

**STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER**

**AGREEMENT WITH
CONTRACTOR'S NAME**

NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER C001193

THIS AGREEMENT (the "Agreement") is between the New York State ("State") Office of the State Comptroller, by the Department of Audit and Control ("OSC"), whose main office and principal place of business is 110 State Street, Albany, New York, 12236, and [Contractor Name] ("Contractor"), whose office is located at [Contractor Address].

W I T N E S S E T H

WHEREAS, OSC has a need for a cloud-based Enterprise Risk Management Software-as-a-Service (the "Solution"); and

WHEREAS, to meet this need, OSC issued an advertisement in the New York State Contract Reporter dated [] for a qualified bidder to provide the Solution and all related and necessary implementation and maintenance services (the "Services"), pursuant to its discretionary authority under State Finance Law § 163(6);

WHEREAS, the Contractor, among others, responded to the advertisement with a response dated [] ("Response");

WHEREAS, the Contractor is a responsible entity with the ability to perform the Services and the compensation to be paid to the Contractor is reasonable; and

WHEREAS, the Contractor [is certified by New York State as a Minority- or Women-owned Business Enterprise ("M/WBE") under Article 15-A of the Executive Law] OR [is certified by New York State as a Service-Disabled Veteran-Owned Business ("SDVOB") under Article 3 of the Veterans' Services Law], and therefore is eligible for a discretionary award under State Finance Law § 163(6).

NOW, THEREFORE, in consideration of the terms set forth and the mutual covenants and obligations of the parties, the parties do hereby agree as follows:

I. TERM

This Agreement will commence upon approval by OSC's Bureau of Contracts and will continue for a period allowing for a full 10 years of active subscription services (meaning a 10 year period that commences upon implementation of the Solution into full production, i.e., "go live," herein referred to as the "Go-live Date" or the "Anniversary Date"). OSC anticipates that implementation will be completed on or before the end of the first year of this Agreement. If implementation is not completed before the end of the first year, the parties will execute an amendment to extend this Agreement by the number of additional months required to complete the implementation to allow for the provision of 10 years of active subscription services.

II. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES

This Agreement is inclusive of the following documents. Only documents expressly mentioned below are deemed a part of this Agreement. Conflicts between these documents will be resolved in the following order of precedence:

A. Appendix A – Standard Clauses for New York State Contracts;

B. Agreement – this document, including:

- Appendix B – Forms AC 3239-A, Contractor's EEO Staffing Plan of Anticipated Workforce and AC 3239-B, Contractor's/Subcontractor's EEO Workforce Utilization Report;
- Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;

- Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
 - Appendix E – Contractor’s Certifications/Acknowledgements;
 - Appendix F –Disclosure of Prior Non-Responsibility Determinations;
 - Appendix G – OSC Consultant Disclosure Reporting Requirements;
- C. Attachment A** – Statement of Work;
- D. Response**, including any attachments and clarifications thereto:
- Attachment B – Response Form;
 - Attachment C – Cost Response Form (including any clarifications thereto);
 - Attachment D – Sample Questionnaire; and
- E. Attachment E** – Service Level Agreement, as agreed to by the parties.

III. SERVICES

- A. Engagement of Contractor.** OSC retains the Contractor to provide the Services necessary to provide the Solution per the requirements described in Attachment A (Statement of Work).
- B. Project Management.** As part of the Contractor’s implementation services, the Contractor shall identify and avoid, transfer, mitigate, and manage risks that may negatively affect the Solution’s successful implementation, including the Solution Go-live Date. The Contractor shall inform OSC of such risks within one business day of determining action is necessary to address a risk that cannot be avoided, transferred, mitigated, or managed.
- C. Not Exclusive.** Nothing contained herein prohibits OSC from contracting at any time with third parties or from performing any of the work itself or through other State entities for any services that otherwise may be requested or required of the Contractor pursuant to this Agreement. The Contractor shall not assert an exclusive right to perform such services; provided, however, the Contractor has the exclusive right to develop and install all Solution enhancements and to host, maintain, and support the Solution during the term of this Agreement.
- D. Cooperation.** The Contractor and OSC and their respective agents, employees and officers shall cooperate with each other to the fullest extent in connection with the Services. OSC will supply and make available necessary information and personnel to assist the Contractor to perform the Services.

IV. COMPENSATION

- A. Implementation Services Fees:** OSC will compensate the Contractor for implementation services on a deliverable basis in accordance with the Cost Summary set forth in Attachment C (Cost Response Form).
- B. Annual Subscription Fee:** OSC will compensate the Contractor for the annual Solution subscription fee per the terms of Section IV (Invoices and Payment). The annual subscription fee will begin on the Go-live Date and is inclusive of all maintenance, support, online application hosting, Solution updates and versions, enhancements, improvements, corrections, service packs, or other modifications of or to the Solution that are released by the Contractor for general distribution to licensees, and all support services that the Contractor provides as part of its Solution support and maintenance program. The annual subscription fee must include the following types of licenses:

License Type	Minimum Licenses	License Description
Administrator	4	Users with the ability to view and edit all organizational units, add and remove users, change access rights and roles, review audit trails and data changes, set up new organizational units, and perform other tasks necessary to administer the Solution.
Business User	125	Users with the ability to edit, update and certify for their organizational units.
Viewer	30	Users with read-only access to all data as assigned by an administrator.

OSC may add additional licenses at any time throughout the term of the Agreement.

- C. **Hourly As-Needed Post-Implementation Services Fee:** OSC shall compensate the Contractor for as-needed post-implementation services on an hourly basis in accordance with the hourly rates set forth in Attachment C. The hourly rates are inclusive of all labor, licenses, insurance, administration, overhead, and any other applicable expenses required to provide the Services. These post-implementation services may include supplementary training, change requests to alter customizations or configurations, analytics development, and consulting services. The parties anticipate that as needed post-installation services will be conducted remotely. However, OSC may, in its discretion, authorize the Contractor to travel onsite to complete certain tasks.
- D. **Escalation:** The annual subscription fee, hourly as-needed post-implementation services rates, and annual additional license fees may increase or decrease on the Anniversary Date. Such increase or decrease will be in accordance with the change in the Consumer Price Index, All Urban Consumer – Northeast for the preceding 12-month period, or 5%, whichever is less. The Contractor must submit a request for such increase with supporting documentation to OSC at least 30 days before the Anniversary Date or such request may be denied. Any request must be reviewed and approved by OSC.

V. **INVOICES AND PAYMENT**

- A. **Total Compensation.** OSC will compensate the Contractor in accordance with Attachment C (Cost Response Form). Total compensation under this Agreement, including reimbursement for travel expenses, shall not exceed **\$XXX.XX**.
- B. **Travel:** OSC will reimburse the Contractor for travel expenses only where OSC has authorized travel in advance. Reimbursement is limited to the following unless written authorization to exceed the specified limits, or to include other items of expense, is obtained in advance:

To the extent permissible under New York State Law, OSC will pay Contractor's pre-approved travel and meals expenses while traveling out of town on business relating to the Services. Travel expense reimbursement will be paid in accordance with guidelines established by the Office of the State Comptroller (see OSC Travel Manual, available at <http://www.osc.state.ny.us/agencies/travel/manual.pdf>). For current per diem reimbursement rates only, visit the U.S. General Services Administration Domestic Per Diem Page (currently available at <https://www.gsa.gov/travel/plan-book/per-diem-rates>), as such rates may be amended from time to time. OSC will reimburse air travel at coach rates.

