



**RFP: Gaming Advisory Services**

**VENDOR ACKNOWLEDGEMENT OF ADDENDUM**

Amendment Number: One (includes Q & A Summary)  
Date Issued: December 5, 2013

By signing below, the bidder attests to receiving and responding to the amendment number indicated above.

FIRM NAME: \_\_\_\_\_

REPRESENTATIVE SIGNATURE: \_\_\_\_\_

**Summary of Amended Provisions:**

**Appendix B- Contract Form:** Pages 11 through 16, labeled as Appendix A are hereby deleted. Appendix A, dated December 2012, included in the RFP (as Appendix A), is incorporated into the Contract.

**RFP Section 1.17 (H):** is revised as follows: The Commission, Board, and State shall not be liable for any of the costs incurred by a bidder in preparing or submitting a Proposal, and, therefore, the Commission, Board, or State will **not** assume any responsibility or liability for any costs incurred by a bidder prior to the award and approval of a Contract. The responsibilities and liabilities of the Commission, Board, and State shall be limited to those set forth in the Contract.

**Gaming Advisory Services  
Questions and Answers  
December 5, 2013**

Q.1: Reference: Attachment 2 Pricing Proposal Form:

Question: For bidders who do not offer services on an hourly rate basis, would the Commission consider an alternative firm fixed price model to support Deliverable 2, Other Engagements and Consultations?

**A.1: No. As provided in Section 4.7 of the RFP, “Utilizing the Pricing Proposal form, Attachment 2, the bidder is to propose pricing based on the Scope of Services set forth in Section 3.2 of this RFP. Bidder must use Attachment 2 as directed. Alternative pricing structures will be deemed non-responsive.”**

**Because it is unknown how many license applications will be received or the size and structure of the applicant organizations, a fixed price proposal is not desirable.**

Q.2: Reference: RFP Section 2.6 Compensation:

Question: Would the Commission change the section to read:

Contractor will be compensated based upon the services provided under the Deliverables and for any additional services ~~provided on an hourly basis on a firm fixed price basis~~ through the Statement of Work process ~~or hourly consultation~~ as set forth in the Part 4 of this RFP and as quoted in the Pricing Proposal.

**A.2: See A.1.**

Q.3: Reference: Section 2.7 Contract Invoicing and Payment:

Question: Would the Commission change the section to read:

Payment under the Contract will be in accordance with New York State Prompt Payment Law (Article 11-A of the New York State Finance Law). Payment for services rendered under Deliverable One will be made upon completion of the Deliverable and upon receipt by the Commission of a proper invoice. Payment for additional services ~~rendered on an hourly rate basis~~ will be made upon submission by the contractor of monthly, itemized invoices. All invoices must be directed by the contractor to the Commission’s Finance Office. The Commission shall promptly process all payments due to the contractor that conform to the provisions of this RFP and are approved by the Commission’s Contract administrator and Finance Officer.

**A.3: See A.1.**

**Q.4: Reference: Section 2.19 Title to and Use of Intellectual Property:**

Question: Would the Commission change the section to read:

The vendor agrees that any intellectual property developed or produced by vendor for the Commission or the Board under this Contract shall be the property of the Commission as a work made for hire. Except that Contractor retains all right, title and interest, including, without limitation, intellectual property rights, in and to the Contractor Tools (as defined below). To the extent that the Materials include any Contractor Tools, Contractor hereby grants to the Commission a non-exclusive, non-transferable, non-sublicenseable, worldwide, royalty-free, perpetual license to use and copy the Contractor Tools solely for internal purposes and solely as part of the Materials. The "Contractor Tools" consist of any and all concepts, analyses, know-how, tools, frameworks, models, and industry information and perspectives used by Contractor in connection with services hereunder.

The Commission understands and agrees that the Materials will be furnished solely for its internal use and may not be furnished in whole or in part to any person or entity other than as described in this Section 4 without Contractor's prior written consent. The Commission may furnish Materials to its directors, officers, and employees (and to its legal counsel, accountants, and investment bankers if retained by the Commission to provide services relating to Contractor's specific services hereunder), in each case only if such persons (i) need to know such information, (ii) are informed of the confidential nature of the Materials, and (iii) agree to comply with the restrictions stated in this Section. The Commission further agrees that, without Contractor's prior written consent, it shall not refer to Contractor or attribute any information to Contractor in any communication external to the Commission for any purpose, including without limitation in press releases, web sites, offering memoranda, and conversations with analysts.

