

# FACE PAGE

<p><b>New York State Department of Labor Governor W. Averell Harriman State Office Building Campus, Building 12 Albany, NY 12240</b></p> <p><b>Agency Code 14000</b></p>	<p>Contract Number:</p> <p>Amount of Agreement:\$ CFDA # (If Applicable): , ,</p> <p>Contract Period: Multi-Year Term (if applicable) From: To:</p>
<p>Contractor Name/Project Sponsors: Data Requestor</p> <p>Street: City: State: Zip: Billing Address (if different from above): Street: City: State: Zip: Title/Description of Project: Data Sharing Agreement</p>	<p><b>Federal Tax Identification Number:</b></p> <p><b>Vendor Identification Number:</b></p> <p>Contractor is a Sectarian Entity <input type="checkbox"/> Check if Yes</p> <p><b>Check ONLY ONE of the Following Three Choices:</b> Contractor is a Municipality <input type="checkbox"/> Check if Yes</p> <p>MUNICIPALITY # (If Applicable): _____ or Contractor is a For-Profit Organization <input type="checkbox"/> Check if Yes or Contractor is a Not-For-Profit Organization <input type="checkbox"/> Check if Yes</p>
<p><b>THIS AGREEMENT INCLUDES THE FOLLOWING:</b></p>	
<p><input checked="" type="checkbox"/> This Face Page <input checked="" type="checkbox"/> Data Sharing and Cost Reimbursement Agreement between NYS DOL and Data Requestor <input checked="" type="checkbox"/> Appendix A - Standard Clauses for all New York State Contracts <input checked="" type="checkbox"/> Appendix B – State Certifications <input checked="" type="checkbox"/> Appendix C – Data Collection Plan <input checked="" type="checkbox"/> Appendix D - List of Authorized Employees <input checked="" type="checkbox"/> Appendix E - Security/Confidentiality Plan <input checked="" type="checkbox"/> Appendix X – Formal Modification Form</p>	<p><b>If Not-For-Profit:</b> Charities Registration Number: Or Exempt Code:</p> <p>Contractor has timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports.</p> <p>Yes <input type="checkbox"/> or No <input type="checkbox"/></p>
<p><b>Contractor and NYSDOL agree to be bound by the terms and conditions contained in this Agreement</b></p>	
<p><b>CONTRACTOR</b></p>	<p><b>NYS DEPARTMENT OF LABOR</b></p>
<p>Signature of Contractor's Authorized Representative:  _____</p> <p>Date: _____</p>	<p>Signature of Authorized Official:  _____</p> <p>Date: _____</p>
<p>Type or Printed Name of Above Representative:  Title of Authorized Representative:</p>	<p>Type or Printed Name of Above Official:  Title of Authorized Representative:</p>
<p><b>Notary Public:</b> State of New York County of _____ On the ____ day of _____, 20_____, before me personally appeared _____ _____ to me known, who being by me duly sworn, did depose and say that he/she resides at _____ that he/she is the _____ of _____ the corporation described herein which executed the foregoing instrument; and the he/she signed his/her name thereto by authority of the board of directors of said corporation.</p> <p>(Notary) _____</p>	<p><b>State Agency Certification:</b> In addition to the Acceptance of this contract, I also certify that original Copies of this signature page will be attached to all Other exact copies of this contract.</p>

**DATA SHARING AND COST REIMBURSEMENT AGREEMENT  
BETWEEN THE NEW YORK STATE DEPARTMENT OF LABOR  
AND DATA REQUESTOR**

**THIS DATA SHARING AND COST REIMBURSEMENT AGREEMENT**

("AGREEMENT") is between the New York State Department of Labor, Harriman State Office Campus, Building 12, Albany, New York ("NYSDOL"), and \_\_\_\_\_ (insert name and address of other party) ("Data Requestor"), collectively referred to as "the Parties."

**WHEREAS,**

The Parties agree as follows:

**I. DATA TO BE DISCLOSED; PURPOSE**

- A. A list of the specific information to be furnished by NYSDOL to the Data Requestor under this Agreement is included in Appendix C the Data Collection Plan. (This information is hereinafter referred to as the "Confidential Data.")
- B. The Data Requestor represents that it is requesting Confidential Data solely for the following purpose(s): \_\_\_\_\_  
\_\_\_\_\_
- C. NYSDOL will release Confidential Data to the Data Requestor exclusively for this purpose(s).

