

**REGIONAL FACIAL RECOGNITION PROGRAM
AGREEMENT
Between the
NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES
And the
MARYLAND MOTOR VEHICLE ADMINISTRATION**

This Agreement is made between the New York State Department of Motor Vehicles ("NY DMV"), an executive agency of the State of New York, and the Maryland Motor Vehicle Administration MD MVA"). NY DMV and MD MVA may collectively be referred to herein as the "Parties", and individually as the "Party".

The Parties agree as follows.

1. The purpose of this Agreement is to assist the Parties in identifying commercial driver license (CDL) holders and other "for-hire" class drivers ("drivers") to whom each party has issued license documents.
2. Each Party acknowledges that drivers with multiple driver licenses issued by multiple jurisdictions have a greater propensity for engaging in fraudulent behavior and being a threat to highway safety.
3. NY DMV has independently, and by separate contractual arrangements, developed a facial recognition system that is integrated within its driver license issuance process. MD MVA will be developing a facial recognition system that is integrated within its driver license issuance process. Facial Recognition systems compare the digitized image of a license applicant against all other digitized images in the Party's photo image database to identify individuals who have multiple license documents, in order to prevent the issuance of a driver license based upon a fraudulent application.
4. The Parties agree to exchange "Personal Information" contained in each Party's driver license records, on a near real-time basis, in order to facilitate facial recognition comparisons against all of the images in the other Party's photo image database.
 - a. "Personal Information" is defined, for the purpose of this Agreement, pursuant to the federal Driver's Privacy Protection Act ("DPPA") (18 U.S.C. §2721, et seq.), as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status" (See, §2125(3)).
 - b. Included in the definition of "Personal Information" is "Highly Restricted Personal Information", which is defined, for the purpose of this Agreement, as an individual's photograph or computerized image, Social Security number or medical or disability information.

5. Each Party shall take all steps necessary to protect the other Party's "Personal Information".

- a. Each Party shall safeguard the other's Party's "Personal Information" to which it has been given access against unauthorized use, access, disclosure, duplication, storage, or dissemination.
- b. The documents and records provided hereunder by each Party may contain the names and addresses of individuals and other "Personal Information". Each Party shall hold all such "Personal Information" in confidence and shall only use the information provided by the other Party in accordance with the terms of this Agreement.
- c. Each Party acknowledges that it is authorized to disclose "Personal Information" and images from its image repository to another governmental agency for use by that governmental agency in carrying out its functions, in accordance with the federal Driver's Privacy Protection Act ("DPPA") (18 U.S.C. §2721, et seq.);
- d. Each Party's "Personal Information" shall only be accessible by the other Party's "Authorized Employees", and the "Authorized Employees" of the Contractor that maintains such other Party's facial recognition system, who have a *need to know* (collectively "Authorized Employees").
 - i. An "Authorized Employee" is defined, for the purpose of this Agreement, as an individual who has completed and passed the employing Party's background check. Such background check must, at a minimum, include: verification of references from prior employment; a name-based and fingerprint-based criminal history records check; and employment eligibility verification as required by law.
- e. "Authorized Employees" shall not copy, duplicate, disclose, transmit or redistribute "Personal Information" in any form to persons other than "Authorized Employees", whether in whole or in part, or in any medium, whether electronic or hard copy, written or verbal.
- f. Each Party must ensure that only "Authorized Employees" under its direct control will be granted access to the other Party's "Personal Information", and such access shall be granted solely for the purpose of participating in the Regional Facial Recognition Program, and performing a facial recognition system comparison pursuant to such Program.
- g. Prior to the exchange of "Personal Information" pursuant to this Agreement, each Party must provide the other Party with a list of "Authorized Employees", and must thereafter promptly update the list to indicate the addition or deletion of such individuals.
- h. Each Party must ensure that the other Party's "Personal Information" is not stored on personal (non-business) computing or other electronic devices, or taken, removed or accessed in any form outside of the control of the receiving Party's facility where its facial recognition system resides, except where required for the purpose of criminal prosecution or administrative action.
- i. The Parties shall not sell, or authorize the sale of, "Personal Information" to any third party for any purpose.