**A.4: Revised Section 2.19 of the RFP: Contractor agrees that any intellectual property developed or produced by such Contractor for the Commission or the Board under this Contract shall be the property of the Commission as a work made for hire; provided, however, Contractor retains all right, title and interest, including, without limitation, intellectual property rights, in and to the Contractor Tools (as defined below in this paragraph). To the extent that any materials include any Contractor Tools, Contractor hereby grants to the Commission a non-exclusive, non-transferable, non-sublicenseable, worldwide, royalty-free, perpetual license to use and copy the Contractor Tools solely for internal purposes and solely as part of the materials. "Contractor Tools" shall mean any and all concepts, analyses, know-how,**

tools, frameworks, models, and industry information and perspectives used by Contractor in connection with services hereunder.

The Commission understands and agrees that materials that include Contractor Tools will be furnished solely for the internal use of the Commission and the Board and, unless applicable law requires otherwise, may not be furnished in whole or in part to any person or entity other than as described in this Section 2.19 without Contractor's prior written consent. The Commission and the Board may furnish materials that include Contractor Tools to their officers and employees (and to their legal counsel, accountants and investment bankers if retained by the Commission or the Board to provide services relating to Contractor's specific services hereunder), in each case, unless applicable law requires otherwise, only if such persons (i) need to know such information, (ii) are informed of the confidential nature of the materials, and (iii) agree to comply with the restrictions stated in this Section 2.19, subject to applicable law. The Commission further agrees that, without Contractor's prior written consent, the Commission shall not refer to Contractor or attribute any information to Contractor in any written communication external to the Commission for any purpose, including without limitation in press releases, web sites and offering memoranda.

Q.5: Reference: Section 3.2C:

Question: Would the Commission change the subsection to read:

**C. Other Engagements (Statement of Work Process)**

It is possible that following award of the gaming facility licenses, the Board may need to engage the vendor for additional related services. At such time that an engagement is required, the process for entering into these engagements is as follows:

- The Board will define, in writing, the objectives and scope of the project.
- The vendor will prepare a work plan in response to the objectives.
- The Board will review the work plan and related cost and, if agreeable, will prepare a Statement of Work (the "SOW"), in the form incorporated into this RFP as **Attachment 4**.
- The SOW will define the work plan and cost-firm fixed price to complete the project, including the staff positions ~~and associated hourly rates~~ that will be dedicated to the work. Pricing will be consistent with rates established in the Pricing Proposal.
- The SOW will be signed by both parties and forwarded to the Office of the State Comptroller (the "OSC") for final review and approval.
- Upon approval of the OSC the project can commence.

A.5: See A.1.

Q.6: Reference: Section 3.2D

Question: Would the Commission change the subsection to read:

**D. Hourly-Additional Consultation**

The Board may also need to consult with appropriate persons on the vendor's staff on an as needed basis. Under these circumstances, the Project Manager will contact the vendor to discuss the work and the vendor will provide assistance under the job category and rates proposed in the Pricing Proposal on a firm fixed price based on the agreed upon scope of work.

**A.6: See A.1.**

Q.7: Reference Section 4.2 Financial Viability

Questions:

- May privately held firms demonstrate their financial viability through other documentation than providing annual reports?
- If a Bidder's client list is confidential, can a Bidder meet the requirement by providing statistical data on its client base?

**A.7: Financial viability of privately held firms may be demonstrated through certified financial statements.**

**The bidder's client list must be provided, but it can be designated as confidential and proprietary.**

Q.8: The RFP states that the advisor cannot underwrite any debt of the applicants. What are the restrictions if the advisor is already a lender to the applicant?

**A.8:** All existing relationships with applicants or potential applicants must be disclosed. All documents supporting the relationships must be submitted with the RFP response.

Q.9: In the scenario analysis, when it says "\$300m company", does it refer to the size of the revenue or enterprise value?

**A.9: The reference is to the "net worth" of the company.**

Q.10: If fixed price and hourly rates are both put in how does the evaluation process rate those two?

**A.10: The Gaming Commission has a method to evaluate the Pricing Proposals. This method will not be shared with the bidding community.**

Q.11: -Are there any studies or pertinent background information available?