**II. PROCEDURE**

- A. The Parties agree that Appendix C, the Data Collection Plan sets forth the details of the Confidential Data which NYSDOL shall furnish to the Data Requestor, including the frequency of the disclosure of data between the Parties. The Parties agree that all Confidential Data disclosed by NYSDOL to the Data Requestor; as described in the Data Collection Plan, will be done via a secure file transfer process to be determined by NYSDOL. This secure file transfer process may include, but not be limited to, requiring that Confidential Data be encrypted in transit and at rest (PGP) and transferred via a secure file transfer (SFTP) or HTTPS.
- B. NYSDOL shall reasonably determine the timing, method and format of its response to the request for Confidential Data (and the request for information itself as needed) in consultation with the Data Requestor as needed.

### III. LIMITATIONS ON DATA USE, ACCESS, AND DISCLOSURE; DATA PRIVACY AND SECURITY REQUIREMENTS

- A. In connection with its receipt, use, and disclosure of Confidential Data received from NYSDOL pursuant to this Agreement, the Data Requestor shall:
- a. Use Confidential Data received from NYSDOL only for the authorized purposes specified in this Agreement;
  - b. Limit access to Confidential Data to the authorized employees of the Data Requestor listed in Appendix D, or their successor in such position, who need such data for the purposes described in this Agreement. The Data Requestor will ensure that Appendix D is kept current and will advise NYSDOL in writing whenever an employee of the Data Requestor is added to or deleted from Appendix D, within ten (10) days of any such change. Notice of such change will be sent to: New York State Department of Labor, Office of Counsel, Attention: General Counsel, Building 12, Room 508, State Office Campus, Albany, New York 12240.
  - c. Store and maintain Confidential Data in a place and manner that is physically secure from access by unauthorized persons (e.g., locked cabinets or storage room);
  - d. Store and process Confidential Data obtained from NYSDOL which is maintained in an electronic format, such as magnetic tapes or discs, in such a way that unauthorized persons cannot obtain the information by any means. The Data Requestor shall ensure that Confidential Data are never remotely accessed or maintained in a mobile or portable device;
  - e. Undertake precautions to limit access to disclosed Confidential Data to authorized persons;
  - f. Adopt safeguards and procedures to protect the confidentiality of Confidential Data and to limit dissemination only to authorized individuals as necessary for their work on the project. A description of the Data Requestor's data security and confidentiality procedures that will apply to the use, handling, storage and destruction of Confidential Data disclosed under this Agreement is annexed hereto and incorporated herein as Appendix E. The Data Requestor expressly acknowledges and agrees that in the event of a conflict between this Agreement and Appendix E that the terms of this Agreement shall control;
  - g. Not disseminate, use, or permit the dissemination or use of Confidential Data in any manner not described in this Agreement without express prior written consent from NYSDOL;
  - h. Destroy thoroughly and irretrievably all Confidential Data received under this Agreement from NYSDOL after completion of the purpose for which the data was disclosed is served. Upon request, the Data Requestor shall provide proof satisfactory to NYSDOL that the Confidential Data have been so destroyed, including the date of destruction and the method utilized, which method must be acceptable to NYSDOL;
  1. Not make, retain, copy, duplicate, or otherwise use any copies of Confidential Data after completion of the purpose for which the data disclosed is served without prior written permission from NYSDOL; and

