

**THIS AGREEMENT**, made this 1<sup>st</sup> day of August, 2023 (the “Agreement”), by and between the State University of New York, an educational corporation existing under the laws of the State of New York and having its office and principal place of business located at H. Carl McCall SUNY Building, 353 Broadway, Albany, New York 12246, for and on behalf of the State University of New York at Stony Brook, located at Nicolls Road, Stony Brook, NY 11794, hereinafter referred to as **University**, and **Vendor**, Parking Systems Plus Incorporated, a business corporation organized under the laws of the State of New York having its office and principal place of business at 28 Fourth Street, Valley Stream, NY 11581, hereinafter referred to as **Contractor**.

**WITNESSETH:**

**WHEREAS**, the University desires to enter into an agreement to secure valet parking, at the University, Stony Brook University Medical Center, managed or operated by the University.

**NOW, THEREFORE**, the parties hereto and for the consideration hereinafter mentioned covenant and agree as follows:

1. The term of this Agreement shall be for a period of three (3) years with two (2) one-year renewals per Invitation for Bid 22/23-168MC commencing upon December 01, 2023 through and including November 30, 2028. For the Contract to be effective, the contract requires the approval of the New York State Attorney General and Office of the State Comptroller.
2. Contractor shall provide valet services to the University in accordance with the terms of Exhibit B and Invitation for Bid 22/23-168MC attached hereto and made a part of this Agreement.
3. The University shall pay Contractor’s fee for services upon receipt of goods/services and properly approved and completed valid and proper invoice/s must match bid in accordance with Invitation for Bid 22/23-168MC as outlined below, payable in accordance with New York State Finance Law after receipt of a valid and proper invoice/s.

**THIS IS A NOT TO EXCEED CONTRACT VALUE OF TWELVE MILLION ONE  
HUNDRED FIFTY-FOUR THOUSAND NINE HUNDRED SEVENTY-SEVEN DOLLARS  
THIRTY-EIGHT CENTS (\$12,154,977.38)**



4. Prices must remain fixed for the entire term of the Agreement.
5. The Contractor shall at all times during the contract term remain responsible. The Contractor agrees, if requested by the Chancellor of the State University of New York or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The Chancellor of the State University of New York or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under the Agreement, 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 notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Chancellor of the State University of New York or his or her designee issues a written notice authorizing a resumption of performance under the contract. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate State University of New York officials or staff, the Agreement may be terminated by the Chancellor of the State University of New York or his or her designee at the Contractor's expense where the Contractor is determined by the Chancellor of the State University of New York or his or her designee to be non-responsible. In such event, the Chancellor of the State University of New York 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.
6. Contractor may not subcontract any of the duties or obligations of this Agreement without the prior written approval of the University, upon satisfying all of the conditions set forth in the "General Terms and Conditions in IFB 22/23-168MC Valet Parking Services. Contractor shall comply, and shall cause each subcontractor, if any to comply, with all applicable laws, ordinances, rules, orders, regulations, requirements and policies of Federal, State and Municipal governments, State University of New York, The University, Stony Brook University Medical Center, Long Island State Veterans Home, and Stony Brook Southampton Campuses, including the requirements and conditions set forth in Exhibit A (Standard

Contract Clauses dated 06.21.23) & Exhibit A-1 (Affirmative Action Clauses dated 3.31.20), each attached hereto and made a part of this Agreement.

7. Hierarchy of Precedence

In the event of a conflict of interpretation between the parties, the order of the following documents shall prevail. Each of which are incorporated herein and made part of this Agreement:

- a. Exhibit A
- b. Exhibit A-1
- c. This Agreement C003796
- d. Exhibit B
- e. IFB 22/23-168MC
- f. Bidder's Response IFB 22/23-168MC

8. Contractor shall be fully liable for the actions of its officers, employees, agents, representatives, partners or subcontractors. Contractor shall indemnify, defend and hold harmless the State of New York, University, the State University of New York, Stony Brook University Medical Center, Long Island State Veteran Home, Stony Brook Southampton Campus and each of their respective trustees, officers, employees, agents and representatives (the "Indemnified Parties") from, against and in respect of any or all damages, claims, losses, charges, actions, suits, proceedings and all costs and expenses including, but not limited to, reasonable counsel fees and disbursements, sustained or incurred by any Indemnified Party arising out of, related to, resulting from or in connection with: (i) any breach of any representation or warranty by Contractor hereunder, (ii) the failure by Contractor, its officers, employees, agents or representatives to perform or observe any term, covenant or agreement on its part to be performed or observed hereunder, (iii) the negligence, willful acts or omissions of Contractor, its officers, employees, agents or representatives or (iv) any defect in any of Contractor's products provided to the University under the terms of this Agreement. Contractor's strict liability, as provided by law, shall not be affected, diminished or impaired by this indemnity provision.

9. Contractor will also indemnify and hold the University harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be suffered or incurred by University in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the University's gross negligence or willful misconduct, provided that the University shall give the Contractor: (i) prompt written notice of any action or claim of infringement, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If usage shall be enjoined for on account of alleged infringement, Contractor shall have the right, at its own expense and sole discretion, to take action in the following order of precedence: (i) to procure for the University the right to continue usage, (ii) to modify the service or product provided under this Agreement so that usage is non-infringing, and is of at least equal quality and performance as before such modification, to the reasonable satisfaction of University; or (iii) to replace said service or product or part(s) thereof, as applicable, with non-infringing service or product of at least equal quality and performance as before such replacement, to the reasonable satisfaction of the University. If the above remedies are not available, and such enjoinder materially adversely affects the University's benefits under this Agreement, at the University's option, the parties shall terminate this Agreement, in whole or in part as necessary and applicable, provided the University is given a refund for any amounts paid for the period during which usage was not feasible.