- C. **Invoice Submission.** The Contractor shall submit invoices as follows:
1. **Invoice Requirements.** All invoices must include the following information:
 - a. Agreement #C001193, Contractor's taxpayer identification number, and Contractor's New York State Vendor Identification Number;
 - b. A detailed description of the Services provided; and

- c. The beginning and ending dates of the billing period included in the invoice, and the expiration date of this Agreement.

2. Timing and Special Requirements.

- a. Implementation Services: The Contractor shall submit invoices after delivery and acceptance of each of the Deliverables, as stated in Attachment A (Statement of Work), Section II Deliverables. The invoice must identify the Deliverable number; a copy of OSC's written acceptance of the Deliverable; and date of deliverable acceptance.
- b. Annual Subscription Fee: The Contractor shall invoice OSC upon the Go-live Date and then annually thereafter on the Anniversary Date, throughout the term of this Agreement.
- c. Hourly Post Implementation Services. The Contractor shall submit an invoice monthly in arrears for hourly post implementation services performed in the prior month. The invoice must identify name, title, number of hours or fraction thereof, hourly rate, and total amount billed for each individual who provided services.
- d. Additional Licenses. If OSC adds additional subscription licenses, the Contractor will invoice OSC retroactively for those licenses on the next Anniversary Date. The invoice must identify the number of additional licenses and license type (i.e., administrator, business user, and viewer). The Contractor shall prorate the additional license fee based on the number of calendar days remaining in the subscription year in which the additional license is added using the formula below. If an adjustment is required during the final subscription year, the Contractor shall send OSC a final invoice with only the adjustment.

$$(\text{\# of days remaining in the subscription year} / 365) \times (\text{additional license fee, per Attachment C})$$

- e. Pre-Approved Travel Expense. Itemization and copies of receipts for each claimed pre-approved travel expense, sufficient to demonstrate conformance with applicable State reimbursement rates, as set forth in Section IV.B (Travel).

3. Submission Contacts. The Contractor shall submit all invoices via email (preferred) to contractinvoices@osc.ny.gov or via hard copy mail to:

Office of the State Comptroller
Bureau of Finance
Contract Payment Unit
110 State Street, Stop 13-2
Albany, NY 12236-0001

With a copy to CIOProcurement@osc.ny.gov (preferred) or via hard copy mail to:

Office of the State Comptroller
110 State Street, Stop 8-7a
Albany, NY 12236-0001
ATTENTION: CIO Procurement

- 4. OSC Payment. All invoices are subject to OSC's acceptance of the Services for which billing is being made. OSC will pay invoices upon receipt of the Contractor's approved invoice in accordance with Article 11-A of the State Finance Law.

VI. EQUAL EMPLOYMENT OPPORTUNITY ("EEO") REPORTING

- A. Contractor Obligations.** The Contractor agrees to comply with applicable federal, State, and local requirements concerning equal employment opportunities for minorities and women, including but not limited to Executive Law § 312 and its implementing regulations. In addition to the requirements stated in Appendix A Clause 12 (Equal Employment Opportunities for Minorities and Women), and to ensure complete compliance with such requirements (and with Executive Law § 312 and the regulations adopted pursuant thereto), Contractor agrees to submit to OSC its EEO Policy Statement, and Form AC 3239-A Proposer's EEO Staffing Plan of Anticipated Workforce. Further, Contractor shall submit on

a semi-annual basis Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report) and shall require each of its subcontractors, if any, to submit such Report on a quarterly basis during the term of this Agreement. The Contractor/subcontractor shall submit two originals and two copies of Form AC 3239-B to OSC at the following address:

Attn: Director of Finance
Office of the State Comptroller
Bureau of Finance
110 State Street, Stop 13-2
Albany, NY 12236

- B. Compliance.** These Reports are reviewed as part of OSC's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce and the Contractor's/Subcontractor's EEO Workforce Utilization Reports, the Contractor/subcontractor may be subject to an in-depth EEO compliance review.
- C. Discrepancy Resolution.** If deficiencies are identified, OSC shall make every effort to resolve the deficiencies identified and to bring the Contractor/subcontractor into compliance with such requirements. If OSC is unsuccessful in its efforts, and upon review, the Deputy Comptroller for Finance and Administration at OSC determines that the Contractor/subcontractor is non-compliant, such Deputy Comptroller shall submit a written complaint to the New York State Department of Economic Development's Division of Minority and Women's Business Development ("DMWBD") regarding the Contractor's/subcontractor's noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon the Contractor/subcontractor by personal service or certified mail, return receipt requested.

DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law § 316) and regulation (5 NYCRR § 143.6).

VII. NOTICES

Any legal notice or other legal communication given pursuant to this Agreement must be in writing and addressed to such party at the address set forth in this Agreement. Notice will be effective:

- (i) When delivered personally to the party for whom intended; or
- (ii) Upon actual receipt by the intended party if such notice or other communication is sent by overnight mail service, or United State Postal Service mail (certified mail, return receipt requested, or first-class postage prepaid).

The following are the names and contact information for OSC and the Contractor. The parties shall notify each other, as soon as possible of any change.

OSC:

Title: Director of Finance
Address: Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

Contractor:

Name: _____
Title: _____
Address: _____
Telephone: _____

VIII. STAFF

Staff Definition. For the purposes of this Agreement, the Contractor's staff means the Contractor's employees. Contractor's "Staff" includes staff, and also owners, officers, directors, consultants, affiliates, partners, and agents of the Contractor; and Contractor's subcontractors (including third-party services providers) and their employees providing Services hereunder or who have access to OSC's confidential information.

- B. **Key Staff.** The Contractor shall assign [Name] as the Project Manager, [Name] as Analyst, and [Name] as Trainer, each a member of the Contractor's "Key Staff." Any replacement's skill level and experience must be at least equivalent to or exceed the qualifications of person being replaced, as determined by OSC. OSC reserves the right to approve or disapprove of all proposed changes in the Contractor's Key Staff. OSC in each instance will be provided with a summary of the experience of the proposed replacement and an opportunity to interview that person, prior to giving its approval or disapproval. Said approval will not be unreasonably withheld.
- C. **Staff Integrity and Professional Capacity.** The Contractor certifies that the Staff provided to perform Services possesses the necessary integrity and professional capacity to meet OSC's reasonable expectations. Subsequent to the commencement of Services, whenever the Contractor becomes aware, or reasonably should have become aware, that any Staff member providing Services to OSC no longer possesses the necessary integrity or professional capacity, the Contractor shall immediately discontinue the use of such Staff and notify OSC. OSC has final approval of any Staff furnished to provide Services and may refuse to approve any Staff members based on its review of the Staff member's responsibility to perform the Services. OSC reserves the right to remove any member of the Contractor's Staff from the project if, in OSC's discretion, the individual is not performing in accordance with this Agreement, or for any reasonable work-related cause.
- D. **Independent Contractor.** The relationship of the Contractor and its Staff to OSC is that of an independent contractor, and not that of an agent or employee of OSC. The Contractor, as an independent contractor, shall not have the authority to contract for or bind OSC for any purpose whatsoever. The Contractor covenants and agrees that its Staff will not hold themselves out as agents, officers, or employees of OSC, and that they will not make any claim, demand or application for any right or privilege applicable to any officer or employee of OSC, including but not limited to, Workers' Compensation coverage, disability coverage, Social Security coverage or Retirement System benefits.
- E. **FIRCA.** The Federal Immigration Reform and Control Act, as amended, (8 USC section 1324a et. al.) obligates employers, such as the Contractor and its subcontractors, if any, to verify that their Staff are legally entitled to work in the United States. The Contractor warrants to OSC that it has verified that Staff assigned to provide Services to OSC are eligible for employment in the United States. The Contractor is responsible for ensuring that its Staff retain the authorization to legally work in the United States throughout the term of this Agreement. In order to confirm that its Staff are legally entitled to work in the United States, OSC reserves the right to request documentation attesting to the legal entitlement to work in the United States for any member of Contractor's Staff assigned work under this Agreement. In accordance with such law, OSC does not discriminate against individuals on the basis of national origin or citizenship.