- J. Maintain a system and/or procedures for handling, storage, use, and destruction of Confidential Data governed by this Agreement sufficient to allow NYSDOL and/or USDOL, and/or their designee(s) to audit compliance with this Agreement.
- B. The Data Requestor will ensure that any study, report, publication, or other disclosure of Confidential Data provided under this Agreement is limited to the reporting of aggregate data, and will not contain any information identifiable to a private person or entity. Aggregate data for purposes of this Agreement will mean data sets consisting of no fewer than ten (10) individuals and/or data sets consisting of no fewer than three (3) employers with one (1) employer comprising no more than eighty (80) percent of the total.
- C. The Data Requestor will ensure that all individuals authorized by the Data Requestor to have access to Confidential Data for authorized purposes as described in this Agreement, have been instructed regarding the confidential nature of the Confidential Data, the safeguards required to protect such data, and the sanctions in applicable state law for unauthorized disclosure of Confidential Data by ensuring that such persons annually take Module [specify appropriate Module(s)] of the online Unemployment Insurance Confidentiality training developed by NYSDOL, as the same may be from time to time updated or revised.
- D. The Data Requestor will annually sign an acknowledgment that all individuals authorized by it to have access to disclosed Confidential Data have been instructed, as explained in III.C, above, with regard to the confidential nature of the Confidential Data, and that each authorized individual has taken NYSDOL's online Unemployment Insurance Confidentiality training Modules (specify appropriate Modules). The Data Requestor will provide this acknowledgment to NYSDOL prior to the disclosure of any Confidential Data hereunder and annually as required to continue the disclosure of Confidential Data hereunder.
- E. The Data Requestor will take all necessary steps to ensure that the individuals who have access to Confidential Data comply with the limitations on data use, access, disclosure, privacy, and security set forth in this Agreement. Such steps will include, but not be limited to, requiring each individual with access to Confidential Data to acknowledge in writing that he/she understands and will comply with such limitations.
- F. The Data Requestor will fully and promptly report any violation or suspected violation of these limitations to NYSDOL. This report will be directed to: New York State Department of Labor, Office of Special Investigations, State Office Campus, Building 12, Room 537, Albany, New York 12240-0001, telephone number 518-457-7012.
- G. The Data Requestor shall notify NYSDOL and affected individuals whenever it becomes aware of the loss or suspected loss of any personally identifiable information provided by NYSDOL hereunder. Personally identifiable information for purposes of this Agreement shall mean any information obtained from NYSDOL that can be used,

alone or in conjunction with any other information, to identify a specific individual. In the event of such loss or suspected loss of personally identifiable information, Data Requestor shall immediately commence an investigation to determine the scope of any breach and restore the security of the system to prevent any further breaches. Data Requestor shall notify NYSDOL of the results of its investigation and the steps taken to prevent any further breaches. Data Requestor expressly acknowledges that it shall bear the full cost of complying with this provision, including the cost to provide notice to all required recipients. Notification to NYSDOL, under the terms of this paragraph, will be directed to the NYSDOL Office of Special Investigations at the address specified in Section II.F.

- H. The Data Requestor will immediately notify NYSDOL upon receipt of any legal, investigatory, or other demand for access to Confidential Data provided to the Data Requestor under this Agreement that is not otherwise authorized under this Agreement and will take all necessary legal action to prevent any disclosure including, but not limited to, moving to quash subpoenas issued for such information. The Data Requestor will keep NYSDOL Counsel's Office fully and timely notified of all developments related to such legal actions and their response thereto. This notification will be directed to: NYSDOL, Office of Counsel, Attention: General Counsel, Building 12, Room 508, State Office Campus, Albany, New York 12240. Phone: 518-457-7069.
- I. The Data Requestor will permit NYSDOL and/or USDOL and/or their designee(s) to enter upon the Data Requestor's premises at reasonable times to inspect and review their safeguards and procedures for protecting the confidentiality and limiting the dissemination of Confidential Data. The Data Requestor will also cooperate, with NYSDOL and/or USDOL and/or their designee(s) in connection with any request for access to staff, information, or material related to a NYSDOL confidentiality compliance review, audit, or monitoring visit as provided for under this Agreement.
- J. a. The Data Requestor will complete an annual Self-Assessment report developed by NYSDOL in order to monitor the Data Requestor's compliance with the terms of this Agreement, including the obligation to safeguard and maintain the confidentiality of the Confidential Data disclosed by NYSDOL under this Agreement. The Data Requestor shall submit this completed Self Assessment, no later than June 30th during each year that this Agreement is in effect, to: New York State Department of Labor, Unemployment Insurance Integrity and Quality Control, Program Analysis and Support, State Office Campus, Building 12, Room 261, Albany, New York 12240.
- b. The Data Requestor's designated contact for purposes of this annual Self Assessment, or any other confidentiality compliance review, audit, or monitoring visit conducted by NYSDOL is:

Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Notice of an upcoming or scheduled NYSDOL monitoring visit shall be limited to the employee identified above so that NYSDOL may observe the Data Requestor's actual confidentiality procedures.