The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the University of any product or service provided under this Agreement without Contractor's approval.

In the event that an action at law or in equity is commenced against University arising out of a claim that the University's use of any service or product under the Agreement infringes any patent, copyright or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Agreement, Contractor shall immediately notify the University and the Office of the New York Attorney General in writing and shall

specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Agreement. Contractor shall in such event protect the interests of the University and secure a continuance to permit University to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses University may have.

10. Contractor agrees that the University and the New York State Office of the State Comptroller shall have access to and the right to examine any books, documents, papers or records maintained by Contractor related to the work performed under the provisions of this Agreement. The records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter.
11. The relationship of Contractor to the University arising from this Agreement shall be that of independent contractor.
12. It is understood by the parties that this Agreement is intended to secure the services of Contractor because of its ability and reputation.
13. The University, by 30 days' prior written notice, may terminate this Agreement. THE UNIVERSITY MAY ALSO TERMINATE THIS AGREEMENT BY WRITTEN NOTICE IMMEDIATELY FOR CAUSE. If the Agreement is terminated for reasons other than cause, University shall be liable only for payment in accordance with the payment provisions of this Agreement for services rendered prior to the effective date of termination. The University shall have the right to terminate this contract early for unavailability of funds, see **Exhibit A (Standard Contract Clauses)**

The University also reserves the right to terminate this Agreement immediately for cause in the event it is determined that the certifications filed by Contractor in accordance with (i) State Finance Law 139-j and 139-k were intentionally false or intentionally incomplete and/or (ii) the Department of Taxation and Finance Contractor Certification forms ST220-TD and ST220-CA were false or incomplete.

Upon such determination, the University may exercise its termination right by providing written notification to Contractor in accordance with the written notification terms of the Agreement.

14. Nothing in this article or in this Agreement shall create or give to third parties any claim or right of action against the Contractor/Consultant or the University beyond such as may legally exist irrespective of this Article or this Agreement.

15. Any notices to either party hereunder must be in writing and signed by the party giving notice and shall be served either personally or by certified or registered mail, with return receipt requested, addressed as follows:

To the University:

Mary La Corte, Assistant Director Administrative Services  
Procurement Office  
Research & Development Park  
Research and Support Services  
Stony Brook University (SUNY)  
Stony Brook, NY 11794-6000

And to Contractor:

Parking Systems Plus Incorporated  
28 Fourth Street,  
Valley Stream, NY 11581

- or other such addressee as may be hereinafter designated by written notice. All notices become effective only when received by addressee.
18. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.
19. This Agreement, consisting of this Agreement, Exhibit A, A-1, B, Invitation for Bid 22/23-168MC and Bidder's Response 22/23-168MC, constitutes the entire agreement of the parties hereto and all previous communication between the parties, whether express or implied, with reference to the subject matter of this Agreement, are hereby superseded.
20. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa and State Technology Law, Section 208). Contractor shall be liable for the costs associated with any breach of these provisions if caused by the negligent or willful acts or omissions of Contractor or its agents, officers, employees or subcontractors.
21. Contractor shall maintain, at a minimum, all requirements listed under "Qualification" in Invitation for Bid 22/23-168MC throughout the term of this Agreement.
22. The respective obligations of each party under this Agreement that by their nature would continue beyond the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.

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23. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy will preclude any other or future exercise of any right, power or remedy. No express waiver of or assent by any party to any breach or default by the other party shall constitute a waiver of or assent to any succeeding breach or default.

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24. **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first written above.

**CONTRACTOR CERTIFICATION**

"In addition to the acceptance of this contract, I certify that all information provided to the Agency with respect to State Finance Law §139j & 139k and Department of Taxation and Finance form ST-220-CA is complete, true and accurate."

Parking Systems Plus

By:  PRESIDENT

Date: 8/17/23

Approved:

**NEW YORK STATE ATTORNEY GENERAL**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**AGENCY CERTIFICATION**

"In addition to the acceptance of this contract, I certify that original copies of this signature page will be attached to all other exact copies of this contract."

State University of New York at Stony Brook

By:  \_\_\_\_\_

Date: 8/28/23

Approved:

**OFFICE OF THE STATE COMPTROLLER**

By: \_\_\_\_\_

Date: \_\_\_\_\_

(ACKNOWLEDGMENT BY CORPORATION)

STATE OF New York )  
COUNTY OF Nassau )

ss.:

On this 17<sup>th</sup> day of August, 2024, before me personally came Mark Baron, known to me, who, being by me duly sworn did depose and say that he/she resides [REDACTED] that he/she is the President of Parking Systems Plus, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name on behalf of the corporation by order of the Board of Directors of said corporation.

