

**VIDEO LOTTERY TERMINALS, GAMES, SOFTWARE AND MAINTENANCE
C202017L1SG
SG GAMING, INC.**

THIS AGREEMENT made this 14th day of April, 2021 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 SG Gaming, Inc., having an office at 6601 South Bermuda Road, Las Vegas, NV 89119 (the "Contractor").


WHEREAS the Commission issued a Request for Proposals ("RFP") on February 1, 2021 soliciting proposals from qualified firms to provide a Video Lottery Terminals, Games, Software and Maintenance, and clarified the requirements of the RFP with questions and answers dated February 23, 2021, March 1, 2021 and March 8, 2021 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal for Lot 1 (Primary Supplier) dated March 19, 2021 (collectively, the "Proposal"), which was deemed to be the Best Value, from among competing proposals by the Commission's evaluation team;

WHEREAS Lot 1 provides the Contractor an award to supply at least 25 percent of the Video Lottery Terminals ("VLTs") at licensed facilities in the state of New York (the "licensed Video Lottery Gaming facilities") in exchange for a guarantee that the Contractor will supply up to 50 percent of the VLTs required at the licensed Video Lottery Gaming facilities if required subject the restrictions and requirements contained within the RFP;

Loose notarial certificate attached

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

1. Scope of Services. The Contractor agrees to provide the Commission with a VLTs, games, software and maintenance in connection with the operation of video lottery program at licensed Video Lottery Gaming facilities, as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are hereby incorporated into this Contract with the same force and effect as if they were fully set forth herein.
2. Term. This Contract shall be effective July 1, 2021 through December 31, 2029.
3. Regulations. Contractor agrees to familiarize itself with the regulations issued by the Commission concerning the operation of video lottery gaming within the State and to comply with same.
4. Licensing. Contractor agrees to submit to licensing procedures established by the Commission and recognizes that satisfactory licensing is a condition of successful performance of the Contract. Failure to maintain the required license shall be cause for termination of the Contract.
5. Financial Arrangements.
 - a. Compensation. In full consideration for all goods and services specified in the RFP and the Proposal, the Commission agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal, unless otherwise stated herein. No minimum amount is guaranteed by this Contract and the Contractor shall not have any right to make a claim therefore. Expenditures under this Contract shall not exceed \$685,000,000. 
 - i. For purposes New York State Finance Law and Article 34 of the New York State Tax Law, the goods and services specified in the RFP and the Proposal

qualify the Contractor to be considered a “licensed lottery sales agent” a “licensed lottery retailer” or a “retailer” as that term is used in Article 34 of the New York State Tax Law, permitting the compensation for services through the retention of a portion of sales revenue.

- ii. The Commission shall each week utilize video lottery central system reports to calculate the amount of net win and the compensation due and owing to the Contractor consistent with the schedule provided by the Contractor in its Pricing Proposal. Upon verification of amounts, the Commission will direct payment to the Contractor either (a) by the Commission directly or (b) by the Video Lottery Facility from lottery receipts through ACH processing. The Commission understands and agrees that it shall be responsible for the Video Lottery Facility’s failure to make payment to Contractor as provided herein and that it shall pay Contractor directly in event of such failure.
- iii. Cost for Additional Options. The Contractor shall obtain written affirmation from a Video Lottery Gaming Facility accepting the financial responsibility to reimburse the Commission for all costs exceeding the “Average Base Compensation Rate” as defined within the RFP prior to delivery of any options selected by the licensed Video Lottery Gaming Facility. The Commission will not compensate the Contractor for the cost of any options without proof of such affirmation.
 - b. Liquidated Damages.
 - i. The Commission may, in its discretion, deduct liquidated damages from the compensation otherwise due to the Contractor when the circumstances which give rise to a claim for liquidated damages exist. There may be occurrences whereby, in its sole judgement, the Commission determines not to assert its

right to claim liquidated damages, and such determination shall not be precedential or prejudice the Commission's option to assert such right in the future.