IX. SUBCONTRACTORS

- A. **Obligation to Disclose Subcontractors.** In the event that the Contractor uses subcontractors to perform any of the Services, the Contractor shall disclose any such subcontractors prior to the performance of any Services. OSC shall have the right to approve or disapprove, after appropriate review and/or interviews, any and all subcontractors of the Contractor prior to their performance of Services. Failure to disclose the identity of any and all subcontractors used by the Contractor together with a detailed description of their responsibilities may, at the sole discretion of OSC, result in a disqualification of the subcontractor or termination of this Agreement.
- B. **Contractor Responsibility.** The Contractor shall require all proposed subcontractors to complete such Appendices included in this Agreement as are deemed necessary by OSC prior to any such proposed

subcontractor's performance of Services. The Contractor acknowledges that this requirement is ongoing for the term of this Agreement. The Contractor shall be fully responsible to OSC for the acts and omissions of its subcontractors (including Contractor's third party service providers) and persons either directly or indirectly engaged by them in connection with the performance of the Services, and their compliance with the terms of this Agreement. Contractor shall be the sole point of responsibility for all Services. The Contractor is solely responsible for all payments to its Staff.

X. INTELLECTUAL PROPERTY

- A. Work for Hire.** All work performed by Contractor or its Staff under this Agreement, including all deliverables, supporting materials, modifications, customizations, custom programs, tools, data, modules, components, and any properties embodied therein is a work for hire. Such work is specially ordered and commissioned for use as contributions to a collective work, or is other such work as specified by the U.S. Copyright Act [17 U.S.C. § 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York. OSC and the Contractor agree title and ownership shall pass to the State of New York upon acceptance of the work. The Contractor and its Staff who have been or may be used in regard to the work forfeit all claims of title or ownership to that work.
- B. Contractor Intellectual Property.** Notwithstanding the above, in the course of performing Services, the Contractor may make available to OSC Contractor materials prepared generally for the Contractor's clients, including without limitation, the Solution, templates, user interfaces, and general purpose software tools ("Contractor Materials"). The Contractor retains all intellectual property rights in the Contractor Materials and grants OSC a perpetual license to such Contractor Materials for OSC's internal business purposes, subject to the terms and conditions of this Agreement. Nothing herein shall be deemed to preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in the course of Contractor's business.

XI. WARRANTIES

- A. Software/Intellectual Property and Other Licenses.** The Contractor warrants that it has the necessary legal rights, including licenses to third-party products, tools, or materials, to perform the Services and deliver the Solution. The Contractor warrants that the Solution, associated Deliverables, and components or parts specified and furnished by or through Contractor do not infringe the patents, copyrights, or other intellectual property rights of any third party, and that Contractor will indemnify OSC in accordance with Section XVII. (Indemnification and Liability) for third-party claims involving Contractor's infringement of another's intellectual property rights.
- B. Services Warranty.** The Contractor warrants that the Services will be performed in a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, "highest applicable industry standards" means the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances. The Contractor shall re-perform, at its own expense, any work not in compliance with this warranty. Such re-performance of Services will be completed within 90 days of notification to the Contractor of non-compliant work.
- C. Solution and Deliverables.** The Contractor warrants that the Solution, associated Deliverables, and components or parts specified and furnished by or through Contractor, are free from defects in material and workmanship and will conform in all material respects to the specifications set forth in the Agreement for the Contractor's standard commercial warranty period, if applicable, or for a minimum of 120 calendar days from the Go-Live Date, whichever is longer ("warranty period").
 - 1. During the warranty period, the Contractor shall repair all Solution defects at no cost to OSC. The Contractor shall extend the warranty period by the cumulative periods of time, after notification, during which an individual component, or the Solution as a whole, requires repairs or replacement resulting from material defects ("extended warranty").

2. Where the Solution or component thereof is marketed with a standard commercial warranty that goes beyond the warranty or extended warranty periods described above, such standard warranty shall be in addition to, and not relieve the Contractor from, the Contractor's warranty obligations during the above warranty and extended warranty periods. The Contractor shall coordinate the warranty or extended warranty periods with any independent software vendor or other third-party manufacturer for warranty repair or replacement. The Contractor shall notify OSC and pass through the standard commercial warranty to OSC at no additional charge; provided, however, that the Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the warranty and extended warranty periods.
- D. **Not a Limitation.** The above warranties shall not limit any rights OSC may have in law or in equity, including the right to recover an amount for damages resulting from any errors, defects, or failure of the Solution or its components to conform to its documentation or specifications.

XII. CONFIDENTIALITY AND SECURITY

- A. **Definition Confidential Information.** "Confidential Information" means any and all information which is disclosed by either party ("Owner") to the other ("Recipient") verbally, electronically, visually, or in written or other tangible form, which is either identified or should be reasonably understood to be confidential or proprietary. Confidential Information includes, but is not be limited to, trade secrets, computer programs, software, employee information, and internal business processes and data such as risk identification and mitigation.
- B. **Use of Confidential Information.** Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than those in herein and who have a justified business "need to know." The Contractor shall use OSC Confidential solely for the purpose of carrying out its obligations to OSC as set forth in this Agreement, and for no other purpose. The Contractor monitors OSC's use of the Solution and gathers Solution performance analytics ("Performance Analytics") for the limited purposes of providing the Services. The Contractor shall not incorporate, integrate into or include any OSC content (whether confidential or not) into any generative artificial intelligence, machine learning, or general artificial intelligence software, systems, tools, or technologies, including, natural language processing, large language models, deep learning / neural network algorithms, or machine learning models ("Generative AI"), other than as necessary to provide the Services hereunder to OSC.
- C. **Mandatory Disclosure of OSC Confidential Information.** In the event of a receipt by the Contractor of a valid order or mandatory request for disclosure of OSC Confidential Information from a judicial, administrative, or governmental agency having jurisdiction over it, the Contractor, must unless prohibited by applicable law, promptly notify OSC thereof. The Contractor shall, except to the extent prohibited as a matter of law, cooperate and assist OSC in responding to any such order or request and limit disclosure.
- D. **Compliance with Laws.** In performing the Services, the Contractor shall comply with: (i) all applicable international, federal, state, and local laws, rules, regulations, and governmental requirements now or hereafter in effect relating to the confidentiality or security of confidential information; (ii) applicable industry standards concerning data protection, confidentiality and information security; and (iii) OSC policies applicable to OSC Confidential Information.
- E. **Excluded Information.** This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; or (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information.
- F. **Disposal.** The Contractor shall promptly, after the termination or expiration of the Agreement, sanitize all OSC Confidential Information, except where the Contractor is required to retain that information

pursuant to applicable law. After the destruction of the Confidential Information, an officer or principal of the Contractor shall certify upon request, in writing and under penalty of perjury, that such destruction has been completed in accordance with the Office of Information Technology Services Policy for Sanitization/Secure Disposal in NYS-S13-003 or successor policy.

