

NYSID CORPORATE PARTNER MEMBERSHIP AGREEMENT

THIS CORPORATE PARTNER 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, “CORPORATE PARTNER” or “PRIVATE VENDOR”) a qualified and approved private vendor, pursuant to Article XI, Section 162, paragraph 7 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 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 PRIVATE VENDOR for NYSID membership as a CORPORATE PARTNER, and participation in the Preferred Source Partnership Program as authorized in the New York State Finance Law, as amended; and

WHEREAS, the PRIVATE VENDOR has requested to join NYSID as a Corporate Partner, and has been found acceptable to NYSID as a Corporate Partner;

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

I. Terms and Conditions of Corporate Partner Membership:

A. NYSID membership is open to private vendors qualified and approved for participation in the Partnership Program as authorized in the New York State Finance

Law, as amended, by ACCES-VR, or a successor entity thereof, and duly certified and approved as a CORPORATE PARTNER by NYSID. The certification determination turns upon factors including the CORPORATE PARTNER'S for-profit status, a satisfactory vendor responsibility questionnaire, and maintenance of disabled employment standards. The CORPORATE PARTNER must maintain such certification for the duration of its membership.

B. On an annual basis, the CORPORATE PARTNER must continue and renew its NYSID membership by completing a NYSID Annual Certification for Corporate Partners, and by providing its most recent audited Financial Statement. If a recent audited Financial Statement is not available, the CORPORATE PARTNER 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 By-laws, and this Agreement, membership in NYSID will be immediately terminated by NYSID by delivery of notice to the CORPORATE PARTNER (i) upon decertification of the PRIVATE VENDOR as eligible to participate in the Preferred Source Partnership Program by ACCES-VR, (ii) upon the occurrence of any other action by the CORPORATE PARTNER that is not in the best interests of NYSID, (iii) upon breach by the CORPORATE PARTNER of any material provision of this Agreement or an agreement with the PURCHASER, or (iv) upon the expiration of all such contracts held by the CORPORATE PARTNER.

D. In order to participate in Preferred Source procurement on behalf of people with disabilities, the CORPORATE PARTNER 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, qualified not-for-profit charitable agencies serving the severely disabled, acting in partnership with a CORPORATE PARTNER serve as the Preferred Source, and NYSID is the facilitator of orders. However, the CORPORATE PARTNER 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 CORPORATE PARTNER'S acceptance of the terms of such authorization, the CORPORATE PARTNER becomes a subcontractor of NYSID.

B. All personnel used to fulfill the contracts facilitated by NYSID on the CORPORATE PARTNER'S behalf shall be employees or agents of the CORPORATE PARTNER and/or the non-profit member agency, 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 CORPORATE PARTNER'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 CORPORATE PARTNER'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 CORPORATE PARTNER'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 CORPORATE PARTNER under such contracts;
4. perform any lawful act which, in NYSID's sole judgment, is consistent with its role as contractor, including supporting the CORPORATE PARTNER'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 CORPORATE PARTNER 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 CORPORATE PARTNER, its agents, employees, servants, or independent contractors; or (2) any claim by an employee or agent of the CORPORATE PARTNER based on an alleged employer/employee relationship between NYSID and the CORPORATE PARTNER'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. CORPORATE PARTNER waives its right to subrogation against NYSID. Minimum required insurance coverage is as follows:
 - a. General Liability
 - i. General Aggregate \$2,000,000

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| ii. Products/Completed Operations | \$2,000,000 |
| iii. Any One Person or Organization | \$1,000,000 |
| iv. Any One Occurrence | \$1,000,000 |
| b. Error & 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 |
- 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 statement reflecting any supports, accommodations, and/or services being provided for said individual(s);
 - 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, wages and benefits paid to any individual performing work under such contracts, as well as any other information required 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;
 - participate in NYSID orientation, quality management, and other mandatory training programs for members, including an orientation program within six (6) months of becoming a CORPORATE PARTNER and prior to receiving a NYSID contract.
 - participate in the NYSID warehousing and distribution system for all non-food and apparel commodities;
 - perform authorized services and otherwise comply with all of the terms of NYSID’s contract with the PURCHASER as well as the terms of any Corporate Partnering Binding Agreement (CPBA) entered into with NYSID and any NYSID non-profit member agency;
 - fulfill authorized commodity orders in a timely manner, in accordance with the PURCHASER’s commodity specifications, the NYSID catalog, and any other provisions of the purchaser’s order;

*For those Corporate Partners 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 withhold a fee (added to the CORPORATE PARTNER'S total costs, and included in the contract price) from all payments received for goods and services supplied by the CORPORATE PARTNER; and

E. **Warranty.** The CORPORATE PARTNER 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 CORPORATE PARTNER on similar projects.

F. The CORPORATE PARTNER is an independent contractor. None of the CORPORATE PARTNER'S employees, agents, consultants or subcontractors shall be considered to be NYSID's employee or agent for any purpose. The CORPORATE PARTNER 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 CORPORATE PARTNER'S employees, consultants or subcontractors. None of the CORPORATE PARTNER'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 CORPORATE PARTNER and NYSID related to the terms of, or performance under, this Agreement, the CORPORATE PARTNER 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 CORPORATE PARTNER.

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 CORPORATE PARTNER 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

CORPORATE PARTNER

Dated: _____, 20__

Name of Company

By: _____
Signature

Print Name

Title

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

Notary Public