

**Contract for
Certified Public Accounting Services for
the New York State Gaming Commission**

C202012

THIS AGREEMENT made this 8th day of January, 2021 is entered into by and between the NEW YORK STATE GAMING COMMISSION, an executive agency of the State of New York having an office at One Broadway Center, Schenectady, New York 12305 (the "Commission"), and Mitchell & Titus, LLP, having an office at 80 Pine Street, 32nd Floor, New York, NY 10005 (the "Contractor"). The Commission is the operator of the New York Lottery program (the "Lottery"), on behalf of the State of New York (the "State").

WHEREAS the Contractor submitted a quotation dated December 3, 2020 (the "Quotation"), pursuant to a Request for Quotation (the "RFQ", including any amendments to the Request for Quotation prior to award of a Contract) dated November 9, 2020, and which the Commission selected pursuant to its discretionary purchasing authority under New York State's State Finance Law section 163(6), from quotations submitted by New York State small businesses and businesses certified pursuant to Articles 15-A and/or 17-B of New York State Executive Law;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. **Scope of Services.** The Contractor, in exchange for the compensation paid by the Commission pursuant to this Contract, agrees to provide the Commission with Certified Public Accounting ("CPA") services, including, but not limited to, auditor services, as more fully set forth in the RFQ. Both the RFQ and the Contractor's Quotation are hereby incorporated by reference into this Contract with the same force and effect as if they were fully set forth herein.
2. **Term.** This Contract shall be effective from March 1, 2021 through February 28, 2024.

3. **Merger and Modification.** This Contract, including its exhibits and incorporated documentation, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by mutual agreement, as set forth in a written amendment to the Contract, signed by both parties.
4. **Compensation, Invoicing, and Payment.** The Contractor will be compensated for work performed pursuant to this Contract, excluding any travel or incidental expenses incurred by the Contractor pursuant to this Contract. Sales tax shall not be included on invoices as New York State agencies are exempt from paying sales tax. The Commission will supply a tax-exempt form if requested by the Contractor.

The Contractor will be compensated as provided herein for work begun by the Contractor during the term of the Contract, that is completed within a reasonable time after the Contract's Term end date, with the Commission determining the reasonableness of the time proposed or used, and reserving the right to deny payment if work is completed within an unreasonable time after the Contract's Term end date.

Compensation for this Contract shall not exceed the amount of \$256,890.

5. **Contract Invoicing and Payment.** The Contractor shall submit invoices on a monthly basis as a PDF email attachment and directed via email to the New York State Business Services Center at accountspayable@ogs.ny.gov with a copy emailed to the Commission's Finance Office at Gaming.sm.invoice.finance@gaming.ny.gov.

Payment under this Contract will be in accordance with New York State's Prompt Payment Law (Article 11-A of New York State's State Finance Law). Payment for services will be made upon completion of the services, in accordance with the terms of the RFQ, and upon receipt and approval by the Commission of a proper invoice.

6. **Approvals Required.** This Contract, and any extension of the term of this Contract or any amendment of the provisions of this Contract, shall not be effective and binding upon the Commission, the State of New York, or the Contractor, unless and until approved by the Office of the New York State Attorney General (“OAG”), and the Office of the New York State Comptroller (“OSC”), as indicated by their execution of this Contract. The Commission agrees to exercise its best efforts to obtain such approval.
7. **Mutual Cooperation.** The objective of this Contract is to ensure that CPA services are provided to the Commission as set forth in this Contract. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objective.
8. **Standards of Performance.** The Contractor warrants that it possesses the experience, knowledge, character, and licenses necessary to perform the scope of services described in this Contract. The Contractor shall perform such services in a competent and professional manner to the satisfaction of the Commission.
9. **Auditor Independence.** The Contractor shall submit annually, a statement, signed by an authorized signatory, that the Contractor is independent of the Commission in accordance with the American Institute of Certified Public Accountants (“AICPA”) and Generally Accepted Accounting Principles (“GAAP”) standards, and is able to conduct any proposed audit and test.
10. **Termination.**
 - a. The Commission shall have the right to terminate this Contract, without showing cause, by providing written notice to the Contractor in accordance with Section 15 of this Contract for any of the following:
 - i. convenience; or
 - ii. a finding that the certification filed by the Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete.
 - b. The Commission shall have the right to terminate this Contract for any of the following causes:

- i. the Contractor's fraudulent or otherwise criminal act against the Commission;
- ii. a material breach by the Contractor of any of the provisions of this Contract;
- iii. the Contractor's filing for bankruptcy in a court of competent jurisdiction;
- iv. a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;
- v. a good faith determination by the Commission that continuation of the Contract could place the integrity or public perception of the Commission in jeopardy;
- vi. a determination by the Commission's Executive Director, or his or her designee, that the Contractor is non-responsible or nonresponsible; or
- vii. a conviction of the Contractor or any of its directors, officers, or employees, of any criminal offense which, in the sole reasonable opinion of the Commission's Executive Director, or his or her designee, would be prejudicial to public confidence in the Commission.

In the event the Commission decides to exercise the right to terminate this Contract for cause, the Commission shall give the Contractor a written Notice of Intention to Terminate for Cause ("Notice") which states clearly and specifically the cause for which termination is sought. The Contractor shall be entitled to a period of thirty (30) days from receipt of such Notice to correct or cure the cause to the reasonable satisfaction of the Commission, in which case such Notice shall be deemed withdrawn and a nullity.

If termination is sought due to a criminal conviction described in subparagraph (vii) of paragraph (b) of this Section, the cause for termination shall be deemed to be cured if the Contractor causes or obtains the dismissal, resignation, retirement or other removal of the person convicted of such offense during such thirty (30) day period.

Where the Contractor is determined by the Commission's Executive Director or his or her designee to be non-responsible or nonresponsible as described in subparagraph (vi) of paragraph (b) of this Section, upon written notice to the Contractor, and a

reasonable opportunity to be heard with appropriate Commission officials or staff, the Contract may be terminated by the Executive Director or his or her designee at the Contractor's expense. In such event, the Executive Director, or his or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

(c) In the event that this Contract is terminated under the provisions of (a) or (b) of this section, the Contractor shall be entitled to payment for services rendered and materials provided prior to the termination, and subject to setoff, if any, for claims by the Commission against the Contractor. In no event shall the Commission be liable to the Contractor for lost profits, or incidental, consequential, or special damages based upon the exercise of the Commission's termination rights.

11. **Responsibility.**

- a. The Contractor shall at all times during the Contract term remain responsible as defined by New York State's State Finance Law §163(1)(c). The Contractor agrees, if requested by the Commission's Executive Director, or his or her designee, to present evidence regarding the Contractor's continuing legal authority to do business in the State of New York, as well as its integrity, experience, ability, prior performance, and organizational and financial capacity.
- b. The Commission's Executive Director, or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such suspension, the Contractor must comply with the terms of the suspension. The Contractor may resume performance of this Contract at such time as the Commission's Executive Director, or his or her designee, issues a written notice authorizing its resumption.

12. **Conflicts of Interest.**

- a. The Contractor shall provide a completed "Vendor Assurance of No Conflict of Interest or Detrimental Effect" form (or any updated form identified by the

Commission for the same purpose), signed by an authorized executive or legal representative of the Contractor. The Contractor hereby reaffirms the attestations made in the Quotation, and covenants and represents that there is, and shall be, no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Contract. The Contractor shall have a duty to notify the Commission immediately of any actual or potential conflicts of interest.

- b. In conjunction with any subcontract under this Contract, the Contractor shall obtain and deliver to the Commission, prior to entering into a subcontract, a completed "Vendor Assurance of No Conflict of Interest or Detrimental Effect" form (or any updated form identified by the Commission for the same purpose), signed by an authorized executive or legal representative of the subcontractor with which the Contractor has contracted. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Commission a signed and completed "Vendor Assurance of No Conflict of Interest or Detrimental Effect" form (or any subsequent form required by the Commission for this same purpose) for each of any subcontractors' subcontractors prior to entering into a subcontract.
- c. The Commission and the Contractor recognize that conflicts may occur in the future due to the Contractor's existing or new relationships. The Commission will review the nature of any relationship and reserves the right to terminate this Contract if, in the judgment of the Commission, a real or potential conflict of interest cannot be cured.