**A.11: There are no current relevant studies prepared by or on behalf of the Gaming Commission.**

Q.12. Are there any entities on the bidders list who have done any work with the New York Gaming Commission on this project prior to the issuance of this RFP? If so can you identify who they are and what work they did perform?

**A.12: None.**

Q.13: What would be the time frame for the final delivery of the work project?

**A.13: Without knowing how many applications may be received and what the structure of the applicants' organizations may be, it is difficult to determine the timeframe for delivery of the work project. We anticipate the project being completed in 2014.**

Q.14: Please expand on some of the key process components the Commission intends to employ to implement gaming expansion, specifically:

- a. Has the Commission had independent market assessments completed in each/any of the regions to ascertain potential revenue (and associated size/scale of casinos)? Were the regions currently contemplated based on these studies (e.g., to minimize competition/maximize revenue to the State)? If studies have been completed, are copies available?
- b. At what stage will suitability of potential applicants (e.g., detailed financial, legal, criminal background checks, compliance investigation of applicants) be considered and investigated? For example, is suitability meant to be part of RFP C13007 or will suitability be conducted as a parallel process by another party? What site/land ownership requirements will be part of the application process?
- c. While we note section 3120 has assigned a weighting of 20% to local impact and siting factors, has other weighting been contemplated among the other various criteria set out in PML section 1313? Will the consultant selected through RFP C13007 be expected to assist in determining these criteria and respective ratings?
- d. Does the Commission intend to manage the selection process through a single phased approach as opposed to a two- (or more) stage approach

where only those applicants meeting certain pre-determined criteria would be asked to submit detailed applications?

- A.14. a: No independent assessments have been done by or for the Commission. The boundaries were established by the State Legislature in the casino gaming enabling legislation.**
- b: Applicant suitability is the responsibility of the Board. The successful bidder for this RFP will lead the applicant financial assessment, while the Board and Commission address other areas including background checks. Land ownership will be addressed in the casino application process.**
- c: Application of the statutorily-defined weighting will be undertaken by the Board with the advice of staff and the successful bidder.**
- d: The selection process will be single stage.**

Q.15: Will the consultant selected through RFP C130007 be responsible for all elements of PML 1313 with respect to incorporation into the application form as well as the eventual review of the submitted applications? Does the Commission want to engage additional advisors to assist with specialized aspects of the criteria set out in PML 1313?

**A.15: The consultant awarded a Contract through this procurement process will perform in an advisory capacity to the Board in relation to the selection of applicants to develop and operate a casino in New York State. The services anticipated from the consultant are outlined in the RFP and include assisting the Board in development of the RFA and Evaluation Instrument as well as participation in the evaluation of Proposals in response to the RFA.**

**This is not an exclusive agreement. The Board has the authority to enter into contracts for other advisory services.**

Q.16: How will the evaluation weighting assigned to pricing be implemented? Only Deliverable One has a fixed fee; Deliverable Two is a listing of hourly rates but no indication of how many hours by rate category. Will responses to section 4.6 be used as a basis for estimating hours and, therefore, potential cost?

**A.16: See A.10.**

Q.17: Section 4.1 A (page 37) states that each bidder must state whether they are qualified and/or registered to do business in New York State. Are New York state-based firms given preference when proposals are evaluated?

**A.17: No. There is no preference to New York State firms. Respondents must, however, be permitted to provide services in New York State, which, for example, requires registration with the New York Department of State.**

Q.18: Section 1.17, Part B (page 10) requests five electronic copies of the proposal on a single compact disc. Is the intent here to request five compact discs each containing a copy of the technical proposal?

**A.18: Yes.**

Q.19: Section 1.17, Part B (page 12) requests two electronic copies of the Pricing Proposal on a single compact disc. Is the intent here to request two compact discs each containing a copy of the Pricing Proposal?

**A.19: Yes.**

Q.20: In Section 4.2 Financial Viability (page 37) – In the event the applicant is not a public company that produces an annual report, what type of financial information do you require (in addition to what is disclosed in the Vendor Responsibility Questionnaire – For Profit Business Entity).

**A.20: See A.7.**

Q.21: In Section 4.4 Project Management and Staffing (page 38) - What type of evidence is required in relation to applicant certification and licenses (i.e, CPA, CFA)?

