

VENDOR CONTRACT AGREEMENT
NYS DEPARTMENT OF STATE

CONTRACT NO. C1001200

THIS IS AN AGREEMENT made by and between the NEW YORK STATE DEPARTMENT OF STATE, 99 Washington Avenue, One Commerce Plaza, Albany, NY 12231 ("Department") and WEST PUBLISHING CORPORATION, 610 Opperman Drive, Eagan MN 55123, Vendor Number 1000004857 ("Contractor"), (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Department by Request for Proposal 18-ADM-11 formally requested the submission of proposals to support and enhance the production and distribution of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) the New York State Register, and certain other items specified in the Request for Proposal, and

WHEREAS, the Contractor in response has submitted a proposal and demonstrated the willingness and ability to provide the services, and

WHEREAS, the Department has evaluated the proposal and selected the Contractor in accordance with the terms and conditions of the Request for Proposal,

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Entirety of Agreement.

This Contract consists of the following elements:

- a. the body of this Contract (*i.e.*, that portion preceding the signatures of the Parties in execution), including any amendments;
- b. Appendix A, "Standard Clauses for all New York State Contracts," as revised January 2014;
- c. Exhibit 1, the Request for Proposal (Proposal Identification 18-ADM-11) issued by the Department on April 2, 2019 attached thereto and made a part hereof; and
- d. Exhibit 2, Contractor's Proposal, together with all attachments and appendices, submitted to the Department and opened on May 22, 2019, attached hereto and made a part hereof.

2. Order of Precedence.

In the event of any inconsistency or conflict in the interpretation among the provisions of this Contract, the conflict shall be resolved by giving precedence to the elements in the following order:

- a. Appendix A;
- b. Appendix X;
- c. the body of the Contract;
- d. Exhibit 1 (Request for Proposal);
- e. Exhibit 2 (Contractor's Proposal).

3. The Work.

The Contractor shall perform the work as specified in Exhibit 1.

4. Performance.

The Contractor shall perform all services in accordance with the provisions of this Contract, applicable Federal, state, and local laws, rules and regulations, and, where applicable, operating certificates for facilities or required licenses and permits. This Contract shall be performed at no cost to the State of New York or this Department. The failure of the Department at any time to require performance of any provision or provisions of this Contract by the Contractor shall in no manner affect the Department's right to enforce the provision(s) at a later time.

5. Contract Period.

This Contract shall commence on the date the Contract is fully executed by all parties on October 1, 2019, and shall continue until September 30, 2024. Unless sooner terminated in accordance with the provisions of this Contract, the contract period shall last five (5) years. The term of the Contract may be extended once for a five-year period, upon mutual consent of both parties and with the approval of the State Comptroller.

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6. Independent Contractor.

The Contractor is an independent contractor and not an agent or employee of the Department, the State of New York, or any of its agencies. The Contractor shall not represent to any third parties that it is an agent of or otherwise entitled to act on

behalf of or bind the Department or the State of New York. Nothing in this Contract shall create or be construed to create any contractual relationship between the Department or the State and any subcontractor, supplier or other third party.

7. Subcontracting.

The Contractor, with the prior written approval of the Department, may subcontract for any portion of the activities covered by this Contract. The Contractor shall take full responsibility for the acts and omissions of its subcontractors in the performance of this Contract. No subcontract shall impair the rights of the Department under this Contract. No contractual relationship shall be deemed to exist between any subcontractor and the Department or the State of New York. The Contractor shall make every reasonable attempt to notify New York State business enterprises, including certified minority-owned and women-owned businesses, of opportunities to participate as subcontractors and suppliers under this Contract.

8. Indemnification.

The Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Department from suits, actions, damages and costs of every name and description relating to any claims, loss or liability for death or personal injury or damage to real or personal tangible property caused by any intentional act or negligence of the Contractor, its agents, employees, partners or Subcontractors, which shall arise or result from this Contract, without limitation, and for all other claims, loss or liability which shall arise or result from this Contract, provided, however, that the Contractor shall not be obligated to indemnify the Department to the extent any claim, loss or damage arising hereunder is due to the negligent act, failure to act, gross negligence or willful misconduct of the Department.

The Department shall give the Contractor:

- a. prompt Notice of any action, claim or threat of suit, or other suit,
- b. the opportunity to take over, settle or defend such action, claim or suit at the Contractor's sole expense, and
- c. assistance in the defense of any such action, claim or suit at the expense of the Contractor.