- G. Security Incident Notification.** To the extent not prohibited by applicable law, the Contractor shall promptly notify OSC in writing upon the occurrence of any Security Incident, as defined in this Section, in the most expedient time possible and without unreasonable delay, but in any event no later than within 24 hours [or as mutually agreed between the parties] of such occurrence.

“Security Incident” means any exploited vulnerability or unauthorized or unlawful access to Confidential Information. A Security Incident includes any destruction, damage, loss, unauthorized use, unauthorized or unlawful disclosure of Confidential Information, any breach or compromise of the Contractor’s computer data, applications, networks or devices (including the applications, networks, or devices of all subcontractors or third-party service providers that access, store, process, or otherwise interact with Confidential Information on behalf of the Contractor), and, in the absence of direct evidence of a Security Incident, any occurrence where it can be reasonably assumed under the circumstances that Confidential Information was exposed, accessed, or disclosed without OSC’s prior written authorization.

As information becomes available, the Contractor shall provide OSC with information regarding the scope of the Security Incident; identification of the vulnerability in the affected system; the amount of time that the vulnerability existed; an identification of potentially compromised Confidential Information; the last time that the attacker (if applicable) had access to the affected systems or Confidential Information; the identity of the unauthorized third party or unauthorized entity that may have accessed or obtained Confidential Information as a result of the Security Incident; and the identification of any misuse of any Confidential Information involved in the Security Incident; and the efforts taken by the Contractor to contain and mitigate the impact of the Security Incident, including any retention of an outside law firm or cyber firm to assist in the effort, the involvement of law enforcement, and a reasonably detailed summary of the results of the investigation of the Security Incident.

The Contractor shall not notify the New York State Attorney General’s Office or any regulating or reporting agency of the Security Incident, or delay such notifications due to law enforcement investigations, without first receiving OSC’s authorization to make or delay such notifications except as required to comply with the Contractor’s legal obligations. OSC shall have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a Security Incident. OSC’s approval of notices and/or public disclosures required by law or other regulations will not be unreasonably withheld or delayed. This prior approval applies to any determination to delay notifications due to law enforcement investigations.

Nothing contained herein reduces or alters the Contractor’s obligations under applicable law.

- H. [Cybersecurity Insurance.]** OSC *prefers* that the Contractor have insurance coverage commensurate with the nature of the Services to be provided (although the existence of such coverage is not and shall not be a cap on Contractor’s liability or indemnification obligations, if any, under the final contract) and that such insurance include cyber liability coverage. OSC prefers that the Contractor agree to include OSC, its officers and employees, as additional insureds and that this coverage is primary as to claims involving the State of New York.]

XIII. BACKGROUND INVESTIGATIONS

- A. Investigation of Covered Staff.** The Contractor shall conduct a background investigations on its employees, and shall require that subcontractors providing Services under this Agreement conduct background investigations on their employees, who are assigned to provide any Services OR who will have (i) access to OSC’s IT systems, (ii) access to OSC Confidential Information, or (iii) access to any OSC facility for five consecutive business days or 10 days over the annual term of the engagement (“Covered Staff”).

- B. Background Investigation Certification.** With the signing of this Agreement, the Contractor certifies that it has or will conduct a background investigation on Covered Staff prior to the Staff commencing Services under this Agreement. The Contractor agrees that during the term of this Agreement these background investigation requirements will apply to any new/replacement Covered Staff. The Contractor shall obtain the consent of Covered Staff to allow the OSC Inspector General ("IG") to audit the results of these background investigations, and (i) to review unredacted background investigation records, including supporting documentation, and (ii) to conduct its own background investigation. OSC reserves the right to prohibit any Covered Staff from providing Services if they do not provide such consent when requested by the IG.
- C. Background Investigation Requirements.** At a minimum, background investigations shall include a review/evaluation of the following:
- identity verification, including Social Security Number or federal identification number search as applicable;
 - employment eligibility, including verification of U.S. citizenship or legal immigration status where appropriate;
 - criminal history/court records (federal, state, and local for the past five years) as permitted under applicable law;
 - work experience/history for the past five years;
 - pertinent skills, qualifications, and education/professional credentials; and
 - references.

XIV. INDEMNIFICATION AND LIABILITY

- A. Contractor Liability and Indemnification.** The Contractor shall be fully liable for any act or omission of the Contractor and its Staff and shall fully indemnify, defend, and hold harmless OSC and the State, their officials, agents, and employees, without limitation, from suits, actions, damages, and costs of every name and description (including reasonable attorneys' fees and expenses) arising from any act or omission of the Contractor or its Staff, including bodily or personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software and databases); damage to intellectual property; and infringement or violation of a third party's patent, copyright, license, or other proprietary or intellectual property right; provided however that the Contractor shall not be obligated to indemnify OSC for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of OSC.
- B. Third Party Claims.** For third party claims, OSC shall give the Contractor:
1. prompt written notice of any action, claim, suit, proceeding, or threat of such action;
 2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at Contractor's sole expense; and
 3. reasonable assistance in the defense of any such action, claim, suit, or proceeding at the expense of Contractor.

Notwithstanding the foregoing, the State reserves the right to join such action, claim, suit or proceeding at its sole expense, if it determines there is an issue involving a significant public interest.

- C. Indemnification is in Addition to Rights.** The indemnification obligation contained: (i) is in addition to, and not in lieu of, any other right, power, or remedy that OSC, or the officers, agents, representatives, and staff of OSC, may have against the Contractor; and (ii) will not be construed to limit in any way the duties, responsibilities, and obligations of the Contractor set forth in this Agreement. OSC may, in addition to other legal remedies available to it, retain from amounts otherwise due to the Contractor such moneys as may be necessary to satisfy any claim for damages OSC may have against Contractor.

D. Limitations of Liability.

1. **No Consequential, Indirect, or Special Damages.** Notwithstanding the above, neither party will be liable for any consequential, indirect, or special damages of any kind which may result directly or indirectly from such performance, including loss of use or loss of profit.
2. **Force Majeure Events.** Neither the Contractor nor OSC will be liable for any delay or failure in performance beyond their control resulting from acts of war, hostility or sabotage; act of nature; electrical, internet, or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such event continues for more than 90 days, either party may terminate all or any agreed upon portion of this Agreement immediately upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures, or OSC's obligation to pay for Services provided by the Contractor which have been approved by OSC.

XV. RESPONSIBILITY TERMS

- A. Contractor Covenants and Representations.** The Contractor represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Contractor's Vendor Responsibility Questionnaire ("Responsibility Questionnaire") provided to the Contractor by OSC prior to execution of this Agreement. The Contractor further represents that as of the date of execution of this Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Responsibility Questionnaire.

- B. Continued Obligation.** The Contractor shall provide to OSC updates to the Responsibility Questionnaire if any material event occurs requiring an amendment or as new information related to such Responsibility Questionnaire becomes available. The Contractor shall, on an annual basis from the date of execution of this Agreement, re-certify such Responsibility Questionnaire, noting any changes, whether material or non-material, or submit a certification of "no change" to OSC.

OSC reserves the right, in its sole discretion, at any time during the term of this Agreement, (i) to require updates or clarifications to the Responsibility Questionnaire, (ii) to inquire about information included in or omitted from the Responsibility Questionnaire, and (iii) to require the Contractor to provide such information to OSC within a reasonable timeframe to be established at OSC's sole discretion.

- C. Determination of Non-Responsibility.** OSC reserves the right to make a final determination of the Contractor's non-responsibility ("Determination of Non-Responsibility") at any time during the term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (ii) the Contractor's failure to disclose material information; or (iii) State's discovery of any other material information which pertains to the Contractor's responsibility.

