



**Contract No. X300113**

**INTERGOVERNMENTAL  
MEMORANDUM OF AGREEMENT**

**By and Between**

**NYS DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES  
and  
Erie County  
for  
TEMPORARY LOAN OF INTEROPERABLE COMMUNICATIONS RESOURCES**

This Intergovernmental Memorandum of Agreement (MOA) is entered by and between the State of New York **Division of Homeland Security and Emergency Services** (“DHSES” or “State of New York”) with offices located at 1220 Washington Avenue, State Office Campus, Building 7A, 7<sup>th</sup> Floor, Albany, New York 12226 and the County of Erie (“County”) with offices located at 45 Elm Street, Buffalo, New York 14203. The foregoing DHSES and/or County shall sometimes be referred to herein individually as “Party” and collectively as the “Parties.”

**WITNESSETH:**

**WHEREAS**, the DHSES has acquired the hardware, software and user Mutualink Edge Subscription Service for Mutualink interoperability platforms and wishes to temporarily loan such equipment at no cost to New York State Counties for communications purposes; and

**WHEREAS**, this MOA establishes the responsibilities, guidelines and procedures for the deployment and use of the equipment, software and user subscriptions provided to the County by DHSES;

**WHEREAS**, the County acknowledges receipt of said equipment;

**NOW, THEREFORE**, in consideration of the promises set forth herein, be it known that a DHSES hereby grants a temporary revocable permit to County, to use the Interoperable Communications Resources designated in Section 2, subject to the terms and conditions as hereinafter provided:

**1. PURPOSE**

DHSES is providing the opportunity for each County to receive and use equipment, software and/or Mutualink Edge Subscription Service (hereinafter “Interoperable Communications Resources”), further described in Section 2, which will allow counties to communicate on a common platform for emergency management and public safety planning and response purposes. These Resources are being provided on a loan basis and title to the Interoperable Communications Resources shall remain with the State at all times. The State has the right to recall the Interoperable Communications Resources at any moment upon notification, including

the termination of the EDGE User Subscription Service. As such, any permanent granting of the Interoperable Communications Resources must be provided for in a separate written agreement signed by both Parties. The Parties acknowledge that the Interoperable Communications Resources issued under the terms and conditions of this MOA are not intended to provide all the equipment (hardware/software) appropriate and necessary for the operation of an interoperability network, and that the Interoperable Communications Resources issued are intended to enhance the ability of the County to successfully communicate with the State, other user local jurisdictions within that State, and adjoining states.

## **2. DESCRIPTION OF INTEROPERABLE COMMUNICATIONS RESOURCES**

DHSES agrees to provide to the County on a temporary loan basis, a copy of Mutualink Edge software with up to five (5) User Subscriptions for County use, in addition to network interface controllers (NIC) to tie into available County media capabilities. All hardware, software and licenses shall be collectively referred to herein as “equipment” or “Interoperable Communications Resources.” The specific Interoperable Communications Resources loaned to the County pursuant to this MOA are hereby attached as Appendix B.

## **3. TERM AND TERMINATION OF AGREEMENT**

- 3.1 The term of this Agreement, unless amended or extended by written mutual consent of the Parties, shall commence on the first Monday immediately following approval by the Office of State Comptroller and shall terminate after twelve (12) months from the day therefrom, unless terminated earlier pursuant to sections 3.2 – 3.4 below.
- 3.2 DHSES may terminate this MOA immediately, upon written notice of termination to the County, if the County fails to comply with the terms and conditions of this MOA and/or with any laws, rules, regulations, policies or procedures affecting this MOA. Written notice of termination shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice outlined in Section 17.
- 3.3 Either Party shall have the right to terminate this MOA early for: (i) unavailability of funds; (ii) cause; or (iii) convenience upon ten (10) business days’ written notice.
- 3.4 The County may terminate this MOA, upon written notice of termination to the State, if the County is unable or unwilling to comply with the terms and conditions of the MOA. Should the County terminate under this clause, the County shall return all remaining equipment, less ordinary wear and tear, to DHSES. Any subscription or non-hardware services shall be terminated by DHSES pursuant to the notice provisions of this Agreement.