13. Confidentiality and Non-Disclosure.

- a. For the purposes of this section, "Confidential Information" means any information not generally known to the public, whether oral or written, that the Commission identifies as confidential and discloses to the Contractor so that the Contractor can provide services to the Commission pursuant to this Contract. The Commission will identify written Confidential Information by marking it with the word "Confidential" and will identify oral Confidential Information as confidential at the time of disclosure to the Contractor. Confidential Information may include, but is not limited to the following:

- i. operational and infrastructure information relating to quotation documents, plans, drawings, specifications, reports, product information;
 - ii. business and security processes and procedures;
 - iii. personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures, and designs; and
 - iv. such other data, information, and images that the Commission deems confidential.
- b. Confidential Information does not include information that, at the time of the Commission's disclosure to the Contractor:
 - i. is already in the public domain or becomes publicly known through no act of the Contractor;
 - ii. is already known by the Contractor free of any confidential obligations;
 - iii. is information that the Commission has approved in writing for disclosure; or
 - iv. is required to be disclosed by the Contractor pursuant to law so long as the Contractor provides the Commission with notice of such disclosure requirement and the opportunity to defend prior to any such disclosure.
- c. The Contractor may use Confidential Information solely for the purposes of providing services to the Commission pursuant to this Contract. The Contractor shall not make copies of any written Confidential Information without the express written permission of the Commission. The Commission's disclosure of Confidential Information to the Contractor shall not convey to the Contractor any right to, or interest in, such Confidential Information and the Commission shall retain all right and title to such Confidential Information at all times.
- d. The Contractor shall hold Confidential Information confidential to the maximum extent permitted by law. The Contractor shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices, and procedures that the Contractor uses to maintain its own confidential information.
- e. Upon written request by the Commission, the Contractor shall return all written Confidential Information to the Commission.

14. **Records Retention.** The retention of records required by the Contractor under this Contract shall be retained for the periods specified in Appendix A. Such records may be retained in their original form, or in any other reliable and readily retrievable format, at the option of the Contractor.
15. **Notice.** All notice required by this Contract shall be sufficient if in writing and sent by certified mail with return receipt requested, unless otherwise specifically allowed to be provided by email. All other communications shall be sufficient if communicated in writing by First Class Mail or hand delivery to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

As to the Commission:

Executive Director of the New York State Gaming Commission
One Broadway Center
Post Office Box 7500
Schenectady NY 12301-7500

As to the Contractor:

Mitchell & Titus, LLP
80 Pine Street, 32nd Floor
New York, NY 10005

16. **Liability and Indemnification.** The Contractor shall be responsible for all damages to life and property due to activities of the Contractor, the Contractor's subcontractors and sub-subcontractors, if any, and the Contractor's agents or employees, in connection with performance of services under this Contract. To the extent permitted by law, the Contractor shall forever defend, indemnify, and hold harmless the State of New York, the Commission, and their respective commissioners, officers, agents, directors, employees, other contractors, and sales agents, and all agents, employees, officers and directors of such contractors and sales agents ("the Indemnified Parties"), from and against any and all claims, liabilities, losses, damages, costs, injuries, debts or expenses (including reasonable fees, court costs, and expenses of attorneys of the Commission's choice), which may be made, incurred, suffered, or required in whole or in part based on, arising

out of, or being related to the Contractor's response to this RFQ, as well as the Contractor's and the Contractors' subcontractors' and sub-subcontractors' (a) obligations to the State of New York or other governmental or legal authority, (b) contracts and subcontracts (including sub-subcontracts), and (c) products and services provided under the Contract.