6. Disqualification from serving as an "Authorized Employee":

Individuals shall be disqualified from serving as an "Authorized Employee",

- or from being employed in any position, unless their employment eligibility has been verified as required by section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and its implementing regulations (8 CFR part 274A);
- if they have been convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction, of any of the offenses set forth in 49 CFR 1572.103;
- within seven (7) years preceding the date of employment, have been convicted of the criminal offenses referenced in 49 CFR 1572.103(b);
- within the five (5) years preceding the date of employment, have been released from incarceration for any crime.

7. Prior to the commencement of any exchange of the "Personal Information", each Party shall be provided reasonable access to conduct a security assessment of the other Party's facility where its facial recognition system resides, in order to ensure the existence of adequate security measures for the proper safeguard of "Personal Information".

8. **The transfer of "Personal Information", for the purpose of conducting a facial recognition comparison of the other Party's photo image database, shall be conducted hereunder through a mutually agreed upon secure electronic transfer method in the following manner:**

- a. Each Party will employ an automated transfer method for delivering "Personal Information" to the other Party.
- b. Upon the receipt of "Personal Information" from the other Party, each Party shall submit that information to its respective facial recognition system for the purpose of identifying any matches.
- c. The only exception to the requirement of automated transfer shall be as follows: After the initial automated search indicates that the subject has duplicate records, a non-automated search shall be permitted for the sole purpose of expanding the matching threshold, in order to prevent the issuance of a driver license based on a fraudulent application.

9. Each Party agrees to advise the other Party of any matches of "Personal Information" in that Party's database.

- a. In the event of any matches, each Party will determine whether duplicate records occurred as a result of fraudulent activity, and will take the appropriate administrative action, and/or refer the matter for criminal prosecution.
- b. Each Party shall advise the other Party of the outcome of any action taken.
- c. The Parties agree to fully cooperate in the investigation and administrative action against, and/or criminal prosecution of, individuals who are determined to have fraudulently obtained, or attempted to fraudulently obtain, a driver's license.
 - i. Such cooperation shall include the exchange of supporting documentary evidence,

and the provision of witness testimony, as may be required.

- ii. Expenses for any travel shall be reimbursed by the prosecuting party as provided by the laws/guidelines of the prosecuting party's state.

10. Ownership of each Party's "Personal Information" shall at all times remain the exclusive property of such Party and, by extension, each Party's respective State.

11. Each Party will cooperate with the other in the ongoing review of the recipient Party's data control processes employed for the protection of "Personal Information".

a. Confirmed or suspected unauthorized use or access of NY DMV's Personal Information provided hereunder, must be immediately reported to NY DMV's Risk Management Office via email at: nysdmvRiskManagement@dmv.ny.gov

b. Confirmed or suspected unauthorized use or access of MD MVA's Personal Information provided hereunder, must be immediately reported to MD MVA's Division of Investigations and Internal Affairs:

- i. by email: EDanz@MVA.Maryland.gov, or
- ii. by telephone: (410) 768-7074

c. Each Party acknowledges that it understands and must comply with laws concerning the loss, misappropriation, compromise, or misuse of protected data provided hereunder, including:

1. the federal Driver's Privacy Protection Act of 1994 (DPPA) (18 U.S.C. §2721, et seq.);
2. the New York State Information Security Breach and Notification Act (ISBNA)(General Business Law, §899-aa; State Technology Law, §208); and
3. the Maryland Public Information Act, Maryland Code Ann., General Provisions § 4-101, et. seq. (2014)

d. In the event that the security of "Personal Information" provided hereunder by NY DMV is breached in violation of the ISBNA, from a system maintained by the other Party, then such other Party shall be responsible for, and bear the cost of providing notice of breach to the subjects to whom such information pertains. In the event that such other Party is authorized to share such information with another entity, such other Party shall hold its recipient responsible for providing such notice. Prior approval from NY DMV is required before any notifications are made to such subjects whose personal information has been so breached; and NY DMV shall bear the same responsibility and associated costs for any notifications required as a direct result of a breach of the security of the other Party's personal information, from a system maintained by NY DMV, under the corresponding law of the other Party's state, if any.