If OSC preliminarily determines the Contractor to be non-responsible, State shall provide written notice to the Contractor detailing the reason(s) for the preliminary determination and shall provide the Contractor with an opportunity to be heard before the determination is finalized.

Upon a Determination of Non-Responsibility of the Contractor, OSC reserves the right to terminate this Agreement for cause pursuant to Section XVI (Termination and Suspension).

XVI. TERMINATION AND SUSPENSION

- A. 30 Days' Notice of Termination.** OSC may terminate or suspend this Agreement, or terminate or suspend the Services in whole or in part, with or without cause upon 30 days' prior written notice to the Contractor.
- B. Immediate Termination or Suspension.** OSC reserves the right to terminate or suspend this Agreement, or terminate or suspend the Services in whole or in part, immediately upon written notice to the Contractor, if OSC, in its discretion, deems the Contractor's performance unsatisfactory at any time during the term of this Agreement.

- C. **Effect of Termination or Suspension.** In the event of termination or suspension, OSC will compensate the Contractor for Services performed through the date of termination or suspension that are acceptable to OSC, in its discretion.

XVII. TRANSITION

- A. **Transition of Records.** Upon expiration or termination of this Agreement, the Contractor shall provide access to a successor contractor and/or to OSC all necessary records, including MS Excel or MS SQL Database back up files with data dictionary, in the Contractor's possession relating to the Services provided under this Agreement. Contractor shall deliver such records within 15 calendar days of such expiration or termination, and in a mutually agreeable format, at no expense to OSC. Contractor shall deliver to such successor contractor or OSC all work-in-progress, including Deliverables in Contractor's possession for which payment has been made by OSC.
- B. **Transition Support.** The Contractor shall provide OSC and its successor contractor with transition support services as OSC deems are reasonably required beyond the data transfer and database back-up file to facilitate orderly migration and transfer of responsibilities to OSC and/or its successor contractor, and at OSC's request, for a period of up to 90 calendar days after the effective date of expiration or termination, the Contractor shall also make appropriate personnel available to OSC and to the successor contractor during normal business hours to answer questions regarding such records and the Services which have been provided by the Contractor under this Agreement ("Transition Services"). The Contractor shall be compensated for Transition Services in accordance with the Hourly As-Needed Post-Implementation Services Fee Rates set forth in Attachment C.
- C. **Cooperation.** The Contractor shall cooperate to the fullest extent with any successor contractor in order to accomplish a smooth and orderly transition, so that the Services required are uninterrupted and are not adversely impacted by the change in contractor.

XVIII. MISCELLANEOUS PROVISIONS

- A. **Waiver.** The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other subsequent default or breach.
- B. **Severability.** If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected thereby and every other term and provision of this Agreement will remain valid and enforced to the fullest extent permitted by law.
- C. **Ethics Compliance.** The Contractor and its Staff shall comply with the requirements of Public Officers Law §§ 73 and 74, and other State codes, rules, and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of this Agreement and/or other civil or criminal proceedings as required by law.
- D. **Public Communication.** Neither the Contractor nor any of its Staff shall make any statement to the press or issue through any media of communication any statement bearing on the Services performed or data collected under this Agreement, without the prior written approval of OSC.
- E. **Survival.** The provisions of Sections XI (Warranties), XII (Confidentiality and Security), XIV (Indemnification and Liability), XVII (Transition) and Appendix A will survive the expiration or termination of this Agreement.

XIX. ENTIRE AGREEMENT/APPROVALS

This Agreement and the appendices, exhibits, and attachments hereto constitute the entire Agreement between the parties and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement may not be changed, modified, or altered in any manner except by an amendment executed by the parties. This Agreement and any amendment hereof will not be deemed executed, valid or binding unless and until approved in writing by the New

York State Attorney General and thereafter, approved in writing by OSC's Bureau of Contracts pursuant to State Finance Law § 112, and filed in the Office of the State Comptroller.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement.

In addition to the acceptance of this Agreement, OSC and Contractor signatures on this page also certify that originals of this signature page will be attached to all other originals of this Agreement.

CONTRACT NUMBER: C001193

NAME

OFFICE OF THE STATE COMPTROLLER

SIGNATURE

SIGNATURE

PRINTED NAME

JEREMY R. DISARE

PRINTED NAME

TITLE

**ASSISTANT DEPUTY COMPTROLLER OF FINANCE AND
ADMINISTRATION**

TITLE

DATE

DATE

CONTRACTOR'S ACKNOWLEDGEMENT

STATE OF _____ }

COUNTY OF _____ }

SS.:

On the _____ day of _____ in the year 20_____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, acknowledged to me that he/she/they maintains an office at _____, is the _____ of _____, the corporation described in foregoing instrument; and, by authority of the Board of Directors of the corporation, is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and, pursuant to that authority, has executed the foregoing instrument in the name of and on behalf of the corporation as the act and deed of the corporation.

**Notary Public
Registration No.**

**APPROVED AS TO FORM:
NYS ATTORNEY GENERAL**

**APPROVED:
THOMAS P. DINAPOLI, COMPTROLLER**

BY:

BY:

DATE

DATE

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform

the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or

representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of (a), (b), and (c) above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder

certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-8467364
Email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced

or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of

a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

June 2023

APPENDIX B
NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE

INSTRUCTIONS: Contractor must complete and submit this form as part of the Agreement.															
Contractor Name:								Federal Identification Number:							
Address:								Contract Number:							
City, State, Zip Code:								M/WBE Participation Goals Assigned: MBE <u>N/A</u> % WBE <u>N/A</u> %							
Does the Contractor have an existing EEO Policy? (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (if Yes, attach current copy of EEO Policy Statement.)								Is the Contractor ESD Certified: (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, provide ESD Certification Number and Expiration Date.)							
<input type="checkbox"/> Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that <u>can</u> be separated out from the Contractor's/Subcontractor's total workforce.								<input type="checkbox"/> Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that <u>cannot</u> be separated out from the Contractor's/Subcontractor's total workforce.							
Enter in the following Job Categories the total number of staff by race, sex, and ethnic status to be utilized by the Contractor during the performance of this State Contract.															
JOB CATEGORIES (as defined in the Instructions attached)	RACE/ETHNICITY OF ANTICIPATED WORKFORCE (Report employees in only one category as defined in the Instructions attached.)														
	Hispanic or Latino		(NOT HISPANIC OR LATINO)												Total Columns A – N
			White		Black or African-American		Native Hawaiian or Other Pacific Islander		Asian		American Indian or Alaska Native		Two or more races		
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	
Executive/Senior Level Officials and Managers															
First/Mid-Level Officials and Managers															
Professionals															
Technicians															
Sales Workers															
Administrative Support Workers															
Craft Workers															
Operatives															
Laborers and Helpers															
Service Workers															
TOTAL:															
Prepared by (signature): _____															
Name of Preparer			Title of Preparer			Date		Telephone Number			Email Address				

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR’S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE

Location and Description of Work to be Performed (expand as necessary):