17. **Relationship.** The relationship of the Contractor to the Commission arising out of this Contract shall be that of an independent contractor. The Contractor retains sole and absolute discretion in the manner and means of carrying out the Contractor's activities and responsibilities under this Contract, except to the extent specified in this Contract. The Contractor, all employees of the Contractor, and the Contractor's subcontractor(s) and sub-subcontractors, if any, in accordance with their respective status as an independent contractor, agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the Commission or the State of New York, and that they will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the Commission or the State of New York, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

All personnel of the Contractor shall be within the employ of the Contractor only, or shall be duly contracted subcontractors of the Contractor, with the Contractor alone responsible for their work, the direction thereof, and their compensation. Nothing in this Contract shall impose any liability or duty on the Commission or the State of New York, for any acts, omissions, liabilities or obligations of the Contractor, a subcontractor, a sub-subcontractor, or any agent of the Contractor for any taxes, unemployment insurance, and workers' compensation. The Contractor hereby agrees to defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, liabilities, losses, damages, costs, injuries, debts or expenses (including reasonable fees, court costs, and expenses of attorneys of the Commission's choice).

18. **Force Majeure.** A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As used herein, Force Majeure means riot, sabotage,

boycott, embargo, or civil or military disturbances; interruption of or delay in transportation; national emergency; acts of terrorism; inability to procure material; failure of electricity or other utilities; restrictive laws, regulations or orders, or any act or failure to act, of any federal, state or local government or governmental agency or authority; confiscation or seizure by any governmental authority; condemnations by any governmental authority; riots or insurrection; wars or war-like actions; earthquakes, flood, storms, wash-outs, fire, lightning or other severe inclement weather, or other acts of god; explosions or other accidents; nuclear reaction or radiation; epidemic, pandemic, or other public health crisis or emergency, whether national or local; interruption or loss of internet, computer, telephone, broadcast or other communications or service; or other similar causes which are beyond the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent.

Neither the Contractor nor the Commission shall be liable to the other for any delay in or failure of performance under this Contract due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute a breach of the Contract or give rise to any liability for damages. The Commission shall extend the period for performance, subject to the provisions of Section 6 – Approvals Required, of this Contract, to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

19. **Severability**. If any term or section of this Contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms or sections is unaffected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.
20. **Documents Incorporated**. Appendix A, Standard Clauses for New York State Contracts, dated October 2019, the RFQ, and the Quotation are hereby incorporated to the same force and effect as if set forth herein.
21. **Order of Precedence**. Any conflict between this Contract and the documents incorporated herein shall be resolved according to the following order of precedence:

- a. Appendix A – Standard Clauses for New York State Contracts;
- b. Any amendments to the Contract;
- c. Contract;
- d. The RFQ and any clarifying responses by the Commission; and
- e. The Quotation and any clarifying responses by the Contractor.

22. **Miscellaneous Provisions.**

- a. A waiver of enforcement of any provision of this Contract shall not constitute a waiver of any other provision of this Contract nor shall it preclude the affected party from subsequently enforcing such provision.
- b. The headings contained in this Contract are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Contract.

23. **Spoilation – Notice of Potential Claims.** The Contractor shall promptly notify the Commission of all claims and potential claims that arise, result from, or are related to this Contract. The Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the Commission the opportunity to review and inspect the evidence, including the scene of an accident or documentation involved in such claim or potential claim.

24. **Attorney Fees.** In the event a lawsuit is instituted by the Commission to obtain performance due under this Contract, and the Commission is the prevailing party, the Contractor shall, except when prohibited by statute or other rule of law, pay the Commission's reasonable attorney fees and costs in connection with the lawsuit.

25. **Work Product, Equipment, and Materials.** All work product, equipment, or materials created or purchased under this Contract belong to the Commission and must be delivered to the Commission at the Commission's request upon termination of this Contract. The Contractor agrees that all materials prepared under this Contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to the

Commission all rights and interests the Contractor may have in the materials it prepares under this Contract, including any right to derivative use of the material. The Contractor shall execute all necessary documents to enable the Commission to protect its copyrights under this section.