  
NOTARY PUBLIC

PATRICIA A DACCOLTI  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01DA6112619  
Qualified in Nassau County  
My Commission Expires 07-06-2024

(ACKNOWLEDGMENT BY PARTNERSHIP)

STATE OF )  
COUNTY OF )

ss.:

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she is a member of the firm of \_\_\_\_\_, consisting of himself and \_\_\_\_\_; that he/she executed the foregoing instrument on behalf of said firm 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 for the uses and purposes mentioned herein.

\_\_\_\_\_  
NOTARY PUBLIC

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "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 or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as "SUNY"):

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. **PROHIBITION AGAINST ASSIGNMENT.** 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 SUNY 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. SUNY retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with SUNY. The Contractor may, however, assign its right to receive payments without SUNY'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.** (a) In accordance with Section 112 of the State Finance Law, the State Comptroller's approval is required for the following contracts: (i) goods, services, construction, and construction-related services for State University hospital or healthcare facilities which exceed \$150,000; (ii) purchases utilizing an Office of General Services (OGS) centralized contract which exceed \$200,000 (iii) goods, services, construction, and construction-related services not described in (i) or (ii) and which exceed \$75,000;

(b) If this contract exceeds the threshold amounts listed above in Paragraph 3(a), or, if this is an amendment for any amount to a contract which, as so amended, exceeds said threshold amounts, 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, and the State shall bear no liability, until it has been approved by the State Comptroller and filed in his or her office.

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 competitive 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 SUNY 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 SUNY, 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 SUNY and any other 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. SUNY 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 SUNY 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, SUNY's or 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 SUNY 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 SUNY or 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 SUNY 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 workforce 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at SUNY's request, 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 sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. SUNY 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, SUNY 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 Exhibit A, the terms of this Exhibit 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 State Finance Law §165 (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 Section 165 of the 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, NY 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 33<sup>rd</sup> Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto: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 SUNY;

(b) The Contractor has complied with the Federal Equal Employment 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 of 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, § 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 SUNY, the Department of Civil Service and the State Comptroller.

**24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT.** In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

**25. PROCUREMENT LOBBYING.** To the extent this contract is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this contract 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 contract by providing written notification to the Contractor in accordance with the terms of the contract.

**26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this contract 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 SUNY 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 contract, if SUNY determines that such action is in the best interests of the State.

**27. IRAN DIVESTMENT ACT.** By entering into this contract, 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 SUNY receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, SUNY 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 SUNY 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.

SUNY 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.

**28. 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.

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***THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY***

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29. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

30. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

31. Hospital Retained Authority: Hospital Retained Authority: The Hospital retains direct, independent authority over the appointment and/or dismissal, in its sole discretion, of the facility's management level employees (including but not limited to, the Facility/Service Administrator/Director, the Medical Director, the Director of Nursing, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer) and all licensed or certified health care staff. The Hospital retains the right to adopt and approve, at its sole discretion, the facility's operating and capital budgets. The Hospital retains independent control over and physical possession of the facility's books and records. The Hospital retains independent control over and physical possession of the facility's operating policies and procedures. The Hospital retains full authority and responsibility for, and control over, the operations and management of the facility. The Hospital retains the right and authority to independently adopt, approve and enforce, in its sole discretion, policies affecting the facility's delivery of health care services. The Hospital retains the right to independently adopt, approve and enforce, at its sole discretion, the disposition of assets and authority to incur debts. The Hospital retains the right to approve, at its sole discretion, contracts for administrative services, management and/or clinical services. The Hospital retains the right to approve, at its sole discretion, any facility debt. The Hospital retains the right to approve, at its sole discretion, settlements of administrative proceeding or litigation to which the facility is a party. No powers specifically reserved to the Hospital may be delegated to, or shared by, the Contractor or any other person. In addition, if there is any disagreement between the parties to this Agreement regarding control between the Hospital and the Contractor, the terms of this Section shall control.

**1. DEFINITIONS.** The following terms shall be defined in accordance with Section 310 of the Executive Law:

**STATE CONTRACT** herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; (c) and (d) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an 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.

**SUBCONTRACT** herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken

or assumed by a business enterprise not controlled by the prime contractor.

**WOMEN-OWNED BUSINESS ENTERPRISE** herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed fifteen million dollars (\$15,000,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned

business enterprise goal and the women-owned business enterprise goal.

**MINORITY-OWNED BUSINESS ENTERPRISE** herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed fifteen million dollars (\$15,000,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

**MINORITY GROUP MEMBER** shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East

Asia, the Indian Subcontinent or Pacific Islands.

**CERTIFIED ENTERPRISE OR BUSINESS** shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development (“DMWBD”) for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

**2. TERMS.** The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University:

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor’s EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for

employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and 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;(ii) 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;(iii) At the request of the University 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, and that such union or representative will affirmatively cooperate in the implementation of the Contractor’s obligations herein.

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report (“Workforce Report”)

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to SUNY of any changes to the previously submitted Staffing Plan. This information is to be submitted on a

quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor’s and/or subcontractor’s total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor’s and/or subcontractor’s total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor’s total workforce during the subject time frame, not limited to work specifically under the contract.

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.



(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(h) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of

DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

**3.** Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

**4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN.** The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women



employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

**5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.** Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with

plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

## **6. MWBE Utilization Plan.**

(a) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107).

Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the

participation by NYS Certified minority- and women-owned enterprises on the State contract;

- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
- iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and
- iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.

ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

i. If a Contractor fails to submit a MWBE Utilization Plan;

ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;

iii. If a Contractor fails to submit a request for waiver; or

iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

(g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(h) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the

occurrence of such a material breach, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### **7. Waivers.**

(a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.

(b) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the University shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **8. MWBE Contractor Compliance Report.**

Contractor is required to submit an MWBE Contractor Compliance Report (Form 7557-112) to the University by the 5<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract. Compliance Reports for construction contracts (Form 7557-110) must be submitted on a monthly basis.

#### **9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.**

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

#### **(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.**

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of zero percent (0%) for Certified Minority-Owned Business Enterprises and zero percent (0%) for Certified Women-Owned Business Enterprises.

**10. ENFORCEMENT.** The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a

finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

**11. DAMAGES FOR NON COMPLIANCE.**

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.

## Exhibit B General Contract Terms and Conditions

State University of New York

October 1, 2021

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "Agreement") 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 or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as "SUNY"):

1. **Binding Effect:** The Agreement shall be binding upon its execution by both parties and, if required, upon the written approvals of the New York State Office of the Attorney General (OAG) and the Office of the State Comptroller (OSC).
2. **Commodity Contract Sales Reports:** Upon written request by SUNY, the Contractor shall furnish reports of detailed sales transactions including, but not limited to, the following: Campus, Product Number (or SKU), Product Description, Manufacturer, quantity purchased, unit price and total dollar volume of purchases.
3. **Compliance with SUNY Policies:** At all times when on SUNY premises, all Contractor and subcontractor personnel shall be required to comply with SUNY regulations, policies and procedures including, but not limited to:
  - a. The requirement to wear an identity tag clearly identifying them as being an employee or agent of the Contractor or subcontractor, as applicable.
  - b. The prohibition against smoking within the buildings or on the grounds owned or leased by SUNY.
  - c. The parking regulations. Parking violations are subject to fines and are the sole responsibility of the Contractor. All vehicles must be registered with SUNY.

The Contractor must communicate these policies to its employees, subcontractors, and any other individuals assigned to enter upon SUNY grounds and premises to perform the contract services.

4. **Amendments:** The Agreement may be amended at any time only upon mutual consent of the parties in writing. Such written amendment will not be effective until signed by both parties, and if required, approved by the OAG and OSC.
5. **Entirety/Order of Precedence:** The following documents will be annexed to, and incorporated into, and made part of, the Agreement:
  - a. Exhibit A, State University of New York Standard Contract Clauses
  - b. Exhibit A-1, State University of New York Affirmative Action Clauses (for contracts valued at greater than \$25,000)
  - c. The Agreement, including any attachments and schedules thereto
  - d. This Exhibit B, State University of New York General Contract Terms & Conditions
  - e. [IF APPLICABLE] Exhibit C, SUNY's solicitation (e.g. Request for Proposals, Invitation for Bids, Request for Quotes, or Request for Qualifications)
  - f. [IF APPLICABLE] Exhibit D, The Contractor's proposal.
  - g. [IF APPLICABLE] Exhibit E, Service Level Agreement

In the event of any inconsistency in, or conflict among, the document elements described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth above.

### 6. Contractor's Representations and Warranties:

- a. The Contractor warrants that the Services it provides under this Agreement will conform substantially to the specifications set out in the Agreement and that all work will be performed in a professional and workmanlike manner, in accordance with the highest applicable industry standards. For purposes of this Agreement, "highest applicable industry standards" shall be defined as 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.
- b. Contractor represents that it is fully capable and willing to provide the Services required by the Agreement; that it has full right and authority to enter into the Agreement; that consent, authorization, order or approval of, or filing or registration with any governmental agency, commission, board, other regulatory body, any person or entity or any corporate affiliates is either not required or has been obtained for or in connection with the execution and delivery of the Agreement by

Contractor and the performance of the work hereunder; that it is not a party to, subject to, or bound by, any agreement, judgment, order, writ, injunction or decree which would prevent the carrying out of the Agreement.

## 7. Data Privacy and Security Requirements

When Contractor creates, receives, maintains or transmits data on behalf of SUNY ("SUNY Data"), Contractor will comply with the following requirements to safeguard SUNY Data:

### 7.1. Data Privacy

- i. Contractor will use any SUNY Data only for the purpose of fulfilling its duties under the Agreement and will not share such data with, or disclose it to, any third party without the prior written consent of SUNY, except as required by the Agreement or as otherwise required by law.
- ii. Contractor will provide access to SUNY Data only to its employees and subcontractors who need to access the data to fulfill its obligations under the Agreement.
- iii. Contractor will ensure that employees who perform work under the Agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Agreement.
- iv. **Location of Data:** SUNY Data will not be stored outside the United States without prior written consent from SUNY and signing of the Agreement is not considered prior written consent.
- v. **FERPA Compliance.** In addition to any other confidentiality obligations herein, Contractor agrees that any disclosure of student education records by SUNY is subject to applicable law including Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and any implementing regulations. With respect to any such disclosure, Contractor agrees to the following: (1) that Contractor's use of student education records will be limited to those purposes expressly authorized in this Agreement; and (2) that Contractor will abide by the limitations on re-disclosure of education records and/or personally identifiable information from education records as set forth in FERPA and (3) that, unless the parties designate another exception in the Agreement, any disclosure of student education records is done so pursuant to the "school official" exception to FERPA, Contractor is a "school official" with a "legitimate educational interest" in any student education records disclosed, and Contractor is under the direct control of SUNY with respect to the use and maintenance of any such student education records. Education records are any and all records, data, or information related to any student or students of SUNY. This obligation shall survive termination of this Agreement.
- vi. **European Union ("EU") General Data Protection Regulation ("GDPR"):** Unless otherwise agreed in writing by the parties, Contractor, as well as any subcontractors Contractor may employ to perform any of its obligations under this Agreement, shall be solely responsible for compliance with the EU GDPR 2016/679, if applicable.
- vii. **Gramm-Leach-Bliley Act:** Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314) ("GLBA"), and to the extent Contractor is a financial institution or service provider of SUNY under these regulations with respect to student or customer information, Contractor will comply with the Safeguards Rule including the requirement to implement and maintain a written Information Security Program ("Program") in order to protect such nonpublic customer information (any record containing nonpublic personal information as defined in 16 CFR §313.3(n), whether in paper, electronic, or other form that is handled or maintained by or on behalf of SUNY or SUNY affiliates (16 CFR §314.2)).
- viii. **HIPAA:** The Contractor will comply with all personal health information protection requirements, if applicable, outlined in the Health Insurance Portability and Accountability Act (HIPAA) and complete the HIPAA Business Associate Agreement.

### 7.2. Data Security Requirements:

Contractor agrees at all times to maintain industry standard information and critical infrastructure security features and protocols which at a minimum, include: network firewall provisioning, intrusion detection, Distributed Denial of Service Scrubbing and regular (at least annually) third party vulnerability assessments, or equivalent.

Further, Contractor agrees to maintain information and critical infrastructure security that conforms to generally recognized "Industry Standards" and best practices that Contractor applies to its own network, infrastructure, applications and data. Generally recognized industry standards include but are not limited to the current standards

and benchmarks set forth and maintained by the Center for Internet Security (See, <http://www.cisecurity.org>) or Payment Card Industry/Data Security Standards (PCI/DSS) (See, <http://www.pcisecuritystandards.org>).

Contractor will maintain a data security plan (“Data Security Plan”), or equivalent, which will comply with PCI DSS requirements and all applicable legal and regulatory requirements for data protection. In addition, the Data Security Plan will protect against any anticipated threats or hazards to the security or integrity of information stored on its servers and unauthorized access to or use of such information that could result in harm or inconvenience to the person who is the subject of such information. Contractor will review, at least annually, its Data Security Plan and update and revise it as needed. A copy of Contractors’ Data Security Plan, or equivalent, will be made available to SUNY upon request.

Contractor shall maintain mandatory procedures and protocols outlined in its “Information Security Incident Response Policy” to be undertaken in the event of an identified or suspected breach of credit card information or current or former student information that is not Directory Information. A copy of Contractor’s Information Security Incident Response Policy, or equivalent, will be made available to SUNY upon request. In the event a breach is suspected, Contractor will: (i) immediately contain the possible exposure while not compromising any data on its system; (ii) contact all members of its Corporate Security Committee; (iii) initiate a local analysis within 24 hours of the suspected breach to determine the type of information that has been potentially compromised, the individuals and SUNY institutions at risk, the incident time frame at risk and the suspected cause of the incident; and (iv) if a breach is identified, immediately contact affected parties with details of the breach.

**Contractor shall, upon request:**

1. Complete and submit the appropriate version of the Higher Education Community Vendor Assessment Tool (HECVAT).
2. Complete a SOC 2 Type 2 report, or equivalent, recognized information security audit report performed by an independent, certified 3rd party auditor covering the principles of Security, Availability, Confidentiality, and Privacy. The equivalent audit report must be based on a recognized information security standard.
3. Address the ability to provide the same levels and types of security through multiple data access methods (e.g., Web, mobile devices, or network)

***Both the HECVAT and SOC 2 Type 2 report must be completed by the appropriate experts in this area.***

**7.3. Other Information Security and Service Requirements**

**7.3.1.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; State Technology Law § 208) (“ISBNA”) and shall also comply with General Business Law § 899-bb (“SHIELD”). Contractor agrees to maintain the security of private information (as defined in ISBNA) and to prevent unauthorized use and/or disclosure of that private information; and implement administrative, physical, and technical safeguards required by law. Contractor agrees to fully disclose to SUNY pursuant to the ISBNA, SHIELD, FERPA, GLBA and any other applicable law any breach of the security of a system where Contractor creates, receives, maintains or transmits private information on behalf of SUNY following discovery or notification of the breach in the system as to any resident of New York State whose private information was, or is reasonably believed to have been, acquired by a person without valid authorization (“Security Incidents”). The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the system. Contractor shall be liable for the costs associated with such Security Incidents if caused by Contractor’s negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor’s agents, officers, employees or subcontractors. In the event of a Security Incident involving SUNY Data, pursuant to the ISBNA/SHIELD, SUNY has an obligation to notify every individual whose private information has been or may have been compromised. In such an instance, Contractor agrees that SUNY will determine the manner in which such notification will be provided to the individuals involved pursuant to the ISBNA/SHIELD and agrees to indemnify SUNY against any cost arising from the Security Incident including, but not limited to, the cost of investigating the incident and of providing notice to the affected individuals. Upon termination or expiration of the Agreement, Contractor will follow SUNY’s instructions relating to any SUNY Data remaining in Contractor’s possession. Upon authorization from SUNY, Contractor will use data and document disposal practices that are reasonable and appropriate and in compliance with

ISBNA/SHIELD and any other applicable law to prevent unauthorized access to or use of SUNY Data and will render the private information so that it cannot be read or reconstructed.