In the event that an action or proceeding at law or in equity is commenced against the Department arising out of any claim, loss or liability covered by this article that is caused by any intentional or willful act, gross negligence, or negligence of the Contractor, its agents, employees, partners or Subcontractors, which shall arise or result from the Goods, Services, and System supplied under this Contract, and the

Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, the Contractor shall immediately notify the Department and the New York State Office of the Attorney General in writing and shall specify to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract, and to what extent it is not so obligated to defend and indemnify. The Contractor shall in such event attempt to secure a continuance to permit the Department to appear and defend their interests in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses the Department may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

Indemnification of the Contractor by the State is prohibited under the Contract.

Indemnification Related to Infringement

The Contractor will also defend, indemnify and hold the Department harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided:

- a. such claim arises solely out of the Goods, Services, and System as supplied by the Contractor, and not out of any modification to the Goods, Services, and Systems made by the Department or by someone other than the Contractor at the direction of the Department without the Contractor's approval; and
- b. the Department gives the Contractor prompt notice of any such action, claim suit or threat of suit alleging infringement.

The Department shall give the Contractor the opportunity to take over, settle or defend such action, claim or suit at the Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of the Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against the Department in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Department's negligent act, failure to act, gross negligence or willful misconduct.

If usage of Goods, Services, or Systems shall be enjoined for any reason or if the Contractor believes that it may be enjoined, the Contractor shall have the right, at its own expense and sole discretion, to take action in the following order of precedence:

- a. to procure for the Department the right to continue usage;
- b. to modify the Goods, Services, or Systems so that usage becomes non infringing, and is of at least equal quality and performance; or
- c. to replace such Goods, Services, or System, or parts thereof, as applicable, with non-infringing Goods, Services, or Systems of at least equal quality and performance.

If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that the Department is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of the Goods, Services, or System under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and the Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, the Contractor shall immediately notify the Department and the Office of the Attorney General in writing and shall specify to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. The Contractor shall in such event protect the interests of the Department and seek to secure a continuance to permit the Department to appear and defend their interests in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses the Department may have. This constitutes the Department's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

9. Force Majeure.

Neither party shall be liable for losses, defaults or damages under this Contract which result from delays in performing, or the inability to perform, all or any of the obligations or responsibilities imposed on either party pursuant to the terms and conditions of this Contract due to or because of acts of God, the public enemy, earthquake, floods, typhoons, civil strife, force majeure or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

10. Termination.

- a. NOT FOR FAULT:

This Contract may be terminated upon mutual written agreement of the Department and the Contractor.

b. FOR FAULT:

i. In the event that the Department determines that the Contractor has failed to comply with the material terms and conditions of this Contract (as determined by the Department), any of the certifications to which the Contractor has certified in the Proposal Form or with any Federal, State or local law, rule, regulation, policies or procedures with which the failure to comply would materially adversely affect this Contract, the Department shall notify the Contractor.

ii. Such notice shall specify such failure to comply and unless otherwise prohibited by statute, shall specify a reasonable period, but not less than 30 days from receipt of the notice, that the Contractor has to correct such failures.

iii. The Department reserves the right to suspend all work during the period provided in the notice.

iv. If the Contractor does not correct such failures during any period which may be provided for in the notice, the Contract shall be deemed to be terminated after the expiration of the period provided in such notice.

11. Remedies for Breach.

If the Contractor fails to observe or perform any term or condition of the Contract the Department may exercise all rights and remedies available at law or in equity. It is understood and agreed that the rights and remedies available to the Department in the event of the Contractor's breach or failure to observe or perform any term or condition shall include, but not be limited to, the following:

a. Cover/Substitute Performance. In the event of the Contractor's material, uncured breach, the Department may, with or without issuing a formal Solicitation:

i. Purchase from other sources; or

ii. If the Department is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Goods, Services, or Systems of equal or comparable quality,

the Department may acquire acceptable replacement Goods, Services, or Systems of lesser or greater quality.

- b. Bankruptcy. In the event that the Contractor files, or there is filed against the Contractor, a petition under the U.S. Bankruptcy Code during the term of this Contract, the Department may, at its discretion, make application to exercise their right to set-off against monies due the debtor or, under the doctrine of recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.
- c. Reimbursement of Costs Incurred. The Contractor agrees to reimburse the Department promptly for any and all additional costs and expenses incurred for acquiring acceptable replacement Goods, Services, or Systems. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees, shall be paid by the Contractor.
- d. Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Department may obtain replacement Goods, Services, or Systems temporarily and the cost of the replacement Goods, Services, or Systems shall be charged to the Contractor without penalty or liability to the Department.
- e. Deduction/Credit. Sums due as a result of these remedies may be deducted or offset by the Department from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Department the amount of such claim or portion of the claim still outstanding, on demand. The Department reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

12. Federal Equal Employment Opportunity Act.

The Contractor shall assure compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.