## **4. TERMS OF USE**

The Parties agree that the County shall continue in possession of the Interoperable Communications Resources provided the County complies with the following conditions:

- 4.1 The Permittee specifically agrees that this Agreement shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the State beyond the monies available for the purpose. Section 112 of the State Finance Law requires that any contract made by a State Agency which exceeds fifty thousand dollars (\$50,000) in amount, or if the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds ten thousand (\$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 before becoming effective. The Contract will be deemed executed upon, and will not be considered fully executed and binding until, receipt of approval by the AG and OSC.
- 4.2 The Parties agree that the County may use the Interoperable Communications Resources for emergency management and public safety planning and response. The County shall also be permitted to use such Interoperable Communications Resources for all other official public safety and emergency management communications on a day-to-day basis. At a minimum, the County agrees to maintain such Interoperable Communications Resources connected and ready for use at all times (24hours/7days).
- 4.3 The County shall be required to test the entire system on no less than a monthly basis. Such testing shall include:
- 1) Placing a call to another county. Neighboring counties may wish to arrange for scheduled testing;
  - 2) Placing a call to the Watch Center;
  - 3) Placing a call to Mutualink tech support; and/or
  - 4) Placing a call to another user within the County.
- 4.4 The County agrees that it shall participate, upon reasonable advance notice, in drills, exercises or other events sponsored by the State involving the use of such Interoperable Communications Resources.
- 4.5 The County agrees that it shall invite DHSES to all incident sessions initiated utilizing the Interoperable Communications Resources.
- 4.6 The County shall ensure that only qualified persons will utilize the Interoperable Communications Resources and that it shall verify that such persons have received any applicable training.
- 4.7 The County shall ensure that all intended users and operators of the Interoperable Communications Resources complete a State-provided orientation that will familiarize the County with the use of such, as appropriate.
- 4.8 The County agrees that it shall keep the Interoperable Communications Resources online and ready for use.
- 4.9 The County agrees and understands that the County is solely responsible for its own access to the internet and electrical supply, which are necessary to ensure connection to the internet and accessibility to subscription services.

- 4.10 The County understands and agrees that the County is solely responsible to understand any and all data safety or security issues surrounding the use of the Interoperable Communications Resources and accommodate its use according to the capabilities and limitations of the Interoperable Communications Resources. As such, the County shall be responsible to educate its users pursuant to this Agreement of such capabilities and limitations.
- 4.11 The County understands and agrees that, on occasion, the vendor will be required to perform both routine and emergency maintenance to the Interoperable Communications Resources, which may be conducted with advance notice or no notice at all. The County shall be prepared for use of alternative systems during planned and unplanned outages.
- 4.12 The County agrees to report inoperable equipment and/or inaccessible or offline services directly to the vendor and shall work with the vendor to resolve the situation until such equipment is rendered operable and/or services are brought back online.
- 4.13 The County agrees that it shall provide DHSES, its vendors and subcontractors with reasonable time and opportunity to properly maintain the Interoperable Communications Resources in accordance with the manufacturer's recommendations and all applicable laws and regulations.
- 4.14 The County understands and agrees that the State may take back the Interoperable Communications Resources at any time for any reason, or may redeploy the Interoperable Communications Resources if it is determined to be needed in another area as directed by DHSES, and that the County must make the Interoperable Communications Resources immediately available. DHSES shall provide reasonable advance notice, or the maximum notice possible under the circumstances, to the County Point of Contact.
- 4.15 The County agrees that DHSES reserves the right to take back the Interoperable Communications Resources in the event of a breach of this MOA, or if the Interoperable Communications Resources are not being used to its full potential, is being misused or has been returned for Reissuance by DHSES. In the event of reissuance, the County agrees to undertake whatever actions are reasonably requested by DHSES to return possession of the Interoperable Communications Resources to DHSES.
- 4.16 The County agrees that it has no claim in law or equity concerning the Interoperable Communications Resources, including hardware, software or licenses.
- 4.17 The County agrees that it shall not sell or otherwise transfer the Interoperable Communications Resources to any other party without the express written permission of DHSES.

## 5. **OTHER TERMS**

- 5.1 The Parties acknowledge that the Interoperable Communications Resources issued under this MOA are not intended to provide all the resources appropriate and necessary for the County's communications capabilities but rather the Interoperable Communications Resources issued are intended to enhance the ability of the County to communicate with

the State and other jurisdictions for emergency management and public safety planning and response.

- 5.2 The Parties acknowledge that the Interoperable Communications Resources issued or any resources to be issued in the future are subject to the availability of funding. The Parties reserve the right to expand the scope of the Interoperable Communications Resources distributed if funding is available.

## 6. **APPENDIX A**

Appendix A, Standard Clauses for All New York State Agreements, is hereby attached and made part of this Agreement and shall take precedence over all other terms of this Agreement.

## 7. **LOAN OF RESOURCES**

The Interoperable Communications Resources shall be loaned exclusively to the County only for the purposes set forth in Section 1 of this MOA. No other use of the equipment shall be authorized. DHSES shall retain title to the Interoperable Communications Resources loaned under this Agreement at all times.