INSTRUCTIONS FOR COMPLETING CONTRACTOR'S EEO STAFFING PLAN OF ANTICIPATED WORKFORCE FORM

RACE AND ETHNIC IDENTIFICATION*	
For the purpose of completing this form, OSC has adapted the race and ethnic designations used and obtained in accordance with the requirements administered by the Equal Employment Opportunity Commission, which do not denote scientific definitions of anthropological origins. Definitions of the race and ethnicity categories are as follows:	
Hispanic or Latino	A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
White	A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
Black or African-American	A person having origins in any of the black racial groups of Africa.
Native Hawaiian or Other Pacific Islander	A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
Asian	A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
American Indian or Alaska Native	A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment
Two or More Races	All persons who identify with more than one of the above five races.
<p>Submission of this form constitutes the Contractor's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this State Contract and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the term of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.</p> <p>By submitting this form, the Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.</p> <p>Failure to submit complete and accurate information may result in non-compliance and bid/proposal disqualification.</p> <p>*The Equal Employment Opportunity Commission's Description of Job Categories and Instructions for assigning employees can be viewed at www.eeoc.gov/employers/eeo1survey/2007instructions.cfm.</p>	

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR'S/SUBCONTRACTOR'S EEO WORKFORCE UTILIZATION REPORT**

PART A – INSTRUCTIONS: All Contractors/Subcontractors must complete and submit this form on a semi-annual basis in accordance with terms of Agreement.															
Contractor/Subcontractor Name:															
Address:								Federal Identification Number:							
City, State, Zip Code:								Contract Number:							
Does the Contractor have an existing EEO Policy? (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (if Yes, attach current copy of EEO Policy Statement.)															
Does the Contractor have an existing Affirmative Action Program? (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (if Yes, attach description of Affirmative Action Program)								Is the Contractor ESD Certified: (Check one): <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, provide ESD Certification Number and Expiration Date.) _____							
<input type="checkbox"/> Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that <u>can</u> be separated out from the Contractor's/Subcontractor's total workforce.								<input type="checkbox"/> Check box if the information provided below reflects only the workforce to be utilized in the performance of this State Contract that <u>cannot</u> be separated out from the Contractor's/Subcontractor's total workforce.							
Enter in the following Job Categories the total number of staff by race, sex, and ethnic status to be utilized by the Bidder during the performance of this State Contract.															
JOB CATEGORIES (as defined in the Instructions attached)	RACE/ETHNICITY OF ANTICIPATED WORKFORCE (Report employees in only one category as defined in the Instructions attached.)														
	Hispanic or Latino		(NOT HISPANIC OR LATINO)												Total Columns A – N
			White		Black or African-American		Native Hawaiian or Other Pacific Islander		Asian		American Indian or Alaska Native		Two or more races		
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	
		Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	
Executive/Senior Level Officials and Managers															
First/Mid-Level Officials and Managers															
Professionals															
Technicians															
Sales Workers															
Administrative Support Workers															
Craft Workers															
Operatives															
Laborers and Helpers															
Service Workers															
TOTAL:															
PART C – Prepared by (signature): _____															
Name of Preparer			Title of Preparer			Date		Telephone Number			Email Address				

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER
CONTRACTOR’S/SUBCONTRACTOR’S EEO WORKFORCE UTILIZATION REPORT

Description of Services or Supplies Provided (expand as necessary):

INSTRUCTIONS FOR COMPLETING CONTRACTOR'S/SUBCONTRACTOR'S EEO WORKFORCE UTILIZATION REPORT FORM

RACE AND ETHNIC IDENTIFICATION*

For the purpose of completing this form, OSC has adapted the race and ethnic designations used and obtained in accordance with the requirements administered by the Equal Employment Opportunity Commission, which do not denote scientific definitions of anthropological origins. Definitions of the race and ethnicity categories are as follows:

Hispanic or Latino	A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
White	A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
Black or African-American	A person having origins in any of the black racial groups of Africa.
Native Hawaiian or Other Pacific Islander	A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
Asian	A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
American Indian or Alaska Native	A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment
Two or More Races	All persons who identify with more than one of the above five races.

CONTRACTOR'S/SUBCONTRACTOR'S EEO WORKFORCE UTILIZATION REPORT SUBMISSION REQUIREMENTS

Please submit completed Form AC 3239-B semi-annually, in accordance with the terms of the State Contract to:

New York State Office of the State Comptroller
Bureau of Financial Administration, Attn: M/WBE Specialist
110 State Street, Stop 13-2
Albany, NY 12236

Submission of this form constitutes the Contractor's/Subcontractor's acknowledgement and agreement to adhere to the compliance requirements and procedures set forth under this State Contract and OSC's right to evaluate and determine Contractor/Subcontractor adherence or compliance during the bid and award of said State Contract, pursuant to New York State Executive Law Article 15-A (the "Article") and the implementing regulations set forth under 5 NYCRR.

By submitting this form, the Contractor agrees (i) to provide OSC access to all documentation, records, reports, facilities, etc. which OSC may deem necessary to determine Contractor compliance, and (ii) to be bound by the provisions of §316 regarding possible fines, sanctions, and penalties for violations of the Article.

Failure to submit complete and accurate information may result in non-compliance and bid/proposal disqualification.

*The Equal Employment Opportunity Commission's Description of Job Categories and Instructions for assigning employees can be viewed at www.eeoc.gov/employers/eeo1survey/2007instructions.cfm.

APPENDIX C

OSC POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT

DISCRIMINATION AND HARASSMENT

It is the policy of the Office of the State Comptroller ("OSC") to provide a workplace that is free of discrimination and harassment based on race, color, sex (including sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender), creed or religion, age, national origin, disability, marital status, military or veteran status, predisposing genetic characteristics, domestic violence victim status or any other classification protected by state or federal law, rule or regulation or executive order.

Discrimination is defined as the failure or refusal to hire, promote, or train an individual or treat that individual equally with respect to compensation, terms, conditions or privileges of employment because of that individual's membership in any one of the above classes. Harassment based upon a person's membership in any of the above classes is included within the definition of discrimination.

In keeping with its policies, OSC reaffirms that it will not tolerate such discrimination or harassment in its workplace and that it will take appropriate action to prevent and stop the occurrence of such conduct in its workplace. OSC employees and any third parties who interact with OSC employees in the workplace are expected to avoid any behavior or conduct that could be interpreted as discrimination/harassment based on membership in any of the above classes.

Examples of conduct that may constitute harassment based upon membership in one of the above classes include, but are not limited to:

- kidding or teasing related to membership in, or characteristic of one of the above classes, such as laughing at or mimicking someone's physical or mental impairment, foreign accent, etc.;
- using ethnic or racial slurs;
- conduct that denigrates or shows hostility toward an individual because of protected class status, and that has the purpose or effect of creating an intimidating, hostile or offensive environment; and
- telling jokes that belittle a member or members of one of the above classes.

SEXUAL HARASSMENT

Sexual harassment, a form of discrimination, is defined as unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- such conduct is made either explicitly or implicitly a term or condition of employment;
- submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

Examples of sexual harassment include, but are not limited to, sexual innuendo; suggestive comments; sexually-oriented kidding, teasing or practical jokes; jokes about gender-specific traits; jokes about sexual orientation, or perceived masculinity or femininity of individuals; foul or obscene language or gestures; display of foul, obscene or sexually suggestive printed or visual material; physical conduct such as touching or patting; sexually-oriented email or phone mail messages; suggestive or obscene letters, notes, or invitations; inappropriate discussions of a person's physical appearance; or unwelcome gifts and attention.

A perpetrator of harassment can be a superior, subordinate, co-worker or anyone in the workplace, including an independent contractor, contract worker, vendor, client, customer or visitor.

Questions about what behavior constitutes discrimination or harassment, including sexual harassment, or requests for OSC Executive Orders and policies on such matters may be directed to the OSC Division of Diversity Management at (518) 473-1368.

