AGREEMENT FOR HEARING OFFICER SERVICES
BETWEEN
THE NEW YORK STATE GAMING COMISSION
AND
MICHAEL KATZER
CONTRACT # T150007

This AGREEMENT made this 7 day of ~~April~~ MAY, 2015 by and between the NEW YORK STATE GAMING COMMISSION, an executive agency of the State of New York having an office at One Broadway Center, Post Office Box 7500, Schenectady, New York 12301-7500 (the "Commission") and MICHAEL KATZER residing at 1972 New Scotland Rd # 504, Slingerlands, NY 12159 (the "Hearing Officer");

WHEREAS, the Commission, pursuant to Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, conducts hearings pertaining to violations of such Law, including without limitation with respect to disciplinary actions upon license holders;

WHEREAS, the Commission issued a Request for Qualifications ("RFQual") on March 6, 2015 to solicit responses from qualified individuals to provide hearing officer and related services; and

WHEREAS, the Hearing Officer submitted a response (the "Response") on March 18, 2015 and was deemed, by reason of his or her competence, work ethic, legal experience and integrity, to be well qualified to act as a hearing officer at such hearings; and

WHEREAS, the Commission is desirous of retaining the Hearing Officer in accordance with the provisions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein set forth, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

The Hearing Officer agrees to provide the Commission with services, as more fully set forth in the RFP and the Response. Both the RFQual and the Response are hereby incorporated into this Agreement with the same force and effect as if they were fully set forth herein.

ARTICLE 2: TERM

The term of this Agreement shall be April 1, 2015 through March 31, 2018. The term shall be effective and binding upon the signatures of both parties. Any amendment to the provisions of this Agreement must be in writing and agreed to by signature of both parties.

ARTICLE 3: RESPONSIBILITY

The Contractor shall at all times during the Contract term remain responsible within the meaning of the State Finance Law. The Contractor agrees, if requested by the Executive Director of the Commission or his or her designee, to present evidence of his or her continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Executive Director of the Commission or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Executive Director of the Commission or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

ARTICLE 4: COMPENSATION

Compensation shall be payable for services rendered at the rates specified below. Total compensation for services provided under this Agreement, including reimbursement for travel expenses, shall in no event exceed the sum of $47,000. No minimum amount is guaranteed by this Agreement and the Hearing Officer shall not have any right to make a claim therefor.

(1) The Commission shall pay the Hearing Officer the sum of $150 per half day (up to three hours) or $300 per day (more than three hours) for time reasonably spent in performing the duties of administrative hearing officer, as may be assigned by the Commission from time to time. More than one hearing may be held on a scheduled hearing day.

(2) The Hearing Officer shall be paid the sum of $150 for each half day (up to three hours) or $300 per day (more than three hours) for time reasonably spent to prepare a written decision including Findings of Fact and Conclusions of Law in each case decided by the Hearing Officer.

(3) The Hearing Officer shall be paid the sum of $400 per day (more than three hours) for time reasonably spent to prepare a written decision including Findings of Fact and Conclusions of Law in each case in which the Hearing Officer has been assigned to a case which has been previously presided over by another hearing officer, and for which the record has been closed by another hearing officer.

(4) If practicable, the Hearing Officer shall be provided with written notice (either electronically or by hard copy) or telephone notice of the adjournment of a scheduled hearing at least 24 hours prior to the scheduled hearing. In the event that all of the hearings on a scheduled hearing day have been adjourned, and the Commission has not provided the Hearing Officer with at least 24 hours' notice of the adjournment of all of the hearings scheduled for that day, the

Hearing Officer may be compensated $200 in lieu of any other fees, at the sole discretion of the Commission.

(5) Subject to the rules, regulations and policies of the Commission, the Hearing Officer shall be reimbursed for actual and necessary expenses incurred by the Hearing Officer while presiding at scheduled hearings and/or attending conferences sponsored by the Commission, at the approved rates that are in effect for New York State Management/Confidential Employees at the time of the hearing(s) or conference(s), as such rates may be amended from time to time. A list of such rates can be currently found at http://www.gsa.gov/portal/category/100120, and such rates are subject to amendment from time to time without notice.