- ii. The parties agree that the assessment will be made per occurrence for the liquidated damages described in Section 2.17 of the RFP. The parties further agree that the failures described in Section 2.17 of the RFP may result in loss of revenues to the State of New York far in excess of the amount contained in Paragraph A(4) of Section 2.17 and, therefore, liquidated damages claimed for such failures would not necessarily be limited to damages per occurrence. In that instance, the measure of liquidated damages for failures described in Section 2.17 of the RFP shall be the amount of lost revenue to the State of New York reasonably estimated from historical data. For the purposes of this Contract, lost revenue to the State of New York shall be equal to the portion of net proceeds due to education aid, which shall be calculated as total credits played, less credits won, less promotional credits, less sales agent commissions and less administrative and operating expenses of the Commission applicable to the number of video lottery terminals for a comparable period in question. Damages are assessed when the liquidated damages bear a reasonable proportion to actual losses sustained as a result of Contractor's conduct.

- iii. The Commission shall send written notice of such failure to the Contractor within 30 days of the occurrence. Failure to send such notice constitutes a waiver of any and all liquidated damages with regards to the occurrence.

6. Consent. The Commission agrees that its consent to the Contractor's assignment of its interest and obligations under the Contract shall not be withheld unreasonably.

7. Approvals Required. This Contract, and any extension of the term of this Contract or any amendment of the provisions of this Contract, shall not be effective and binding upon the

Commission, the State of New York, or the Contractor unless and until approved by the New York State Attorney General and the State Comptroller. The Commission agrees to exercise its best efforts to obtain such approval.

8. Mutual Cooperation. The objectives of this Contract include maximizing the net proceeds to the State of New York from video lottery gaming at reasonable rates of compensation to Contractor through the installation and use of a video lottery terminals, games and software as more fully described in the RFP and the Proposal. The parties agree to cooperate fully and in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish these objectives. Contractor agrees to commit to the level and quality of staffing as specified in its Proposal, and to submit quarterly reports to the Commission specifying current staffing levels, personnel, vacancies and plan for filling vacancies.

9. Contractor's Proprietary Rights. The Commission acknowledges the Contractor's proprietary and intellectual property rights in and to Contractor's hardware, system specifications and details set forth in the Proposal and the software heretofore and hereafter created by Contractor for operation of the system on hardware of both the Contractor and the Commission. The Commission further acknowledges that such rights shall survive the expiration or termination of this Contract and agrees to maintain the confidentiality thereof to the extent allowed by law and to render such reasonable assistance as may be necessary to protect and preserve Contractor's interests therein.

11. Limitation of Contractor's Lobbying Activities. Contractor agrees to abide by all applicable rules, regulations and laws relating to its lobbying activities in New York. In addition, Contractor agrees to provide, during the term of this Contract or any extensions thereof, written notification, updated quarterly, to the Commission specifying the name, business address and telephone number of any lobbyist, as that term is defined in Section 1-C of the New York State Lobbying Act (New York State Legislative Law Article 1-A) employed or hired to represent the

Contractor within the State of New York on Commission issues. Failure to provide this information to the Commission will constitute a material breach of the terms of this Contract and be cause for termination.

12. Communication and Contracts. Contractor shall enter into and maintain only authorized communication in regard to the goods and services provided pursuant to this contract with other contractors supplying goods and services to the Commission in furtherance of video lottery gaming within New York State. Contractor agrees to forego entry into any contracts other than this Contract to perform services or supply goods in furtherance of video lottery gaming in New York State unless otherwise approved in writing by the Commission.

13. Termination and Suspension.

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

- (i) a material breach by the Contractor of any of the provisions of this Contract;
- (ii) a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;
- (iii) a good faith determination by the Commission that continuation of the Contract could place the integrity of the Commission in jeopardy; or
- (iv) a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business which, in the sole reasonable opinion of the Executive Director of the Commission, would be prejudicial to public confidence in the New York Lottery or the Commission.
- (v) Grounds for Cancellation. Upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath,

to testify in an investigation, concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract.