13. Nonsectarian.

Services performed pursuant to this Contract are secular in nature and shall be performed by the Contractor in a manner that does not discriminate on the basis of

religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

14. Personal Information.

a. The Contractor shall maintain information relating to individuals who may receive services pursuant to this Contract in conformity with applicable provisions of law, rules and regulations.

b. The Contractor, its officers, employees, agents, successors and assigns shall not disclose or release, other than may be required by this Contract, any information obtained in the course of its performance.

15. No Additional Terms.

No additional or alternative terms and conditions may be incorporated by the Contractor into the Contract by unilaterally affixing them to the Goods, Services, or Systems upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms and conditions onto order forms, contracts or other documents forwarded by the Contractor for payment, notwithstanding the Department's subsequent acceptance of Goods, Services, or Systems, or that the Department has subsequently processed such document for approval or payment.

16. Proposal Ownership.

All proposals and accompanying documentation become the property of the State of New York and will not be returned. The Department reserves the right to use any portions of the Contractor's proposal not specifically noted as proprietary.

17. Cooperation with Third Parties.

The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other contractors or Subcontractors of the State, as necessary to ensure delivery or performance of Goods, Services, or System and fully perform and observe the terms and conditions of the Contract.

18. Extensions/Amendments.

a. This Contract may be amended to extend the Contract period for one individual extension period of five years, upon mutual agreement of both Parties, under the Pricing Schedule provisions specified on the Proposal Form, and shall be deemed fully executed when approved by and filed in the Office of the State Comptroller.

b. Other terms or conditions of this Contract may be amended by mutual agreement of both Parties.

c. Any alteration of the terms or conditions of this Contract shall constitute an amendment which shall be in writing and shall not be valid unless signed by the Contractor and, for the Department, signed by the Secretary of State, a Deputy Secretary of State, the General or Deputy Counsel, or the Director of Administration and Management, and shall be deemed fully executed when approved by and filed in the Office of the State Comptroller.

19. Appendix A.

The Contractor shall be bound by the terms and provisions of Appendix A, as revised January, 2014, containing the statutory terms and conditions applicable to contracts to which New York State is a party.

20. Severability.

Any part of this Contract that is contrary to the laws of the State of New York shall not invalidate any other part of this Contract.

21. Rights and Responsibilities.

The rights, duties and remedies set forth in the elements of this Contract shall be in addition to and not in limitation of rights and obligations otherwise available at law.

22. Headings and Captions.

The headings and captions contained within this Contract are intended solely for convenience and reference purposes and shall in no way be deemed to define, limit or describe the scope or intent of this Contract, or any provisions thereof, nor in any way affect this Contract.

23. Integration Clause.

This Contract constitutes the entire understanding of the Parties to it and the Parties agree that there are no understandings, representations or warranties, either express or implied, whether written or oral, made by either Party except as may be expressly set forth herein.

24. Guaranty or Surety Bond.

The Contractor shall furnish, as soon as practicable following execution of this Contract, a surety bond in the amount of \$1,000,000. The conditions of the bond shall be that, in case of failure or refusal on the part of the successful Contractor and/or subcontractors to perform any of the covenants contained in this Contract, the

Contractor shall forfeit and pay to the People of the State of New York the sum of \$1,000,000, which sum is hereby agreed upon, not as a penalty but as fixed, stipulated and liquidated damages suffered by the People of New York, to be sued for and recovered by the Attorney General in the name of and for the benefit of the People of the State of New York.

For each day's failure by the Contractor to keep on hand, sell, furnish or deliver the contract product at the established prices in the manner and time fixed by this Contract, provided such failure has not been caused or substantially contributed to by the acts or omissions of the Department or its employees or agents, the Contractor shall forfeit and pay for each day's failure the sum of two thousand five hundred dollars (\$2,500), hereby fixed and agreed upon, not as a penalty but as fixed, stipulated and liquidated damages suffered by the People aforesaid, the same to be sued for and recovered by the Attorney General, in the name and for the benefit of the said People of New York State, provided that the aggregate of such damages shall not exceed the sum of two hundred fifty thousand dollars (\$250,000).

The bond shall be acceptable to the Secretary of State as to form, manner of execution, and sufficiency of sureties, and shall be delivered in duplicate.