The Hearing Officer, while in travel status, shall be reimbursed for all actual and necessary transportation expenses incurred while using a common carrier. If the Commission gives authorization for use of a personally-owned vehicle for reimbursed travel, reimbursement will be based on proper, supported receipts and in accordance with the prevailing allowances established by the State of New York for Management/Confidential Employees. For more information please refer to the New York State Travel Manual at: http://www.osc.state.ny.us/agencies/travel/manual.pdf. For current mileage reimbursement rates

please visit: http://www.gsa.gov/portal/content/104877.

Reimbursement shall be based upon the rates that are in effect at the time expenses are incurred. The Hearing Officer shall submit a request for reimbursement of such expenses in such form as the Commission may require.

(6) The Hearing Officer shall attend and participate in all Hearing Officer trainings and conferences, which may be live or via an electronic format (such as a webcast), to be held at the discretion of the Commission. The Hearing Officer shall be reimbursed for actual and necessary expenses incurred to attend and participate in any Hearing Officer training or conference.

(7) The Hearing Officer shall maintain adequate records to substantiate all claims for payment and, at the Commission's request, shall make such records available at the Commission's offices in Schenectady, New York for examination and copying.

ARTICLE 5: INVOICING AND PAYMENT

Payment for services under this agreement will be in accordance with New York State Prompt Payment Law (Article 11-A of the New York State Finance Law). Payment 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 at the address provided in this Agreement. The Commission shall promptly process all payments due to the contractor that conform to the provisions of this Agreement and are approved by Commission staff. Invoices shall be submitted following completion of the report and include the following information:

(a) Hearing Officer's taxpayer identification number and New York State Vendor Identification Number;

(b) Detailed description of services provided by date(s) of service, including the hearing case number;

(c) Itemized documentation of travel, overnight lodging and meal expenses sufficient to demonstrate conformance with applicable State reimbursement rates;

(d) Total amount billed for services and expenses for the invoice period and the beginning and ending dates of the billing period included in the invoice.

ARTICLE 6: RELATIONSHIP

The relationship of the Hearing Officer to the Commission arising out of this Agreement shall be that of an independent contractor.

(1) The Hearing Officer, in accordance with its status as an independent contractor, agrees that he or she will conduct himself or herself in a manner consistent with such status, that he or she will neither hold himself or herself out as, nor claim to be, an employee of the Commission or the State by reason of this Agreement or Hearing Officer's designation as an administrative hearing officer in any matter, and that he or she will not by reason of this Agreement or Hearing Officer's designation as an administrative hearing officer in any matter, make any claim, demand or application for any right or privilege applicable to an employee of the Commission or the State, including without limitation, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel the Hearing Officer may engage shall be within the employ of the Hearing Officer only, who 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 Commission or the State, on account of any acts, omissions, liabilities or obligations of the Hearing Officer or any person, firm, company, agency, association, corporation, or organization engaged by the Hearing Officer as expert, consultant, independent contractor, researcher, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation, and the Hearing Officer hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities.

(2) The Commission makes no commitment that the Hearing Officer will be assigned any particular matter or any matters at all. The Commission will inquire as to availability in regard to a particular matter and if the Hearing Officer confirms availability and is assigned a matter, the Hearing Officer shall commence and complete the matter.

(3) The Hearing Officer agrees that any material, whether written, audio, visual or otherwise, that the Hearing Officer creates in performing services for the Commission pursuant to this agreement shall be a "work made for hire" in which the Commission shall own all right, title and interest, including all patent, copyright and other proprietary rights that may be secured.

(4) The Hearing Officer further agrees that in any matter assigned pursuant to this agreement, the Hearing Officer will not make statements, comments, public appearances, participate in radio or television programs or on-line computer forums or any public conferences of any sort in relation to any Commission matter, except as permitted in writing by the Commission's Public Information Officer.

(5) The Hearing Officer represents that the Hearing Officer is not a party to, and will not enter into, any contract or any contractual obligation that conflicts with any of the Hearing Officer's obligations under this Agreement or limits (as determined by the Commission in the sole exercise of the Commission's discretion) the rights granted to the Commission under this Agreement or that impairs the Commission's ability to fully exercise such rights.