Such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the state or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that any and all contracts made with the state or any public department, agency or official thereof, since the effective date of this law, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the state without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the state for goods delivered or work done prior to the cancellation or termination shall be paid.

(b) In the event that the Commission decides to exercise the right to terminate this Contract for cause, the Commission shall give the Contractor written Notice of Intention to Terminate for Cause ("Notice"). Such Notice shall state clearly and specifically the cause for which termination is sought, and the Contractor shall be entitled to a period of thirty (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 (iv) of Paragraph (a) of this section

14, the cause for termination shall be deemed to be cured if the Contractor causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

(c) The Commission reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with New York State's 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 Contractor in accordance with the written notice terms of this Contract.

(d) Upon written notice to the Contractor, 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 Contractor's expense where the Contractor is determined by the Executive Director or his or her designee to be non-responsible or nonresponsible. 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.

(e) 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.

15. Conflict of Interest.

(a) The Contractor has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with the State of New York, that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

(b) The Contractor hereby reaffirms the attestations made in its Proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Contract. The Contractor shall have a duty to notify the Commission immediately of any actual or potential conflicts of interest.

(c) In conjunction with any subcontract under this CONTRACT, the Contractor shall obtain and deliver to the Commission, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the Commission a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

(d) The Commission and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The Commission will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of the Commission, a real or potential conflict of interest cannot be cured.

16. Ticket Purchase and Prize Payment Restrictions. No officer or employee of the Contractor or employee of any subcontractor who is directly involved in game development, has access to game terminals, components that could impact game terminal performance or sensitive information regarding game terminals or software, and no person residing in the same household of such officer or employee shall purchase a New York Lottery video lottery ticket or be paid a prize in any New York Lottery video lottery game. The Contractor shall ensure that this requirement is made known to each officer and employee of the Contractor and any subcontractor. "Subcontractor" is defined as those who play a major role in providing video lottery games and who are employed by the Contractor during the life of the Contract.

17. Confidentiality and Non-Disclosure.

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

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

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

- (ii) is already known by the Contractor free of any confidentially obligations;
- (iii) is information that the Commission has approved in writing for disclosure; or
- (iv) is required to be disclosed by the Contractor pursuant to law or applicable professional standards, so long as the Contractor provides the Commission with notice of such disclosure requirement and an opportunity to defend prior to any such disclosure.

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

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

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

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

19. Notices. All notices required by this Contract shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if

communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

(a) As to the Commission:

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

(b) As to the Contractor:

Contact: Michael Caloiaro
Company Name: SG Gaming, Inc.
Address: 6601 Bermuda Road, Las Vegas, NV 89119

20. Liability and Indemnification. The Contractor shall be responsible for all damages to life and property due to the activities of the Contractor, as well as the activities of the subcontractors (if any), agents or employees of the Contractor in connection with the performance of services under this Contract. The Contractor shall indemnify, defend, and save harmless the Commission and the State of New York, and their officers, employees, agents, assigns and retailers from and against any and all third party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

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

21. Relationship. The relationship of the Contractor to the Commission arising out of this Contract shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission or the State of New York, and that it will not make any claim, demand or application for any right or

privilege applicable to an officer or employee of the Commission or the State of New York, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Contract shall impose any liability or duty on the Commission or the State, of New York on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation insurance, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State of New York against any such liabilities.

22. Force Majeure. A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As herein used, "Force Majeure" means fire, explosion, action of the elements, governmental interference, rationing or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent.

Neither the Contractor nor the Commission shall be liable to the other for any delay in or failure of performance under the Contract resulting from this RFP due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute a default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Commission to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

23. Documents Incorporated. Appendix A, Standard Clauses for New York State Contracts, dated October 2019, the RFP, and the Proposal are hereby incorporated herein and made a part hereof.