25. Warranty.

The Contractor warrants and represents that: Defects shall be corrected promptly by the Contractor at no cost or expense to the Department. The Warranty Period shall be for the term of the Contract or for the period of intended use by the Department, whichever is longer. The Warranty Period shall be tolled and then extended for the cumulative period during which the Goods, Services, or System requires correction. The Goods, Services, and Systems shall be substantially free from defects in material and workmanship for the Warranty Period.

Any Goods, Services, and Systems acquired by the Department shall not contain any known viruses. The Contractor is not responsible for viruses introduced by the Department or third parties at the Department's site. Goods, Services, and Systems furnished pursuant to this Contract shall be able to accurately process date/time Data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations.

The Contractor is not responsible for any modification of the Goods, Services, and System made by the Department without the Contractor's approval. The Department shall promptly notify the Contractor of any claim of breach of any warranty provided herein. The rights and remedies of the Department are in addition to and do not limit any rights afforded to the Department by any other clause of the Contract.

26. Protection of Data, Infrastructure, and Software.

The Contractor shall provide physical and logical security for all data, infrastructure (e.g., hardware, networking components, physical devices), and software related to the services pursuant to this Contract. All data security provisions agreed to by the Parties may not be diminished for the duration of the Contract without prior written agreement by the parties.

The Contractor shall be responsible for backing up all data, having system redundancy, and securing all data in accordance with NYS Office of Information Technology Services policies, available at:
<https://its.ny.gov/tables/technologypolicyindex>

27. No Hardstop/Passive Monitoring.

The Contractor hereby warrants and represents that the Goods, Services, and System and all upgrades, do not and will not contain any computer code that would disable or impair in any way their operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit the Contractor to access the Goods, Services, or Systems to cause such disablement or impairment (sometimes referred to as a "trap door" device). The Contractor agrees that in the event of a breach or alleged breach of this provision the State shall not have an adequate remedy at law, including monetary damages, and the State shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which the State shall be entitled.

28. Data Breach-Required Contractor Actions.

Unless otherwise provided by law, in the event of a data breach, the Contractor shall:

- a. notify the ITS EISO and provide Notice to the Department; and contact both by telephone as soon as possible, but in no event more than 72 hours from the time the Contractor confirms data breach;
- b. consult with and receive authorization from the State prior to notifying any affected parties to whom notice of the data breach is required, either by statute or by the State;
- c. coordinate all communication regarding the data breach with the ITS EISO and the Department (including possible communications with third parties); and
- d. cooperate with the ITS EISO, and any contractor working on behalf of the Department or ITS EISO in attempting to:

- i. determine the scope and cause of the breach;
- ii. prevent the future recurrence of such security breaches; and
- iii. take such corrective actions that the Contractor deems necessary to contain the Data Breach.

The Contractor shall provide Notice to the Department as to all such corrective actions taken by the Contractor to remedy the data breach. If the Contractor is unable to complete the corrective action within the required timeframe, the Department may consider such inability as a breach of the contract, and may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the Department, or until the Department has completed a new procurement for a replacement service system. The Contractor will be responsible for the reasonable cost of these services during this period.

Nothing herein shall in any way impair the authority of the State or the Office of the Attorney General to bring an action against the Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA), limit the Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations, or limit the State's other remedies available under the Contract, at law, or in equity.

29. Transferring of Data.

Except as required for reliability, performance, security, or availability of the services, the Contractor will not transfer data, unless directed to do so in writing by the Department.

At the request of the Department, the Contractor shall provide the services required to transfer data from existing databases to physical storage devices, to facilitate movement of large volumes of data. The Contractor will provide notice to the Department when and if they move the Department's data to a new location.

At the end of the contract, the Contractor may be required to facilitate the transfer of data to a new contractor. The Department will, by notice, prescribe a commonly available format for the data and delivery methodology (physical device, FTP etc.) at the time of data transfer. The Contractor shall transfer the data without charge or compensation. Notwithstanding any other provision of the contract, in the event of Contract breach or termination for cause of the contract, all expenses for the transfer of data shall be the responsibility of the Contractor.

Transfers of data may include, but are not limited to, conversion of all data into or from an industry standard format or by the Contractor providing an application programmable interface to complete the transfer of data as required by the Department.

30. Secure Data Disposal.

Upon notice by the Department, the Contractor shall destroy data in all of its forms, including all back-ups. Data shall be permanently deleted and shall not be recoverable, according ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor. Certificates of destruction, in a form acceptable to the State, shall be provided by the Contractor to the Department.