**A.21: The intent of this language is for the bidder to provide any applicable certifications and licenses that the proposed staff holds.**

Q.22: In Section 1.15 (page 8) – Is the IRS Form W-8 BEN an acceptable replacement for Substitute Form W-9, or will a Substitute Form W-8 BEN be made available?

**A.22: U.S. domestic entities are required to submit Substitute Form W-9, found at [http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf). Foreign entities are required to submit Form W-8 BEN, found at <http://www.irs.gov/pub/irs-pdf/fw8ben.pdf>. More tax information regarding Foreign companies may be found at:**

**<http://www.irs.gov/Businesses/International-Businesses>**

Q.23: Will RFP appendices forms be made available to applicants in a Word document format (or other editable format; i.e. Appendix B - Contract)?

**A.23: No. Many of these documents are from other sources, such as the Office of the State Comptroller and the Department of Taxation and Finance and are not available to us in Word format. We have made the Pricing Proposal form available in Word format as a convenience to bidders.**

|

GAMING ADVISORY SERVICES  
CONTRACT # C130007

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, [year] by and between the NEW YORK GAMING FACILITY LOCATION BOARD (the "Board"), through the NEW YORK STATE GAMING COMMISSION, DIVISION OF GAMING, an executive agency of the State of New York having an office at One Broadway Center, Post Office Box 7500, Schenectady, New York 12301-7500 [(the "Commission")], and [name of company] having an office at [address of company] [(the "Contractor" or "Consultant")].

WHEREAS the Commission issued a Request for Proposals on November 26, 2013 soliciting proposals from qualified firms to provide Gaming Advisory Services , and clarified the requirements of the Request for Proposals with a list of Questions and Answers dated December 5, 2013 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [date of Proposal] (collectively, the "Proposal"), which received the highest total combined score from among competing proposals by the Commission's evaluation team;

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

1. Scope of Services. The Contractor agrees to provide the Board with gaming advisory services, as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are

hereby incorporated into this Agreement with the same force and effect as if they were fully set forth herein.

2. Term. This Agreement shall be for a term of one year following date of approval by the State Comptroller and may be extended, as determined by the Board, for two additional six-month periods under the same terms and conditions, including rates.

3. Compensation.

In full consideration for all goods and services specified in the RFP and the Proposal, the Board, or the Commission on behalf of the Board, agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal Pricing Form. No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor.

4. Approvals Required. This Agreement, and any extension of the term of this Agreement or any amendment of the provisions of this Agreement, shall not be effective and binding upon the Board, the Commission, the State of New York, or the Contractor unless and until approved by the Attorney General of the State of New York and the State Comptroller. The Commission, on behalf of the Board, agrees to exercise its best efforts to obtain such approval.

5. Mutual Cooperation. The objective of this Agreement is to obtain gaming advisory services. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objective.

6. Termination.

(a) The Board shall have the right to terminate this Agreement for convenience or for any of the following causes:

(i) a material breach by the Contractor of any of the provisions of this Agreement;

(ii) a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;

(iii) a good faith determination by the Board that continuation of the contract could place the integrity of the Board or the Commission in jeopardy; or

(iv) a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business that, in the sole reasonable opinion of the Board, would be prejudicial to public confidence in the Board or the Commission.

(b) In the event that the Board decides to exercise the right to terminate this Agreement for cause, the Board shall give the Contractor advance written Notice of Intention to Terminate for Cause ("Notice"). Such Notice shall state clearly and specifically the cause for which termination is sought, and the Contractor shall be entitled to a period of 30 days from receipt of such Notice to correct or cure the cause so described to the reasonable satisfaction of the Board in which case such Notice shall be deemed withdrawn and a nullity. If termination is sought because of a criminal conviction as described in subparagraph (iv) of Paragraph (a) of this section 6, the cause for termination shall be deemed to be cured if the Contractor causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such 30-day period.

(c) The Board reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Board may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Agreement.

7. Confidentiality and Non-Disclosure.

(a) For the purposes of this section, “Confidential Information” means any information not generally known to the public, whether oral or written, that the Board or the Commission identifies as confidential and discloses to the Contractor so that the Contractor can provide services to the Board pursuant to this Agreement. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Board or the Commission deems confidential. The Board or the Commission will identify written Confidential Information by marking it with the word “Confidential” and will identify oral Confidential Information as confidential at the time of disclosure to the Contractor.