#### IV. PAYMENT OF COSTS

- A. The Data Requestor shall pay to NYSDOL the reasonable costs to disclose the Confidential Data. These costs include, but are not limited to, development and processing of this Agreement, actual NYSDOL staff hours incurred in generating Confidential Data (including overhead rates, as applicable), and the reasonable costs to inspect and review the safeguards and procedures for protecting the confidentiality, and limiting the dissemination of, Confidential Data as referenced in Section III of this Agreement.
- B. NYSDOL has established an administrative fee of \$1,000 to cover the cost of Agreement development and processing and review of the initial Self Assessment form to be submitted to NYSDOL. This administrative fee excludes the cost to generate the Confidential Data or to conduct any onsite monitoring visit deemed necessary by NYSDOL. In addition to this administrative fee, at the time of signing, the estimated hourly cost to produce the Confidential Data is \$80 to \$100 per hour.
- C. NYSDOL will invoice the Data Requestor for payment after each disclosure under this Agreement. The initial invoice will include NYSDOL's administrative fee. All invoices submitted by NYSDOL shall be sent for approval and payment to:

Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

- D. Payments shall be made by check within thirty (30) days of receipt of the invoice and made payable to New York State Department of Labor. Checks shall be mailed to: New York State Department of Labor, Administrative Finance Bureau, Room 464, State Office Building Campus, Building 12, Albany, New York 12240.
- E. If NYSDOL determines that it is necessary to enter upon the Data Requestor's premises in order to conduct an on-site monitoring visit, the costs of such monitoring visit(s), if any, will be invoiced and subject to payment in the same manner as the costs to disclose the Confidential Data as described in this Section IV. At the time of execution of this Agreement, the estimated hourly cost of such on-site monitoring visit is \$78 per hour plus travel expenses in accordance with the State rate then in effect.
- F. Failure to make timely payment of any NYSDOL invoice(s) hereunder may result in NYSDOL ceasing to release data to the Data Requestor until any outstanding balance has been paid in full, without NYSDOL first providing notice to the Data Requestor of such cessation.

## **V. SUSPENSION/TERMINATION OF AGREEMENT**

- A. NYSDOL agrees to provide Confidential Data pursuant to this Agreement subject to the representations and agreements by the Data Requestor contained in this document. NYSDOL will suspend the Agreement and the further disclosure of any Confidential Data hereunder if: i) the Data Requestor fails to comply with any provision of this Agreement or ii) the NYSDOL Commissioner of Labor believes in good faith that the Data Requestor has violated its obligations to maintain the confidentiality of such data or limit their dissemination. Such suspension will continue until NYSDOL is satisfied that corrective action has been taken. In the absence of prompt and satisfactory corrective action, NYSDOL will terminate the Agreement. Upon termination, the Data Requestor must return all Confidential Data obtained by the Data Requestor under the Agreement (and any copies thereof) and any other information relevant to the Agreement or must provide proof, satisfactory to NYSDOL, that all such Confidential Data and information have been thoroughly and irretrievably destroyed in a manner acceptable to NYSDOL.
- B. Either Party may terminate this Agreement at any time upon written notice to the other Party.

## **VI. GENERAL PROVISIONS**

- A. Data Requestor will hold NYSDOL harmless from, and indemnify NYSDOL for, any and all claims, losses, expenses, and/or damages arising out of any breach by Data Requestor of the security and confidentiality requirements of this Agreement, or other unauthorized

use of Confidential Data without limitation, including but not limited to, paying to NYSDOL any costs of enforcing this Agreement, securing appropriate corrective action, and returning Confidential Data furnished hereunder, as well as any costs incurred by NYSDOL in enforcing the terms of this Agreement.