August 31, 2021

APPENDIX D

OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY

Whereas, it is the policy of the Office of the State Comptroller (OSC) and the New York State Common Retirement Fund (CRF) to procure goods and services in a fair, equitable and open manner and to protect the procurement process from improper influences; and

Whereas, procurement lobbying activities must be monitored and documented to assure the integrity of the procurement process;

Now, therefore, I, Thomas P. DiNapoli, Comptroller of the State of New York, in consideration of the foregoing, do hereby order as follows;

1. **Applicability.** This executive order applies to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology. Decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, and selections of investment advisors or managers whose services are integral to the administration of CRF investments, remain subject to the Comptroller's fiduciary responsibility to administer the CRF prudently to increase and preserve CRF assets on behalf of its beneficiaries. In addition, selection of counsel to represent the CRF in transactional, investment or litigation matters remain subject to the Comptroller's fiduciary responsibilities. Although such CRF investment decisions and selections are not subject to this executive order, they shall be made in a fair and equitable manner, in accordance with the Comptroller's fiduciary responsibilities.
2. **General Counsel.** The General Counsel shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF. The General Counsel shall form such committees or draw upon OSC staff as needed to fulfill this responsibility.
3. **Procedural Controls.** The General Counsel shall develop, in consultation with the executive staff of OSC, procedural controls in the form of written Procurement Integrity Procedures. Such procedures shall:
 - a. require that decisions made on the award of procurement contracts shall be made in accordance with Article 11 of the State Finance Law, free from any improper influence;
 - b. require that any OSC employee who has direct knowledge of any improper influence or attempted improper influence shall immediately make a record of the improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the General Counsel or appropriate Division of Legal Services staff designated by the General Counsel;
 - c. prohibit contact relating to a bid or proposal, during the procurement process, between all OSC personnel involved in the determination of the procurement contract award and any employee, agent, or consultant of a bidder or proposer competing for the contract, except for contacts authorized by the procedures established pursuant to this executive order;
 - d. establish procedures for appropriate contacts between OSC personnel involved in the determination of a procurement contract award and the employees, agents or consultants of a bidder or proposer for the purpose of clarifying a bid or proposal. Such authorized contacts shall only be for the purpose of providing information to OSC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by a bidder or proposer, and shall occur only at such times and in such manner as have been authorized by the procedures established pursuant to this executive order;

- e. provide for appropriate contacts between OSC personnel and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of bids or proposals and selection of a contractor have been completed;
 - f. establish a process for the review by the General Counsel of any allegations of improper influence or attempted improper influence, and for the imposition of sanctions if such improper activity has been found to exist.
- 4. Incorporation of Procedural Controls in Contract Documents. The Procurement Integrity Procedures required by this executive order shall be incorporated into all OSC and CRF procurement solicitations and contracts.
 - 5. Periodic Review. The General Counsel shall periodically review the Procurement Integrity Procedures with OSC personnel in order to ascertain potential areas of exposure to improper influence and to adopt desirable revisions for more effective avoidance of improper influences.
 - 6. Sanctions. Any OSC employee who violates the Procurement Integrity Procedures may be subject to disciplinary action. Any vendor who violates the Procurement Integrity Procedures may be found to be a non-responsible vendor, and on the basis of such finding, may be ineligible to receive a contract award.

_____/s/_____
Thomas P. DiNapoli
Comptroller, State of New York

Last Revised Date: March 14, 2007
Original Date: February 14, 2002

OSC PROCUREMENT INTEGRITY PROCEDURES

In order to ensure that procurements of goods or services¹ by the Office of the State Comptroller (OSC) or the Common Retirement Fund (CRF) are conducted in a fair, equitable and open manner, the procedures set forth below shall apply to the procurement process.

The General Counsel to the Comptroller shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF.

A copy of these Procurement Integrity Procedures will be given to every OSC employee, consultant, or other person assigned to any task related to an OSC or CRF procurement. A copy of these procedures will be incorporated into every Request for Information (RFI), Request for Proposals (RFP) or Invitation for Bids (IFB) issued by OSC or CRF.

Any OSC employee who violates these procedures may be subject to disciplinary action, such as a reprimand, suspension, demotion, or dismissal. Any vendor who violates these procedures may, after notice and an opportunity to be heard, be determined to be a non-responsible vendor, and on the basis of such a determination may be ineligible to receive a contract award.

Every reasonable effort will be made to assure compliance with these procedures, but a minor deviation from these procedures that does not impair the fairness and integrity of the procurement process will not require the invalidation of a contract award.

1. OSC employees must provide every interested vendor² with an equal opportunity to compete. No information may be given to one vendor without being made available to all other interested vendors. Vendors should be asked to submit every substantive question³ concerning the procurement in writing not later than the date specified by OSC for such questions; and a copy of each question, together with OSC's written answer, should be supplied to all interested vendors and included in the procurement record.
2. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will serve as the coordinator for all procurement-related contacts between OSC personnel and vendor personnel. All telephone calls, correspondence, and meeting requests must be routed to: Assistant Comptroller for Administration, Office of the State Comptroller, 110 State Street – 13th Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: RFP@osc.state.ny.us. OSC's Assistant Comptroller for Administration, or a designee, will maintain a record of all such contacts.
3. A vendor may not exert or attempt to exert any improper influence⁴ relating to the vendor's bid

¹ These procedures apply to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology, except that they do not apply to (i) decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, (ii) selections of investment advisors or managers whose services are integral to the administration of CRF investments, and (iii) selection of counsel to represent the CRF in transactional, investment or litigation matters. Such CRF investment decisions and selections remain subject to the Comptroller's fiduciary responsibilities, and are to be made in a fair and equitable manner in accordance with those responsibilities.

² For the purposes of these procedures, the term "interested vendor" means a person or firm that has received or requested a Request for Information (RFI), an RFP, or an IFB issued by OSC or CRF.

³ For the purposes of these procedures, the term "substantive question" means an inquiry concerning a material requirement of the procurement process, such as a technical specification or a financial prerequisite. The term does not apply to ministerial matters, such as the time and place or manner of submitting a bid or proposal.

⁴ For the purposes of these procedures, the term "improper influence" means any attempt to achieve preferential, unequal, or favored consideration of a bid or proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law sections 73 and 74.

or proposal. Any OSC employee who has direct knowledge of any improper influence or attempt to exert an improper influence concerning a procurement contract shall immediately make a record of the improper influence or attempted improper influence and notify the General Counsel to the Comptroller. The General Counsel to the Comptroller shall thereupon cause an investigation to be made and shall recommend such action, if any, as may be necessary.

4. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor's bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process⁵. If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.

⁵ For the purposes of these procedures, the term "attempt to influence the procurement process" means any attempt to influence any determination by OSC or CRF by a person other than an OSC employee with respect to (i) the solicitation, evaluation or award of a procurement contract; or (ii) the preparation of specifications or request for submissions of bids or proposals for a procurement contract.