(b) Confidential Information does not include information that, at the time of Board disclosure to the Contractor:

- (i) is already in the public domain or becomes publicly known through no act of the Contractor;

(ii) is already known by the Contractor free of any confidentially obligations;

(iii) is information that the Board or the Commission has approved in writing for disclosure; or

(iv) is required to be disclosed by the Contractor pursuant to law so long as the

Contractor provides the Board and the Commission with notice of such disclosure requirement and opportunity to defend prior to any such disclosure.

(c) The Contractor may use Confidential Information solely for the purposes of providing services to the Board pursuant to this Agreement. The Contractor shall not make copies of any written Confidential Information without the express written permission of the Board. The Board's disclosure of Confidential Information to the Contractor shall not convey to the Contractor any right to or interest in such Confidential Information and the Board and the Commission shall retain all right and title to such Confidential Information at all times.

(d) The Contractor shall hold Confidential Information confidential to the maximum extent permitted by law. The Contractor shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that the Contractor uses to maintain its own confidential information.

(e) Upon written request by the Board or the Commission, the Contractor shall return all written Confidential Information to the Board or the Commission.

8. Records Retention. Records required by this Agreement to be retained by the Contractor shall be retained for the periods specified in Appendix A, attached hereto. Such records may be retained in their original form or in any other reliable and readily retrievable format, at the option of the Contractor.

9. Notices. All notices required by this Agreement shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

(a) As to the Board:

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

(b) As to the Commission:

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

(c) As to the Contractor:

[Name and Address]

10. Liability and Indemnification. The Contractor shall be responsible for all damages to life and property due to activities of the Contractor, as well as the subcontractors (if any), agents or employees of the Contractor in connection with performance of services under this agreement. The Contractor shall indemnify, defend, and save harmless the Board, the Commission, the State of New York, and their officers, employees, agents, assigns and retailers from and against any and all third-party claims, liabilities, losses, damages, costs, or expenses, including reasonable

attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

- (a) The Contractor, its officers, employees, agents, successors and assigns,  
and/or
- (b) A Subcontractor, its officers, employees, agents, successors and assigns.

11. Relationship. The relationship of the Contractor to the Board arising out of this Agreement shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Board, Commission or the State by reason hereof, and that it will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the Board, Commission or the State, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Agreement shall impose any liability or duty on the Board, Commission or the State, on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation, and the Contractor hereby agrees to indemnify and hold harmless the Board, Commission and the State against any such liabilities.

12. Documents Incorporated. Appendix A, "Standard Clauses for New York State Contracts," the RFP, and the Proposal are hereby incorporated herein to the same force and effect as if set forth at length hereat.

13. Order of Precedence. In the event of a conflict in any of the provisions of this Agreement and the documents incorporated herein, such conflict shall be resolved by giving precedence in interpretation to the document listed before another in the list of documents contained below in this section 13:

- (a) Appendix A – Standards Terms for New York State Contracts;
- (b) Any amendments to the Agreement;
- (c) Agreement;
- (d) Request for Proposal and any clarifying responses by the Lottery;
- (e) Vendor Proposal and any clarifying responses by the vendor.

14. Miscellaneous Provisions.

(a) A waiver of enforcement of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement nor shall it preclude the affected party from subsequently enforcing such provision.

(b) This instrument and the documents incorporated herein represent the entire agreement between the Board and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

(c) The headings contained in this Agreement are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Agreement.

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

[CONTRACTOR]

NEW YORK GAMING FACILITY  
LOCATION BOARD

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

NEW YORK STATE GAMING COMMISSION

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

Title: \_\_\_\_\_

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

ATTORNEY GENERAL

COMPTROLLER  
Thomas P. DiNapoli

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me personally came \_\_\_\_\_, to me known, who being duly sworn, did depose and say that he or she resides in \_\_\_\_\_ (if the place of residence is in a city, include the house and street number), that he or she is the \_\_\_\_\_ of [company name], the corporation which executed this contract, and that he or she was authorized to execute this contract on behalf of said corporation.

\_\_\_\_\_  
Notary Public

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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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, licenser, 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, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital 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.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

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

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

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

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

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

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

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

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

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

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto: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](mailto:mwbecertification@esd.ny.gov)  
<http://esd.ny.gov/MWBE/directorySearch.html>

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.