12. Each Party must promptly and securely dispose of the other Party's "Personal Information" upon the fulfillment of the purpose for which such information is hereunder provided, or as instructed by the other Party, in the other Party's sole discretion. Each Party shall comply with the other's instructions for the secure disposal of its "Personal Information", and shall promptly provide written certification upon completion.

13. Neither Party shall use, access, disclose or disseminate the other's "Personal Information" after

receipt of written notification from the other Party that any of the following events have occurred or that the occurrence of any such event is imminent: (a) unauthorized use, access, disclosure or dissemination of the other's "Personal Information" by the recipient Party's officers, employees, subcontractors or agents; (b) breach of a material term of this Agreement; (c) completion of the Party's obligations pursuant to this Agreement; or (d) upon receipt of notice of termination of this Agreement by either Party.

14. The principal contacts for all notifications required or otherwise necessary under this Agreement shall be as follows:

For NY DMV: Owen McShane Director, Division of Field Investigations 6 Empire State Plaza, Room 431 Albany, NY 12228 Owen.McShane@dmv.ny.gov (518) 474-8805	For MD MVA: Eric Danz Manager, Division of Investigations and Internal Affairs 6601 Ritchie Highway NE Glen Burnie, MD 21062 EDanz@MVA.Maryland.gov (410) 768-7074
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15. Whenever written notice is required to be given under the terms of this Agreement and when not otherwise specified, it shall be directed to each party at the address specified in the above paragraph. All notices and submissions, except as otherwise expressly provided in this Agreement, shall be sent with an acknowledging return receipt requested. The notices and submissions may be delivered by overnight delivery.
16. Intentionally omitted.
17. Intentionally omitted.
18. This Agreement may be amended by mutual written consent. Any proposed amendment or modification must be submitted to the other Party prior to any formal discussion or negotiation of the issue.
19. Either party may terminate this Agreement for any reason upon ninety (90) days' written notice to the other party. Notwithstanding the foregoing, the Parties expressly reserve the right to immediately suspend the provision of "Personal Information" to the other Party in the event that a breach of security has occurred or appears to such providing party to be imminent. In such event, the providing Party will promptly provide the other with notification, and will make good faith attempt to resolve the problem.
20. This Agreement shall be effective upon execution by both Parties and continue in full force and effect until terminated, as provided above.
21. In accordance with Section 41 of the New York State Finance Law, the NY DMV, an entity of the State of New York, shall have no liability under this Agreement beyond funds appropriated and

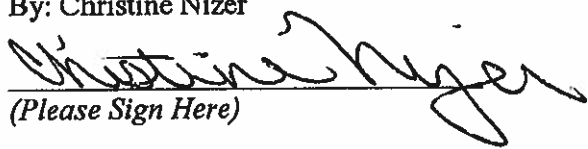
available for this Agreement; and such limitation of liability shall apply to the other Party as may be mandated by the other Party's state law.


22. Nothing in this Agreement is intended to diminish or otherwise affect the authority of the Parties to carry out their respective statutory, regulatory or other official functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by any Party against the United States, its agencies or officers, state or local agencies or officers carrying out programs authorized under federal, state or local laws, or any other persons.
23. The Parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties, and shall inure solely to the benefit of the Parties. The provisions of this Agreement are intended only to assist the Parties in determining and performing their obligations under this Agreement. The Parties intend and expressly agree that only they shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement, or to bring any action for breach of this Agreement.
24. This Agreement may not be assigned or otherwise transferred by either Party without the prior written consent of the other. No such assignment or transfer shall relieve the Parties of any of their obligations or liabilities, whether accrued or un-accrued, under this Agreement.
25. The Parties retain all equitable and legal rights, including the right to seek injunctive relief, to prevent losses or damages resulting from the actual or anticipatory breach of this Agreement.
26. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction.
25. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the other provisions shall remain in full force and effect.
26. The Parties acknowledge that their obligation to safeguard the security of "Personal Information", and other protected personal information provided hereunder shall survive the expiration of this Agreement by termination or otherwise.
27. This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof, and it supersedes all other negotiations, understandings and representations (if any) made by and between the Parties.
28. This Agreement may be signed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts shall together constitute one and the same instrument.
29. This Agreement shall be subject to the provisions of Appendix-A hereof, entitled "Standard Clauses for New York State Contracts", which provisions shall at all times be controlling. All