26. **Representations and Warranties.** The Contractor represents and warrants to the Commission that neither the Contractor, in connection with performing the services in performance of this Contract, nor the completed product delivered by the Contractor, will infringe any patent, copyright, trademark, trade secret, or other proprietary right of any person. The Contractor further represents and warrants to the Commission that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this contract or in delivery of the completed product, unless it has obtained the appropriate and legal license to use the same in execution of its services under this Contract. The Contractor further represents and warrants to the Commission that neither the Contractor nor any other company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.

27. **Counterparts.** This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

28. **Effectiveness of Contract.** This Contract is not effective until fully executed by both parties through their authorized representatives. Upon full execution, the Contract shall be effective as of the day and year first above written.

Acknowledgement

ACKNOWLEDGEMENT BY INDIVIDUAL

STATE OF New York)

) ss.: EIN: 132781641

COUNTY OF New York)

On this 19 day of November, 20 20, before me personally came Uzma Malik-Dorman, Partner, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

LORNA J. THOMAS
Notary Public, State of New York
No. 01TH6207331
Qualified in Kings County

Lorna J Thomas
Notary Public

Commission Expires June 8, 2021

ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION

STATE OF _____)

) ss.:

COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person described in and who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____ and that he/she executed the foregoing instrument in the firm name of _____, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

Notary Public

ACKNOWLEDGEMENT BY CORPORATION

STATE OF _____)

) ss.:

COUNTY OF _____)


On this _____ day of _____, in the year 20____, before me personally came _____, to me known, who, being by me duly sworn did depose and say that he/she resides in _____; that he/she is the _____ of the _____, the corporation described in and which executed the above instrument; and that he/she signed his/her name(s) thereto by authority of the board of directors of said corporation.

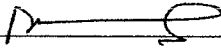
Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this Contract, effective as of the day and year first above written.

MITCHELL & TITUS, LLP

NEW YORK STATE
GAMING COMMISSION

By: 

By: 

Title: Partner

Title: EXECUTIVE DIRECTOR

Date: 1/08/2021

Date: 01/15/21

NEW YORK STATE
Attorney General

NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED DEPT. OF AUDIT & CONTROL Mar 18 2021 Randolph McConnach FOR THE STATE COMPTROLLER

From: Maggi, Benjamin
To: [Bowers, Alysan \(GAMING\)](#); [Contract Approval Relation, Stacey \(GAMING\)](#)
Cc: [Relation, Stacey \(GAMING\)](#)
Subject: Approved - RE: NYS Gaming Commission - Mitchell & Titus - Contract #C202012
Date: Wednesday, February 17, 2021 11:40:13 AM

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Approved As To Form: 2/17/2021 by Benjamin Maggi
Received: 2/17/2021

Reminder: Agencies must forward the contract approved by the OAG Contract Approval Section along with the email in which the OAG Contract Approval Section approved the contract, to OSC via the Comptroller's EDSS system. If you are not enrolled in the EDSS system and have not made alternative arrangements with OSC on how to submit your transaction, please contact OSC at 518-408-4672 or email ITServiceDesk@osc.ny.gov.

OAG: CAS please file and enter. "P"

Benjamin L. Maggi
Assistant Attorney General
New York State Office of the Attorney General
Contract Approval Section
The Capitol, Albany, NY 12224
(518) 776-2350
ATTORNEY CLIENT PRIVILEGED/NOT FOR DISSEMINATION

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From: Bowers, Alysan (GAMING) <Alysan.Bowers@gaming.ny.gov>
Sent: Wednesday, February 17, 2021 10:39 AM
To: Contract Approval <contractapproval@ag.ny.gov>
Cc: Relation, Stacey (GAMING) <Stacey.Relation@gaming.ny.gov>
Subject: NYS Gaming Commission - Mitchell & Titus - Contract #C202012

[EXTERNAL]

Good morning,

STANDARD CLAUSES FOR NYS 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 (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), 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 is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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, 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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.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 October 2019, 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 State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-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.