**7.3.2. Service Levels (Applicable to Cloud Based, Remotely Hosted or Technology as A Service**

**Contracts):** Contractor will ensure availability of the Services in accordance with the Agreement and the provisions of the Service Level Agreement annexed to the Agreement as Exhibit D and incorporated herein by reference.

**7.3.3. Disaster Recovery:** Contractor shall maintain disaster recovery services at the dedicated facility that is able to handle SUNY Data and business continuity needs under the Agreement in the event disaster recovery is needed. Throughout the term of the Agreement, Contractor shall maintain contracts or arrangements that are substantially equivalent or an improvement to those currently in effect. Contractor shall test disaster recovery capabilities, at least once every calendar year and provide SUNY with a copy of its disaster recovery plan, or equivalent, upon request.

**7.3.4. Business Continuity:** Contractor at all times must have a business continuity plan in place designed to minimize the risks associated with a disaster or similar incident impacting Contractor's ability to provide Services under the Agreement.

**7.3.5. Data Portability:** Contractor agrees that SUNY owns the SUNY Data in the solution and that Contractor will take all steps and actions, at the direction of SUNY, that are necessary and reasonable to facilitate and complete the orderly, efficient, expedient and professional transfer of the Services and SUNY Data, in whole or in part, in the format and on the media requested during the Term and/or upon the expiration or termination of the Agreement to SUNY, a SUNY Institution, or third-party that SUNY may select. The cost of any such transfer services are included in the Contractor's proposal.

- 8. Diesel Emissions Reduction Act of 2006 (the "Act"):** If Contractor operates any diesel powered heavy duty vehicle(s) pursuant to the Agreement, Contractor certifies and warrants that all such heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) Section 19-0323, will comply with the specifications and provisions of ECL Section 19-0323 and any regulations promulgated pursuant thereto, including but not limited to, 6 NYCRR Part 248, which requires the use of best available retrofit technology and ultra-low sulfur fuel. If needed, qualification for a waiver will be Contractor's responsibility. If applicable, annually, but no later than March 1st, Contractor shall complete and submit directly to SUNY, via electronic mail, the "Regulated Entity and Contractor Vehicle Inventory Form" and "Regulated Entity and Contractors Annual Report Form" that can be found at the New York State Department of Environmental Conservation ("DEC") website: <http://www.dec.ny.gov/chemical/4754.html>. SUNY reserves the right to require Contractor to periodically certify compliance with the provisions of ECL Section 19-0323.
- 9. Dispute Resolution:** At the option of SUNY, the parties shall use good faith efforts to amicably resolve any dispute arising under this Agreement. If the parties are unable to amicably resolve the dispute within thirty (30) days, then either party may seek legal or equitable redress.
- 10. Electronic and Information Technology ("EIT") Accessibility:**
- a) SUNY is committed to providing an accessible, usable, and integrated experience for all its students, staff and community. Electronic and information technology ("EIT") consists of information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information that will be deployed in connection with such technology, equipment or systems. Further, EIT includes, but is not limited to, telecommunications products, information kiosks and transaction machines, Internet and Intranet websites, web-delivered content, software, electronic books and electronic book reading systems, search engines and databases, multimedia, classroom technology, and office equipment.
  - b) Contractor warrants that (i) Web-based EIT products provided under this Agreement shall conform to Web Content Accessibility Guidelines ("WCAG") 2.1 AA and (ii) non-web-based EIT products provided under this Agreement shall meet or exceed the applicable accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194.
  - c) Contractor agrees to provide evidence of compliance with these requirements before this Agreement becomes effective and any other time upon reasonable request of SUNY. Contractor will provide accessibility testing results and written documentation verifying accessibility. In the event EIT provided under this Agreement does not fully conform to the standards set forth above, Contractor will promptly advise SUNY in writing of the non-

conformance and provide detailed information regarding the plans to achieve conformance, including but not limited to an intended timeline. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services.

- d) Failure to comply with these accessibility standards shall constitute a breach of this Agreement. Contractor agrees to indemnify and hold harmless SUNY from any claims arising out of its failure to comply with the foregoing accessibility standards.

**11. Electronic Payment Authorization:** Contractor shall provide complete and accurate billing invoices to SUNY in order to receive payment for its services. Billing invoices submitted to SUNY must contain all information and supporting documentation required by SUNY and OSC. Payment for invoices submitted by Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Vice Chancellor for Business and Finance of the State University of New York or designee, in her/his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York State procedures and practices. Contractor shall comply with the OSC procedures to authorize payments. Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the OSC's electronic payment procedures, except where the Vice Chancellor or designee has expressly authorized payment by paper check as set forth above.

**12. FOIL:** Contractor acknowledges that this Agreement is subject to the New York State Freedom of Information Law ("FOIL") as set forth in Article 6 of the New York State Public Officers Law, and that only Contractor's proprietary information that satisfies the requirements of §87(2)(d) of the Public Officers Law shall be excepted from disclosure thereunder.