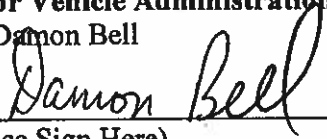
references to "contractor" contained therein shall apply to MD MVA.

30. This Agreement shall be subject to the provisions of Appendix-B hereof, entitled "Standard Clauses for Sharing Data with External Entities", which provisions shall be controlling subordinate only to Appendix-A referenced above.
31. In lieu of maintaining any policy of insurance as may be required by the other Party, the Parties agree that the State of New York may self-retain as to such risks. With respect to self-retention, the State of New York represents that it has full resources of its taxing power to respond to any claims for liabilities which may arise during the term of this Agreement, provided however that the State of New York's obligations with respect to any such claims are subject to the availability of lawful appropriations thereof as required by Section 41 of the New York State Finance Law. Provisions concerning the State of New York's responsibility for any claims for liability as may arise during the term of this Agreement are set forth in the New York State Court of Claims Act and any damages arising from such liability shall issue from the New York State Court of Claims Fund or any applicable, annual appropriation of the Legislature of the State of New York.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officer or representative.

Maryland
Motor Vehicle Administration
By: Christine Nizer

(Please Sign Here)
MDOT-MVA Administrator
(Title)
Date: 2, 8, 17
(mm/dd/yyyy)

New York State
Department of Motor Vehicles
By: 
Elizabeth Coats
(Please Sign Here) Contract Manager
NYS Dept. of Motor Vehicles
(Title)
Date: 2, 13, 17
(mm/dd/yyyy)

Maryland
Motor Vehicle Administration
By: Damon Bell *(for legal subagency only)*

(Please Sign Here)
Deputy Counsel - Attorney General Office
(Title)
Date: 02, 07, 2017
(mm/dd/yyyy)

APPENDIX-A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

(January 2014)

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

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

contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers. (b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize

minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

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

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

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

14. GOVERNING LAW. Intentionally omitted.

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.

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

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

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

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

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
Email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
Email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

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

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

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

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State. During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.



Department of
Motor Vehicles

Appendix-B

STANDARD SECURITY CLAUSES FOR SHARING DATA WITH EXTERNAL ENTITIES

The terms of this Appendix have been incorporated into an agreement between the New York State Department of Motor Vehicles and the recipient of DMV data. The Parties to the Agreement shall comply with the applicable provisions hereof, to the extent not superseded by federal law.

All data to which the Maryland Motor Vehicle Administration ("Recipient") will be provided is proprietary to DMV. Such data shall hereinafter be referred to as "DMV data". Recipient will safeguard all DMV data and resources to which it is granted access. Such safeguards must provide a level of protection of DMV data which is at least equivalent to those provided under Information Technology Services (ITS) Information Security Policy NYS-P03-002, and its associated standards, and comports with industry standards for such engagements.

1. Recipient agrees to limit its use of DMV data to the purpose of fulfilling Recipient's obligations arising under the terms of this Agreement, and for no other purpose, unless expressly authorized to do so by DMV.
2. Recipient must protect DMV data that is in Recipient's possession, or under its control from unauthorized access, disclosure, or dissemination.
3. DMV data includes information that is:
 - provided by DMV which is marked "Confidential";
 - defined as "Personal, Private and Sensitive Information" (PPSI);
 - not expressly granted for public disclosure or dissemination;
 - protected by law from disclosure or dissemination;
 - concerning DMV's infrastructure; and,
 - pertinent to an ongoing investigation.
4. Recipient must not permit DMV data to be copied or shared with anyone outside of the Recipient's organization, unless expressly authorized by DMV; and must limit access to, and use of, DMV data to individuals who require access for the purpose of fulfilling Recipient's obligations arising under the terms of this Agreement.
5. Recipient must cooperate with DMV in the review of Recipient's data control processes employed for the protection of DMV data.
6. In the event that Recipient confirms or suspects the unauthorized use or access of DMV data or resources provided hereunder, Recipient agrees to promptly notify DMV's Risk Management Office via email at: nysdmvRiskManagement@dmv.ny.gov