(6) The Hearing Officer shall refer to the Hearing Officer's relationship with the Commission as "hearing officer."

ARTICLE 7: LIABILITY AND INDEMNIFICATION

The Hearing Officer shall be responsible for all damages to life and property due to activities of the Hearing Officer, as well as agents or employees of the Hearing Officer in

connection with performance of services pursuant to this Agreement. The Hearing Officer shall indemnify, defend and save harmless 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 attorney fees, that may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of the Hearing Officer, his or her employees, agents, successors and assigns.

ARTICLE 8: CONFLICTS OF INTEREST

(1) If the Hearing Officer has a conflict of interest based upon his or her other business or personal relationships that would render the Hearing Officer unable to legally and ethically perform the services required under this Agreement, the Commission may terminate this Agreement immediately upon written notice. The Hearing Officer shall notify the Commission of any such conflict upon becoming aware of such conflict.

(2) Hearing Officer will make all reasonable efforts to avoid having the provision of services under this Agreement by the Hearing Officer, or his/her employees or agents, result in such a conflict of interest, or in the appearance of such a conflict of interest.

(3) Hearing Officer has an on-going responsibility to inform the Commission of any real or apparent conflict of interest.

ARTICLE 9: SECURITY AND CONFIDENTIALITY

(1) The Hearing Officer shall comply with all applicable facility and information security policies and procedures of the Commission and the State in performing services under this Agreement.

(2) The Hearing Officer may not connect (either through hardwired or wireless means) any non-Commission computer or telecommunications equipment to the Commission network without prior written approval. Personal and corporate laptop computers are included in this prohibition.

(3) The Hearing Officer 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). The Hearing Officer shall be liable for the costs associated with such breach if caused by the Hearing Officer's negligent or willful acts or omissions, or the negligent or willful act or omission of the Hearing Officer's agents and employees.

(4) The Hearing Officer understands that in the performance of services under this Agreement, the Hearing Officer and his/her agents and employees may receive or have access to "Personal Information." For purposes of this Agreement, the term "Personal Information" shall include (but not necessarily be limited to) an individual's Social Security number, driver's license number, or non-driver identification card number; an individual's account number, credit card number, or passwords which would permit access to an individual's financial information; evidentiary exhibits; medical records; and hearing transcripts.

(5) The Hearing Officer agrees that the Hearing Officer and his/her employees and agents are: (i) required to take all appropriate action to protect the confidentiality of Personal Information supplied to, or received by, the Hearing Officer in the course of his/her performance of services under this Agreement; (ii) required to abide by all Commission policies and procedures related to the treatment of Personal Information; (iii) prohibited from copying, communicating or otherwise disclosing Personal Information unless specifically directed by the Commission, or as specifically required to provide services to the Commission under this

Agreement; and (iv) required to immediately notify the Commission of any unauthorized disclosure, breach, or suspected breach, of such Personal Information. The Hearing Officer shall be liable for the costs associated with any notification required if the unauthorized disclosure, breach, or suspected breach of such Personal Information is caused by the Hearing Officer's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Hearing Officer's agents or employees.

(6) Upon the Commission's written request, the Hearing Officer shall return to the Commission all Personal Information; all tangible and intangible Commission property; all hearing transcripts, exhibits, reports, briefs, correspondence and other hearing-related documents; and all records thereof.

(7) As soon as the items described in the foregoing subdivision (6) of this Article are no longer necessary for the Hearing Officer's performance of his/her obligations hereunder, (but in all events no later than 30 days after such time), the Hearing Officer shall cause to be shredded all hard copies of such items, and shall permanently delete or otherwise destroy all such information that is stored electronically.

(8) The provisions of this section shall survive the termination or expiration of this Agreement.

ARTICLE 10: TERMINATION

1. The Commission shall have the right to terminate this Agreement for convenience or for any of the following causes:

(a) A material breach by the Hearing Officer of any of the provisions of this Agreement;

(b) A determination by a court of competent jurisdiction that the Hearing Officer is bankrupt or insolvent;

(c) A good faith determination by the Commission that continuation of the Agreement could place the integrity of the Commission or the Commission in jeopardy;

(d) A conviction of the Hearing Officer or any of its directors, officers, or employees of any criminal offense connected to the Hearing Officer's business that, in the sole reasonable opinion of the Commission, would be prejudicial to public confidence in the Commission or the Commission; or

(e) It is found that the certification filed by the Hearing Officer in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Commission may exercise its termination right by providing written notice to the Hearing Officer in accordance with the written notice terms of this Agreement.