The equipment/resources shall be loaned exclusively to the Permittee only for the purposes set forth in Section 2 of this Agreement. No other use of the equipment shall be authorized. DHSES shall retain title to the equipment loaned under this Agreement at all times. The Permittee is responsible for all costs associated with preparing, packing and transporting the equipment, including all applicable costs. Possession of the equipment will pass from DHSES to the Permittee at the time of receipt of the equipment. All transportation to and from the site of the equipment and all associated costs will be covered exclusively by the Permittee.

## 8. **COMPENSATION**

As compensation for this permit, the Permittee shall pay DHSES a one-time administrative fee of \$1.00; payment of same waived. As such, this Agreement shall not be construed to have any monetary value. The County is responsible for all peripheral costs associated with use of the equipment, including internet and mobile data access, in addition to preparing, packing and transporting the equipment for return to DHSES.

## 9. **COUNTY POINT OF CONTACT**

The County will designate its own member Point of Contact ("County POC") for the purpose of arranging for and the installation, maintenance and return of the equipment to DHSES. The County's POC shall also be responsible as a 24-hour point of contact for this Agreement and any issues arising from its existence and be responsible for maintaining the current status of the contact information. The County Point of Contact is:

## **10. DHSES POINT OF CONTACT**

For the State of New York:

Robert Barbato  
Director, Office of Interoperable & Emergency Communications  
NYS Division of Homeland Security and Emergency Services  
State Office Campus - Building 7A  
1220 Washington Ave  
Albany, NY 12242  
Office: 518-322-4915  
Robert.Barbato@dhses.ny.gov

## **11. CONDITION AND MAINTENANCE OF INTEROPERABLE COMMUNICATIONS RESOURCES**

- 11.1 DHSES will make its best effort to ensure that the Interoperable Communications Resources loaned under this Agreement are furnished to the County in a serviceable condition suitable for its intended use. However, DHSES makes neither warranty nor guarantee of fitness of the property for any particular purpose or use.
- 11.2 DHSES shall be responsible for the following: 1) ordering, purchasing and accepting Interoperable Communications Resources; and 2) communicating to the vendor the need to issue the Interoperable Communications Resources to the County.
- 11.3 The County shall be responsible to receive the Interoperable Communications Resources and document that the County's orientation with the Interoperable Communications Resources occurred. Additionally, the County shall, as appropriate, 1) provide periodic inventory reports to DHSES with the reports setting forth what equipment was issued; 2) assist in resolving equipment related issues, such as defective equipment; 3) conduct any maintenance, as determined by DHSES, in accordance with the manufacturer's recommendations and all applicable laws and regulations to assist in its operational functionality; and 4) satisfaction of any State or federal reporting requirements.

## **12. INTEROPERABLE COMMUNICATIONS RESOURCES SECURITY**

Upon acceptance of the Interoperable Communications Resources, County assumes all responsibility for secure storage, maintenance, and property accountability. Any change in the storage location must be approved in advance by DHSES.

### **13. NO THIRD-PARTY TRANSFERS**

This MOA or the Interoperable Communications Resources loaned hereunder shall not be transferred to any other party by the County without the express written permission of DHSES.

### **14. RETURN OF EQUIPMENT**

Upon expiration of the MOA, the County shall be responsible to return all Interoperable Communications Resources to DHSES in the same condition as it was issued, less and except ordinary wear and tear. If the Interoperable Communications Resources are not returned, or returned in good working order and repair, the County may be responsible to reimburse DHSES the replacement value of the Interoperable Communications Resources.

### **15. LIABILITY AND INSURANCE**

15.1 The County shall indemnify and hold harmless the State of New York for any claims arising out of the use and deployment of the Interoperable Communications Resources. DHSES does not agree to any indemnification provisions in any documents attached hereto that require DHSES or the State of New York to indemnify or hold harmless the County or third parties. Notwithstanding anything to the contrary in this Agreement, DHSES shall not be liable to the County for any special, consequential, or punitive damages, or loss of profits or revenues, whether such damages are alleged as a result of tort (including strict liability) Agreement, warranty, or otherwise, arising out of or relating to DHSES's acts or omissions under this Agreement. County remains liable for direct damages attributable to their respective negligence, misconduct and omissions without limitation.

15.2 Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee or any other between the Parties.

### **16. INTERPRETATION**

This Agreement shall be interpreted according to the laws of the State of New York.

### **17. NOTICES**

Any and all notifications, consents and other communications to DHSES regarding the implementation, production, or operational production or operational processes or procedures of this Contract shall be in writing. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or



**NYS DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES  
and  
Erie County  
MOA No. X300113**

**APPENDIX B**

Quantity	Item
1	Cisco Router/VPN appliance
2	M500-610-001 Radio Network Interface Controller (RNIC)
5	Edge Client Software licenses
1	Client Management Software License

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

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

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (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](mailto:opa@esd.ny.gov)

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<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.