**13. Independent Contractor:** Contractor and its agents or employees or any entity or person acting on behalf of Contractor engaged in the performance of work shall at all times be deemed to be performing as an independent contractor. Contractor hereby covenants and agrees to act in accordance with that status. Contractor and its agents or employees or any entity or person acting on behalf of Contractor shall neither hold themselves out as, nor claim to be, officers or employees of SUNY and shall make no claim for, nor be entitled to, Workers' Compensation coverage, medical, unemployment, social security, retirement membership, or any other employment-related benefits from SUNY. Neither party shall have the right or authority to enter into binding contracts on behalf of the other.

**14. Force Majeure:**

Neither Contractor, SUNY, nor the State of New York shall be deemed in default of this Agreement, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, an act of war whether declared or undeclared, acts or threats of terrorism, contamination by radioactivity, pressure waves from devices travelling at supersonic speeds or damage caused by any aircraft or similar device, armed conflict, labor strike, lockout, boycott, electrical, internet or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure or other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot avoid even by using its best efforts, provided that the Party relying upon this provision: (i) gives prompt written notice thereof to the other Party; and (ii) takes all steps reasonably necessary to mitigate the effects of the force majeure event. a) If a force majeure event extends for a period in excess of more than 90 days, either party may terminate all or any agreed upon portion of the 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 SUNY's obligation to pay for Services provided by Contractor which have been approved by SUNY.

**15. Liability and Indemnification:**

- a) Contractor shall be fully liable for any act or omission of Contractor and its Staff (officers, employees, agents, subcontractors or licensees) and shall fully indemnify, defend, and hold harmless SUNY and the State, their officials, agents, and employees, without limitation, from suits, actions, damages, and costs of every name and description (including reasonable attorney's fees and expenses) arising from any act or omission of 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 Contractor shall not be obligated to indemnify SUNY for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of SUNY. For third party claims, SUNY shall give Contractor:



- i. Prompt written notice of any action, claim, suit, proceeding, or threat of such action for which Contractor is liable relating to this Agreement;
- ii. The opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at the Contractor's sole expense; and
- iii. Reasonable assistance in the defense of any such action, claim, suit, or proceeding at the expense of the Contractor.

Notwithstanding the foregoing, the State of New York 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.

- b) For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this Agreement as being without limitation, and regardless of the basis on which the claim is made, the Contractor shall be liable for any act or omission of Contractor and its Staff, in an amount not to exceed, in aggregate, the greater of the dollar amount of this Agreement, or two times the charges paid to the Contractor. The Contractor shall not be responsible for loss of records or data unless the Contractor is required to back-up the records or data.
- c) Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special damages of any kind that may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by SUNY, the Contractor, or by others.

**16. Office of Federal Contract Compliance Programs:** The Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

**17. OSHA:** If applicable, the Contractor shall provide all necessary safeguards for safety and protection as set forth by the United States Department of Labor, Occupational Safety and Health Administration.

**18. Piggybacking:** Other New York government entities as authorized by State Finance Law and General Municipal Law, and other departments, agencies or instrumentalities of the United States government as well as any department, agency, office, political subdivision, or instrumentality of any state or state(s) who are permitted to do so by their procurement laws and regulations, may utilize the Agreement upon securing all legally-required approvals. Private entities, cooperatives and consortia may also utilize the Agreement with the express approval of SUNY and the Contractor.

**19. Public Announcements:** Public announcements or news releases regarding this Agreement must not be made by the Contractor without the prior written approval of SUNY.

**20. Restrictions on the Activities of Current and Former State Officers and Employees:** All Contractor employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations and corporations in business with the State. The Contractor and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth in the New York State Public Officers Law §§ 73 and 74, and the underlying principle of law is to prevent conflicts of interest and encourage ethical behavior. The law may be found on the following website:  
[http://www.jcope.ny.gov/about/laws\\_regulations.html](http://www.jcope.ny.gov/about/laws_regulations.html). Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

**21. Rights in Deliverables:** The Contractor hereby assigns to SUNY ownership of all materials created by the Contractor specifically for SUNY hereunder and required to be delivered to SUNY by virtue of their description or specification as a deliverable in the Statement of Work, upon SUNY's payment in full of applicable invoices. Deliverables exclude the Contractor's proprietary tools, methodologies, and any enhancements made to such tools and methodologies, which shall remain the sole property of the Contractor, and exclude any third-party components whether or not included or embedded therein. Deliverables shall be deemed to be "works made for hire" under federal copyright laws. Notwithstanding anything to the contrary, the Contractor retains all rights to its knowledge, experience and know-how (including processes, ideas, concepts and techniques) acquired in the course of performing the Services.

**22. Severability and Enforceability:** If any provision of this Agreement is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Agreement, unless it prevents accomplishment of the objectives and purposes of the Agreement, which determination shall be submitted as a dispute herein. In the event of any holding that the illegality or invalidity prevents accomplishment of the objectives and purposes of the Agreement, the Parties will immediately commence negotiations to remedy such illegality or invalidity.