31. Problem Resolution.

All correspondence required under this Contract shall be transmitted to representatives of each Party as follows:

For the Department:

Jane Hamm, Director
Division of Administrative Rules
NYS Department of State
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231
Jane.hamm@dos.ny.gov
518-474-6785

For the Contractor:

John Nelson
West Publishing Corporation
610 Opperman Drive
Eagan, MN 55123
John.s.nelson@thomsonreuters.com
651-687-4406

32. Trade Secrets.

The Contractor claims no exceptions from disclosure under Public Officers Law section 87(2)(d) for any materials in Exhibit 2.

33. Internal Processes.

The Contractor, without the prior approval of the Department or without the necessity of amending this Contract, may make changes to its internal processes applicable to the work to be performed pursuant to this Contract (including, without

limitation, reallocating personnel and acquiring and disposing of equipment and property), that do not materially adversely affect the Contractor's performance of the work under this Contract (notwithstanding the identification in Exhibit 2 of persons proposed to be assigned to the work, real or personal property to be used in the performance of the work, or other internal processes applicable to the work). The Contractor shall make no changes in the form or style of the work without consultation with and consent of the Department.

34. Time for Performance.

The schedules and timelines in Exhibit 2 will require the Contractor to commence work on meeting its obligations under this Contract on the October 1, 2019 Contract start date.

35.

A. No Cost Contract

There is no cost to NYS associated with this contract.

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B. Legislative Mandates.

The Parties agree that in the event any future legislative mandate substantially increases the Contractor's costs in preparing, publishing, or distributing the work, the Contractor shall have the right to petition the Department for consent to increase pricing (effective upon the distribution of any supplementation required to comply with such legislative mandate), in addition to its right to increase pricing as set forth in Exhibit 1.

The Parties agree that the immediately preceding sentence pertains exclusively to potential future cost increases that may be passed on by West to state and private product subscribers as a result of potential future legislative mandates impacting Contractor's cost for providing same. As such, any subscriber cost increases pursuant to this Contract would not change New York State's characterization of this Contract as a "no cost" Contract.

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36. Exclusive Publisher.

a. The Department grants to the Contractor during the term of this contract the exclusive right to prepare, publish, and distribute the Official Compilation of Codes, Rules and Regulations of the State of New York in whole or in part, in all media of expression now known or hereafter developed. In furtherance thereof, the Department shall not license to any third party the use of the master electronic tape or any other electronic media of the Official Compilation of Codes, Rules and Regulations of the State of New York for commercial purposes. This shall not be construed to impair any right or duty of the Secretary of State as custodian of the records in the Department nor to prevent certification of such records, including the master compilation of codes, rules and regulations (as referenced in Executive Law section 102) or any portion thereof.

b. In addition, the Department grants to the Contractor during the term of this contract the exclusive right to reprint, reproduce, distribute, and market portions and/or compilations of portions of the Official Compilation of Codes, Rules and Regulations of the State of New York (customarily known as spin-off or slice products), provided the Department will be permitted,

from time to time, to receive copies of and review such products for accuracy. In furtherance thereof, the Contractor shall have the right to transfer or license such right to reprint, reproduce, distribute and market portions and or compilations of portions of the Official Compilation of Codes, Rules and Regulations of the State of New York to any affiliate of the Contractor.

37. Copyright.

- a. The Contractor shall make good faith efforts to secure a copyright for all material in the NYCRR. The copyright for the annotations and other editorial work of the Contractor shall be in the name of the Contractor. The copyright for all other copyrightable material shall be in the name of the Secretary of State for the benefit of the People of the State of New York.
- b. In furtherance of the rights granted to the Contractor hereunder, in the event a third party publishes a compilation of the codes, rules, and regulations of the State of New York, or takes any action related thereto, the Department agrees to cooperate with the Contractor in connection with bringing a claim for copyright infringement against such third party.
- c. To assure continuity of the NYCRR, the Contractor hereby grants to the Secretary of State a license to use the annotations and other editorial works of the Contractor for the duration of the copyright period. This license is limited to the NYCRR and does not extend to any other use of the copyrighted material. The Secretary may assign this license to any future contractor who publishes the NYCRR upon termination of this Contract.

