice of privacy practices of NYSID in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect MEMBER'S use or disclosure of PHI.
- b. NYSID shall notify MEMBER of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such changes may affect MEMBER'S use or disclosure of PHI.

- c. NYSID shall notify MEMBER of any restriction to the use or disclosure of PHI that NYSID has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect MEMBER'S use or disclosure of PHI.

5. Permissible Requests by NYSID.

NYSID shall not request that MEMBER use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by NYSID, provided that, to the extent permitted by an agreement with the PURCHASER, MEMBER may use or disclose PHI for MEMBER's Data Aggregation activities or proper management and administrative activities.

6. Term and Termination.

- a. All PHI provided by NYSID or the PURCHASER to MEMBER, or created or received by MEMBER on behalf of NYSID or the PURCHASER, shall be destroyed or returned to NYSID or the PURCHASER, or, if it is infeasible to return or destroy PHI, shall extend the protections to such information in accordance with the provisions of this Section.
- b. Upon NYSID's knowledge of a material breach by MEMBER, NYSID shall either:
  - i. Provide an opportunity for MEMBER to cure the breach or end the violation, and terminate this Agreement and the agreement with the PURCHASER if MEMBER does not cure the breach or end the violation within the time specified by NYSID, or
  - ii. Immediately terminate this Agreement and the agreement with the PURCHASER if MEMBER has breached a material term of this Agreement and cure is not possible; or
  - iii. If neither termination nor cure is feasible, NYSID shall report the violation to the Secretary.
- c. Except as provided in paragraph (d) of this Section, upon any termination or expiration of the Agreement or this Addendum, MEMBER shall return or destroy all PHI received from NYSID or the PURCHASER, or created or received by MEMBER on behalf of NYSID or the PURCHASER. This provision shall apply to PHI that is in the possession of subcontractors or agents of MEMBER. Neither MEMBER nor its subcontractors shall retain any copies of PHI.

- d. In the event that MEMBER determines that returning or destroying the PHI is infeasible, MEMBER shall provide to NYSID notification of the conditions that make return or destruction infeasible. Upon NYSID's written agreement that return or destruction of PHI is infeasible, MEMBER shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as MEMBER maintains such PHI.

7. Miscellaneous.

- a. A reference in this Addendum to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- b. The parties agree to take such action as is necessary to amend this Addendum from time-to-time as is necessary for NYSID to comply with the requirements of HIPAA, the Privacy and Security Rules and HITECH.
- c. The respective rights and obligations of MEMBER under Section 6 (c) and (d) of this Addendum shall survive the termination of this Addendum and the Agreement.
- d. Any ambiguity in this Addendum shall be resolved to permit NYSID to comply with HIPAA and HITECH.
- e. MEMBER is solely responsible for all decisions made by MEMBER regarding the safeguarding of PHI.
- f. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer upon any person other than NYSID, MEMBER and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
- g. Modification of the terms of this Addendum shall not be effective or binding upon the parties unless and until such modification is committed to writing and executed by the parties hereto.
- h. This Addendum shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.
- i. Should any provision of this Addendum be found unenforceable, it shall be deemed severable and the balance of this Addendum shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.

- j. This Addendum and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.
- k. All notices and communications required or permitted to be given hereunder shall be sent by certified or regular mail, addressed to the other party at its respective address as set forth above, or at such other address as such party shall from time-to-time designate in writing to the other party, and shall be effective from the date of mailing.
- l. MEMBER shall maintain or cause to be maintained sufficient insurance coverage as shall be necessary to insure MEMBER and its employees, agents, representatives or subcontractors against any and all claims or claims for damages arising under this Addendum and such insurance coverage shall apply to all services provided by MEMBER or its agents or subcontractors pursuant to this Addendum. MEMBER shall indemnify, hold harmless and defend NYSID from and against any and all claims, losses, liabilities, costs and other expenses (including but not limited to, reasonable attorneys' fees and costs, administrative penalties and fines, costs expended to notify individuals and/or to prevent or remedy possible identity theft, financial harm, reputational harm, or any other claims of harm related to a breach) incurred as a result of, or arising directly or indirectly out of or in connection with any acts or omissions of MEMBER, its employees, agents, representatives or subcontractors, under this Addendum, including, but not limited to, negligent or intentional acts or omissions. This provision shall survive termination of this Addendum.