**23. Subcontractors, Partners, Joint Ventures and other Third Party Participants (“Subcontractor”):**

a. Prior to commencing services, the Contractor shall submit a statement to SUNY describing the portion of the work and materials which subcontractors are to perform and must furnish any other information to document that such subcontractors have the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and provisions of the Agreement. If SUNY finds that the subcontractors are qualified, it will so notify the Contractor within ten (10) business days following receipt of Contractor’s written statement described above. If SUNY determines that a subcontractor is not qualified, it will so notify the Contractor. The Contractor must, within ten (10) business days thereafter, submit a written statement as described above with respect to other proposed subcontractors, unless the Contractor decides to do such work itself and in SUNY’s opinion is qualified to do such work.

b. SUNY’s approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under the Agreement. The Contractor shall be solely responsible to SUNY for the acts, omissions or defaults of such subcontractors and of such subcontractors’ officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. No provisions of the awarded contract shall create or be construed as creating any contractual relation between SUNY and any subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Contractor.

c. The Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work. Contractor shall check requirements of the work and coordinate and adjust as required so that conflicts in time, work space, equipment and supplies do not occur in the work being performed by the Contractor with its own employees and the work being performed by its subcontractors.

d. No subcontractor shall be permitted to work until it has furnished satisfactory evidence to SUNY of the insurance required by law.

e. The Contractor shall execute a written agreement with each of its subcontractors and shall require all subcontractors to execute with their sub subcontractors a written agreement which shall bind each to the terms and provisions of the prime contract awarded, insofar as such terms and provisions are applicable to the work to be performed by such subcontractors. The Contractor shall require all subcontractors and sub subcontractors to promptly, upon request, file with SUNY a copy of such agreements upon request, from which the price and terms of payment may be deleted.

**24. SUNY Requirements for Contractor Responsibility:**

a. General Responsibility: The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the SUNY Chancellor or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

b. Suspension of Work for Non-Responsibility: The SUNY Chancellor, in his or her sole discretion, reserves the right to suspend any or all activities under the Agreement, 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 notice, the Contractor must comply with the terms of the suspension order. Agreement activities may resume at such time as the SUNY Chancellor or his or her designee issues a written notice authorizing a resumption of performance of the Agreement.

c. Termination for Non-Responsibility: Upon written notice to the Contractor and a reasonable opportunity to be heard with appropriate SUNY officials or staff, the Agreement may be terminated by the SUNY Chancellor or his or her designee at the Contractor’s expense, where the Contractor is determined by the SUNY Chancellor or his or her designee to be non-responsible. In such event, the SUNY Chancellor 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.

**25. Termination:** The Agreement awarded to the Contractor may be terminated by SUNY for any of the following reasons:

a. Convenience of SUNY: The Agreement may be terminated at any time upon receipt of 30 days prior written notice given by SUNY for any reason or no reason.

b. Event of default: The Agreement may be terminated in the event of breach of any of its provisions by the Contractor, or if the Contractor's Services are deemed unsatisfactory in SUNY's sole discretion, due to Contractor's fault or negligence, or that of its officers, employees, subcontractors, agents, licensees, licensors, or affiliates. In such event, SUNY will send a written cure notice in accordance with the Notice provisions of the Agreement, and the Contractor shall have 30 days to correct the deficiencies noted. If the deficiencies are not corrected, SUNY may terminate this Agreement immediately upon written notice.

c. Deficient Certifications: If the Agreement has a value greater than \$15,000, SUNY shall have the right to terminate in the event the State Finance Law sections 139-j and 139-k certifications executed by the Contractor are found to be false or incomplete. If the Agreement has a value of greater than \$100,000 and Contractor's sales for the immediately preceding four quarters were greater than \$300,000, or if the Agreement has a value of \$125,000 or greater, the University shall have the right to terminate in the event the Contractor's Department of Taxation and Finance Contractor Certification form, ST 220-CA, statements are found to be false or incomplete.

d. Lack of Funds: If for any reason the State of New York terminates or reduces its appropriations to SUNY, the Agreement may be terminated or reduced at SUNY's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to SUNY for payment of such costs. In any event, no liability shall be incurred by the State (including SUNY) beyond monies available for the purposes of the awarded contract.

e. SUNY may terminate the Agreement, upon written notice, in the event of any of the following: (i) The Contractor makes an assignment for the benefit of creditors; (ii) a petition in bankruptcy or any insolvency proceeding is filed by or against the Contractor and is not dismissed within 30 days from the date of filing; or (iii) all or substantially all of Contractor's property is levied upon or sold in any judicial proceeding.

f. Upon expiration or termination of this Agreement, the Contractor shall provide SUNY with all necessary records, electronic and otherwise, in the Contractor's possession relating to the Services provided under this Agreement. At SUNY's request, the Contractor shall also make appropriate Staff available to SUNY during normal business hours to answer questions regarding such records and the Services which have been provided by the Contractor under this Agreement. 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 are uninterrupted and are not adversely impacted.

**26. Trademarks and Service Marks:** The Contractor understands and agrees that SUNY trademarks, service marks and logos are registered trademarks or owned by SUNY (the "Licensed Marks"). To the extent required by this Agreement, SUNY hereby grants to the Contractor a license to use the Licensed Marks only in connection with its work for SUNY under this Agreement. Such license shall limited to the use identified herein and shall not be construed as permission by SUNY to use its name or the Licensed Marks for any other purpose. The Contractor agrees not to use, reproduce, copy, or create materials bearing the SUNY name, logos or Licensed Marks without prior written approval and review of such materials by SUNY.