38. Key Personnel

- a. Each party will be responsible for the supervision, direction, control, and compensation of their respective personnel.
- b. All employees, subcontractors or agents performing work must meet or exceed the technical or other qualifications set forth in this RFP. Contractor acknowledges that the skill and experience of personnel to be assigned to the scope of work set forth in this RFP is a material element in executing the Contract. The Department must be notified of any changes in key personnel that may take place during the course of the contract.
- c. The Department may refuse access to or request replacement of any individual if such individual renders, in the sole judgment of the Department, inadequate or unacceptable performance of services, or for any other reason the Department finds such individual does not meet the security or responsibility requirements of the State. Upon notification from the Department, the Contractor shall work with the Department to resolve any staffing concerns that the Department may have. The replacement must possess comparable skills and experience as the person replaced.

39. Insurance Requirements

Prior to the commencement of the work to be performed by the Contractor hereunder, the Contractor shall provide copies of required insurance certificates to the Department evidencing compliance with all requirements contained in this Section. Such Certificates shall be of a form and substance acceptable to the Department.

Certificate acceptance and/or approval by the Department does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall be obtained at the sole cost and expense of the Contractor; shall be maintained with insurance carriers acceptable to the Department; shall be primary and non-contributing to any insurance or self-insurance maintained by the Department; shall be endorsed to provide written notice be given to the Department, at least 30 days prior to the cancellation or non-renewal of such policies, with notice, evidenced by return receipt of United States Certified Mail; shall be sent to:

LuAnn Hart
NYS Department of State Bureau of Fiscal Administration
One Commerce Plaza, 99 Washington Avenue, Suite 1110
Albany, NY 12231

and shall specify Bid #18-ADM-11 and name the Department as certificate holder thereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85). The Department as certificate holder requirement does not apply to Workers Compensation, Disability or Professional Liability coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject.

The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Contractor shall not take any action, or fail to take any action that would suspend or invalidate any of the

required coverages during the period of time such coverages are required to be in effect.

Not less than 30 days prior to the expiration date or renewal date, the Contractor shall supply to the Department updated replacement Certificates of Insurance, and amendatory endorsements.

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

- a. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse and underground coverage.

If such insurance contains an aggregate limit, it shall apply separately on a per job or per project basis.

- b. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
- c. If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product, hazardous material or substance, the Contractor shall maintain in full force and effect throughout the term hereof, pollution legal liability insurance with limits of not less than \$5,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Department arising from the Contractors work.
 - i. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.
 - ii. If the Contract includes disposal of materials from the job site, the Contractor must furnish to the Department, evidence of pollution legal liability insurance in the amount of \$2,000,000 maintained by the disposal site

operator for losses arising from the disposal site accepting waste under this Contract.

If autos are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90.

- d. If providing professional services, the Contractor shall maintain, or if subcontracting professional services, shall certify that Subcontractor maintain, errors and omissions liability insurance with a limit of not less than \$1,000,000 per loss.
 - i. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract and, if the project involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses.
 - ii. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period exercised, for a period of not less than two years from the time work under this Contract is completed.
- e. Waiver of Subrogation. The Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the Department, or, if such waiver is unobtainable (a) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against the Department or (b) any other form of permission for the release of the Department.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year written below, and the person's signing this Agreement represent and warrant that they are duly authorized to sign on behalf of the respective Parties.

Approved by:

WEST PUBLISHING CORPORATION

John Nelson

By: John Nelson

Date: September 10, 2019

NEW YORK STATE
DEPARTMENT OF STATE

Judith E. Kenny

By: Judith E. Kenny

Date: 9/29/19

NYS Department of State
Director of Administration

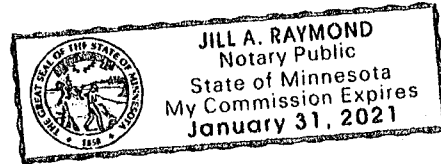
Minnesota

STATE OF NEW YORK
COUNTY OF Dakota

) ss:

On this 10th day of September, 2019, before me came John Nelson, to me known and known to me to be the person described in and who executed the foregoing instrument on behalf of West Publishing Corporation, and he acknowledged to me that he executed the same.

Jill A. Raymond
NOTARY PUBLIC



ATTORNEY GENERAL

By: _____
Date: _____
APPROVED AS TO FORM
NYS ATTORNEY GENERAL
OCT 29 2019
Lorraine I. Remo
LORRAINE I. REMO
SECTION CHIEF

STATE COMPTROLLER

By: _____
Date: _____
APPROVED
DEPT. OF AUDIT & CONTROL
NOV 21 2019
David Brunster
FOR THE STATE COMPTROLLER

APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

January 2014

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

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

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

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

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

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

the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

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

14. GOVERNING LAW. 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.