11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.
12. During the evaluation and selection phases of the procurement process, no OSC employee may disclose any part of a bid or proposal to any other person, except that (i) a member of an evaluation or selection committee may discuss a proposal with another member of the same committee, and (ii) a member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.
13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011

APPENDIX E

CONTRACTOR'S CERTIFICATIONS/ACKNOWLEDGEMENTS

SIGNATURE AUTHORITY
<p>The Contractor* and the person signing on behalf of the Contractor certify that such person is authorized to sign on behalf of the Contractor and has the express authority to contractually bind the Contractor.</p>
ACKNOWLEDGEMENT OF RECEIPT OF OSC'S POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT
<p>The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Policy on Discrimination and Harassment, Including Sexual Harassment (Appendix C), and each agrees to abide by the terms of Appendix C.</p>
CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW § 139(L) REGARDING SEXUAL HARASSMENT POLICY AND ANNUAL TRAINING
<p>"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law."</p>
NON-COLLUSIVE BIDDING CERTIFICATION
<p>"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of [such persons] knowledge and belief:</p> <ol style="list-style-type: none"> 1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other competitor; 2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder, directly or indirectly, to any other competitor; and 3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition."
CONTRACTOR'S ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY
<p>The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures (Appendix D). By submission of this bid, the Contractor and the person signing on behalf of the Contractor each affirms, under penalty of perjury, that they understand and will comply with the terms of Appendix D.</p>

* All reference to "bidders" within this Appendix E includes proposers and Contractors. Reference to "bids" includes proposals and other responses to solicitations.

THE SIGNATURE(S) BELOW INDICATES AGREEMENT WITH EACH OF THE ABOVE CERTIFICATIONS/ ACKNOWLEDGEMENTS

PROPOSER NAME	JOINT PROPOSER NAME (IF ANY)
SIGNATURE	SIGNATURE
PRINTED OR TYPED NAME	PRINTED OR TYPED NAME
TITLE	TITLE
DATE	DATE

Add additional signature lines below for additional Joint Proposers, as necessary.

October 24, 2023

APPENDIX F

DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Have you been found by any governmental entity to be non-responsible within the past four years from the date of this bid due to:

1. Impermissible contacts or other violations of New York State Finance Law Section 139-j (e.g., conduct prohibited by the ethics provisions of the New York State Public Officers Law)?

☐ Yes

☐ No

2. Intentional provision of false or incomplete information to a governmental entity?

☐ Yes

☐ No

If your answer to either of the above is “Yes,” please attach a written explanation indicating the date of the non-responsibility finding, the entity that found you to be non-responsible, and the circumstances surrounding such finding (including any written finding of non-responsibility issued by such entity).

By my signature on this form, I certify that all information disclosed to the State is complete, true, and accurate with regard to prior non-responsibility findings within the past four years based on (i) impermissible Contacts or other violations of New York State Finance Law Section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity.

Signature

Printed or Typed Name

Title

Procurement Number

Date

August 15, 2014

APPENDIX G

OSC CONSULTANT DISCLOSURE REPORTING REQUIREMENTS

CONTRACTOR INSTRUCTIONS

Background:

Pursuant to New York State Finance Law Section 163(4)(g), State agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract. The report must include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Contractors selected for award on the basis of a procurement issued by OSC (Request for Proposals, Request for Quotations, Mini-Bid, or Invitation for Bids) must complete **Form A, State Consultant Services – Contractor’s Planned Employment**, upon notification of award. The completed **Form A** must include information for all employees that will be providing services under the contract, whether employed by the contractor or by a subcontractor.

Contractors selected for award are also required to complete **Form B, State Consultant Services Contractor’s Annual Employment Report**, annually for each year of the contract term, on a State fiscal year basis. The first report is due May 15 for the period April 1 through March 31 of the most recently concluded State fiscal year or portion thereof.

Form A must be submitted to OSC as the contracting agency. Form B must be submitted to OSC (as the contracting agency), the Department of Civil Service, and the Consultant Reporting Section of the Bureau of Contracts at OSC, at the addresses provided in these instructions.

Instructions:

Form A: State Consultant Services – Contractor’s Planned Employment

Upon notification of contract award, complete Form A, attached to these instructions, to report the necessary planned employment information prospectively from the start date through the end of the contract term. This is a one-time reporting requirement.

Complete Form A for contracts for consulting services in accordance with the following:

- **Employment category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract. (Note: The O*NET database is available through the US Department of Labor’s Employment and Training Administration website at <https://www.onetonline.org>.)
- **Number of employees:** the total number of employees in the employment category anticipated to provide services under the contract, including part-time employees and employees of subcontractors.
- **Number of hours to be worked:** the total number of hours anticipated be worked by the employees in the employment category.
- **Amount payable under the contract:** the total amount payable by the State to the Contractor under the contract, for work by the employees in the employment category, for services to be provided during the contract term.

Submit completed Form A to OSC within 48 hours of notification of selection for award at the address listed below.

Form B: State Consultant Services Contractor's Annual Employment Report

Use Form B, attached to these Instructions, to report annual employment information. This form captures historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Submit Form B to OSC (as the contracting agency), the Department of Civil Service, and to the Consultant Reporting Section of the Bureau of Contracts at OSC at the addresses listed below.

Complete Form B for contracts for consulting services in accordance with the following:

- **Scope of Contract:** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: The O*NET database is available through the US Department of Labor's Employment and Training Administration website at <https://www.onetonline.org>.)
- **Number of Employees:** the total number of employees in the employment category employed that provided services under the contract during the Report Period, including part-time employees and employees of subcontractors.
- **Number of hours worked:** the total number of hours worked during the Report Period by the employees in the employment category.
- **Amount Payable under the Contract:** the total amount paid or payable by the State to the Contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Submit the completed Form B by May 15 for the period April 1 through March 31, and annually by May 15th thereafter for each State fiscal year (or portion thereof) the contract is in effect, as follows:

To OSC (as the contracting agency):

By mail: Bureau of Finance
Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

By email: rfp@osc.state.ny.us

To the Bureau of Contracts:

By mail: Bureau of Contracts
NYS Office of the State Comptroller
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

By email: CDMOST@osc.ny.gov

To Department of Civil Service:

By mail: NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239
Attn: Executive Office

By email: SubmitformB@cs.ny.gov

FORM A

New York State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term

State Agency Name: Office of the State Comptroller	
State Agency Department ID: 3050000	Agency Business Unit: OSC01
Contractor Name:	Contract Number:
Contract Start Date: / /	Contract End Date: / /

Employment Category	Number of Employees	Number of hours to be worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

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FORM B

New York State Consultant Services Contractor's Annual Employment Report Report Period: April 1, to March 31,

Contracting State Agency Name: Office of the State Comptroller			
Contract Number:		Agency Business Unit: OSC01	
Contract Term: / / to / /		Agency Department ID: 3050000	
Contractor Name:			
Contractor Address:			
Description of Services Being Provided:			
Scope of Contract (Choose one that best fits):			
<input type="checkbox"/> Analysis <input type="checkbox"/> Evaluation <input type="checkbox"/> Research <input type="checkbox"/> Training			
<input type="checkbox"/> Data Processing <input type="checkbox"/> Computer Programming <input type="checkbox"/> Other IT consulting			
<input type="checkbox"/> Engineering <input type="checkbox"/> Architect Services <input type="checkbox"/> Surveying <input type="checkbox"/> Environmental Services			
<input type="checkbox"/> Health Services <input type="checkbox"/> Mental Health Services			
<input type="checkbox"/> Accounting <input type="checkbox"/> Auditing <input type="checkbox"/> Paralegal <input type="checkbox"/> Legal <input type="checkbox"/> Other Consulting			
Employment Category	Number of Employees	Number of Hours Worked	Amount Payable Under the Contract
Total this page	0	0	\$ 0.00
Grand Total			

Name of person who prepared this report:

Title:

Phone #:

Preparer's Signature:

Date Prepared: / /

(Use additional pages, if necessary)

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Placeholder for Attachments A-E