7. Recipient acknowledges that it understands and must comply with laws concerning the loss, misappropriation, compromise, or misuse of protected data provided hereunder, including:
 - a) the federal Driver's Privacy Protection Act of 1994 (DPPA) (18 U.S.C. §2721, et seq.), and
 - b) the New York State Information Security Breach and Notification Act (ISBNA) (General Business Law, §899-aa; State Technology Law, §208).
8. In the event that the security of personal information is breached in violation of the ISBNA, from a system maintained by Recipient, then the Recipient shall be responsible for providing notice of breach to the person(s) to whom such information pertains. In the event that Recipient is authorized to share such information with another entity, Recipient must hold its recipient responsible for providing such notice. Prior approval from DMV is required before any notifications are made to such persons.
9. Recipient must take appropriate measures to advise pertinent staff members of the penalties associated with unauthorized access, use, or dissemination of protected data.
10. Recipient agrees to comply with DMV's instructions for the secure disposal of agreement-related electronic or hard copy files in Recipient's possession upon expiration of the term of this Agreement.
11. The following provisions apply to circumstances when Recipient or its subcontractors make use of resources provided by DMV:
 - a) **Personal Computers (PCs):** DMV-provided PCs must only be used for activities related to official assignments and/or job responsibilities. Recipient is responsible for the use, protection, security and care of all DMV owned personal computers (PCs) and related equipment assigned to them by DMV.
 - a. DMV-provided PCs, including laptops, monitors, printers, hardware, peripherals, commercially licensed software, files, programs, and data, are the property of DMV. DMV reserves the right to access or audit PCs, storage drives and removable media, and the information contained therein.
 - b. Recipient must comply with the following restrictions when using DMV-provided PCs:
 - i. Protect against unauthorized access when the PC is left unattended by locking it, or logging-off;
 - ii. Log-off the PC at the end of the workday, to ensure that the power remains on;
 - iii. Do not leave a laptop unattended or unsecured;
 - iv. Do not move the PC or related equipment to another location without approval from DMV;

- v. Do not modify or repair any PC or related equipment without prior approval from DMV; and,
 - vi. Do not connect any hardware that is not expressly approved by DMV. Recipient must contact DMV for a list of approved hardware.
- b) **Software:** Only software that is approved by DMV may be installed on DMV-provided PCs. Recipient must abide by all software license agreements. Non-work related software (e.g. games or music downloading programs) must not be installed or used on DMV PCs. Recipient must not install DMV-owned software or programs on a non-DMV-owned PC, unless expressly approved by DMV.
- c) **Internet:** DMV-provided Internet access must only be used for activities related to official assignments and/or job responsibilities. Recipient must employ reasonable precautions, including safeguarding and changing passwords, to prevent the unauthorized use of their DMV provided internet account by anyone else. Recipient must not access third-party internet service providers and webmail accounts (e.g., checking a personal email account on AOL), unless expressly authorized by DMV.
- d) **Network:** Recipient must limit the use of the DMV network to activities related to official assignments and/or job responsibilities.
- e) **Email:** Recipient must limit the use of DMV email accounts to activities related to official assignments and/or job responsibilities.
- a. Recipient must use secure email service methods, which comply with industry standards, when sending DMV data. Recipient is not authorized to use third-party sites, e.g., Dropbox, to transmit DMV data.
12. Recipient agrees to continuing cooperation with DMV in response to developing security vulnerabilities.

(Revised 07/2016)