In the event that the Commission decides to exercise the right to terminate this Agreement for cause, the Commission shall give the Hearing Officer 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 Hearing Officer 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 Commission 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 (d) of Paragraph (1) of this Article, the cause for termination shall be deemed to be cured if the

Hearing Officer causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such 30-day period.

2. Upon written notice to the Hearing Officer, and a reasonable opportunity to be heard with appropriate Commission officials or staff, the Contract may be terminated by the Executive Director or his or her designee at the Hearing Officer's expense where the Hearing Officer is determined by the Executive Director or his or her designee to be non-responsible. In such event, the Executive Director or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

3. The Hearing Officer shall have the right to terminate this Agreement without cause, effective 30 days after written notice of the exercise of such right has been provided to the Commission.

4. Whether termination is for cause or convenience, the Commission's sole obligation shall be to pay the Hearing Officer's fees and disbursements for services rendered prior to the effective date of termination. In the event of termination, the Hearing Officer shall immediately deliver to the Secretary all materials in the possession of the Hearing Officer relating to any hearing assigned to Hearing Officer, organized in a manner that the Secretary may direct to assist the Commission in maintaining an accurate record of the proceedings and, if necessary, transfer a hearing to another Hearing Officer.

ARTICLE 11: RECORDS RETENTION

Records required by this Agreement to be retained by the Hearing Officer 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 Hearing Officer.

ARTICLE 12: NOTICES

1. Except as otherwise provided in this Agreement, any notice or other communication given pursuant to this Agreement shall be in writing and shall be effective upon the first to occur of (a) personal delivery to the party for whom intended, or (b) five days following deposit of the notice into the United States Postal Service mail (certified mail, return receipt requested, or first class postage prepaid), or (c) actual receipt by the intended party, if the notice is sent by overnight mail service or by electronic means.

2. Any notice given by the Hearing Officer to the Commission in direct relation to the provisions of this Agreement (including a change of contact information, and excluding invoices) under this Agreement shall be sent by mail, addressed to:

General Counsel
New York State Gaming Commission
P.O. Box 7500
One Broadway Center
Schenectady, NY 12301

With a copy to:

Supervisor of Contract Administration
New York State Gaming Commission
P.O. Box 7500
One Broadway Center
Schenectady, NY 12301

Any notice given by the Commission to the Hearing Officer shall be sent by mail, addressed to:

Michael Katzer
1972 New Scotland Rd # 504
Slingerlands, New York 12159

Either party may designate different contact information by giving written notice to the other in accordance herewith.

ARTICLE 13: DOCUMENTS INCORPORATED

Appendix A, Standard Clauses for New York State Contracts, dated January 2014; the RFQual; and the Response are hereby incorporated herein to the same force and effect as if set forth at length hereat.

ARTICLE 14: 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 Article:

(a) Appendix A;

(b) Any amendments to the Agreement;

(c) Agreement;

(d) Request for Qualification and any clarifying responses by the Commission;

(e) Hearing Office Response and any clarifying responses by the vendor.

ARTICLE 15: MISCELLANEOUS

1. 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.

2. This instrument and the documents incorporated herein represent the entire agreement between the Commission and the Hearing Officer, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

3. 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 latter day and year written below.

MICHAEL KATZER

By: Michael Katzer

Title: Hearing Officer

Date: 4/25/2015

NEW YORK STATE
GAMING COMMISSION

By:

Title:

Date: 5/7/15

STATE OF New York)
) ss.:
COUNTY OF Albany)

On this 25th day of April, 2015, before me personally came Michael Katza, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

Notary Public

ALETHEA J SNYDER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SN6298016
Qualified in Albany County
My Commission Expires March 10, 2018

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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

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

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

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

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

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

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

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

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

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

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

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

The Omnibus Procurement Act of 1992 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.