24. Order of Precedence. Any conflict between the provisions of this Contract and the documents incorporated herein shall be resolved according to the following order of precedence, from the highest to the lowest:

- (a) Appendix A – Standard Clauses for New York State Contracts;
- (b) Any amendments to the Contract;
- (c) Contract and appendices;
- (d) Request for Proposal and any clarifying responses by the Commission;
- (e) Vendor Proposal and any clarifying responses by the vendor.

25. Miscellaneous Provisions.

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

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

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

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

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

SG GAMING, INC.

By: *Robert J. Varento*
Title: *SVP & CFO*
Date: *April 14, 2021*

NEW YORK STATE
GAMING COMMISSION

By: *[Signature]*
Title: *Executive Director*
Date: *26 April 2021*

ATTORNEY GENERAL

By: _____
Title: _____
Date: _____

COMPTROLLER
Thomas P. DiNapoli

By: _____
Title: _____
Date: _____

APPROVED DEPT. OF AUDIT & CONTROL
Jun 23 2021 James M. Iwaneczko
FOR THE STATE COMPTROLLER

Acknowledgement

ACKNOWLEDGEMENT BY INDIVIDUAL

STATE OF _____)
) ss.:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____, 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

ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION

STATE OF _____)
) ss.:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person described in and who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____ and that he/she executed the foregoing instrument in the firm name of _____, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

Notary Public

ACKNOWLEDGEMENT BY CORPORATION

STATE OF Nevada)
) ss.:
COUNTY OF Clark)

On this 14 day of April, in the year 2021, before me personally came Robert Parente, to me known, who, being by me duly sworn did depose and say that he/she resides in Las Vegas, Nevada; that he/she is the EVP & COO of the SG Gaming, Inc., the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he he/she signed his/her name thereto by like order.

Alejandra Buntrock
Notary Public



ALEJANDRA BUNTROCK
Notary Public, State of Nevada
No. 08-7277-1
My Appt. Exp. Jan. 22, 2024

*This notarial certificate is attached to a VLT Agreement
Appendix B-1*

From: [Maggi, Benjamin](#)
To: [Relation, Stacey \(GAMING\)](#); [Contract Approval](#)
Subject: Approved - RE: Resend: NYS Gaming Commission Contract C202017L1SG SG Gaming - Video Lottery Games
Email 5 of 36
Date: Friday, April 30, 2021 1:10:23 PM

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Approved as to Form: 4/30/2021 by Benjamin Maggi
Received: 4/27/2021

OAG: CAS please file and enter. "P" Amount: 730,000,000

Reminder: Agencies must forward the contract approved by the OAG Contract Approval Section along with the email in which the OAG Contract Approval Section approved the contract, to OSC via the Comptroller's EDSS system. If you are not enrolled in the EDSS system and have not made alternative arrangements with OSC on how to submit your transaction, please contact OSC at 518-408-4672 or email ITServiceDesk@osc.ny.gov.

Benjamin L. Maggi
Assistant Attorney General
New York State Office of the Attorney General
Contract Approval Section
The Capitol, Albany, NY 12224
(518) 776-2350
ATTORNEY CLIENT PRIVILEGED/NOT FOR DISSEMINATION

The information contained in this electronic mail message is privileged and confidential and intended only for the individual or individuals named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please reply to the sender immediately to notify us of the error and delete the original message. Thank you.

From: Relation, Stacey (GAMING) <Stacey.Relation@gaming.ny.gov>
Sent: Tuesday, April 27, 2021 2:53 PM
To: Contract Approval <contractapproval@ag.ny.gov>
Subject: Resend: NYS Gaming Commission Contract C202017L1SG SG Gaming - Video Lottery Games
Email 5 of 36

[EXTERNAL]

Stacey Relation
Contract Management Specialist 3

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, 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 § 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of 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 (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by 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 Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its 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 clause. 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 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the 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 § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or 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: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should 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.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.