- B. In addition to suspension or termination of the Agreement as provided for herein, NYSDOL reserves the right to undertake any other action under the Agreement, or state or federal law, to enforce the Agreement and secure satisfactory corrective action and/or return or destruction of Confidential Data furnished hereunder, including seeking damages, penalties, and restitution from the Data Requestor or its subcontractors as permitted under law.
- C. The Data Requestor may not assign or subcontract this Agreement, its obligations or any interest hereunder, without the express, prior written consent of NYSDOL. Any assignment or subcontract made without such consent will be null and void and would constitute grounds for immediate termination of the Agreement by NYSDOL.
- D. This Agreement may only be amended by the mutual consent of the Parties in writing.
- E. The term of this Agreement will commence upon \_\_\_\_\_ and end upon the completion of the work subject to this Agreement but no later than \_\_\_\_\_.
- F. The Data Requestor's confidentiality and related assurances and obligations hereunder, including the obligation to pay the costs of providing Confidential Data to the Data Requestor, shall survive termination or expiration of the Agreement.
- G. This Agreement is complete and contains the entire understanding of the Parties relating to the subject matter contained herein, including all the terms and conditions of the Parties' agreement. This Agreement supersedes any and all prior understandings, representations, negotiations, discussions, and/or agreements between the Parties relating hereto, whether written or oral.
- H. If any terms or conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions thereof will not be affected thereby and shall remain in full force and effect.
- I. This Agreement shall be governed by the laws of the State of New York.

**VII. ADMINISTRATION CONTACTS**

- A. Except as otherwise specified herein, NYSDOL's designated contact concerning this Agreement, shall be:

Name: \_\_\_\_\_



Title: \_\_\_\_\_  
Address: New York State Department of Labor  
State Office Campus  
Building 12, Room \_\_\_\_  
Albany, New York 12240  
Phone: (518) \_\_\_\_\_  
Email: \_\_\_\_\_@labor.ny.gov

NYSDOL may designate a new or alternate contact by providing the Data Requestor a written notice to that effect.

B. The Data Requestor's designated contact concerning this Agreement shall be:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

The Data Requestor may designate a new or alternate contact by providing NYSDOL a written notice to that effect.

### **VIII. SIGNATURE; EFFECTIVE DATE**

Each of the Parties represents that the individual signing this Agreement on behalf of such Party is duly authorized to execute this Agreement and to agree to the terms and conditions of the Agreement on behalf of their respective Party. This Agreement shall not be deemed valid or binding until executed by both Parties.

**NYS DEPARTMENT OF LABOR**

**THE DATA REQUESTOR**

Name:

Name:

Title:

Title:

Date:

Date:

## **APPENDICES**

- Appendix A: Standard Clauses for New York State Contracts
- Appendix B: State Certifications
- Appendix C: Data Collection Plan
- Appendix D: List of Authorized Employees
- Appendix E: Security/Confidentiality Plan
- Appendix X: Formal Modification Form

**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.

**APPENDIX B  
STATE CERTIFICATIONS**

The undersigned, as a duly sworn representative of the contractor/vendor, hereby attests and certifies that:

- 1) No principal or executive officer of the contractor's/vendor's company, its subcontractor(s) and/or successor(s) is presently suspended or debarred; and
- 2) The contractor/vendor, its subcontractor(s) and/or its successor(s) is not ineligible to submit a bid on, or be awarded, any public work contract or sub-contract with the State, any municipal corporation or public body for reason of debarment for failure to pay the prevailing rate of wages, or to provide supplements, in accordance with Article 8 of the New York State Labor Law.
- 3) The contractor/vendor, its subcontractor(s) and/or its successor do not have any outstanding debts owed to the Department, including but not limited to, contractual obligations, fines related to Safety and Health violations, payments owed to workers for public works projects or the general provisions of the Labor Law, Unemployment Insurance contributions or other related assessments, penalties or charges.

**"NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:  
MacBRIDE FAIR EMPLOYMENT PRINCIPLES"**

In accordance with Chapter 807 of the Laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either:

(answer Yes or No to one or both of the following, as applicable.)

1. Has business operations in Northern Ireland:

Yes                       No

If Yes:

2. Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of its compliance with such Principles.

Yes                       No

**NON-COLLUSIVE BIDDING CERTIFICATION**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit to bid for the purpose of restricting competition.

## **IRAN DIVESTMENT ACT**

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies 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" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such a Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should Labor receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, Labor 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 Labor shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

Department reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Agreement, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

I, the undersigned, attest under penalty of perjury that I am an authorized representative of the Bidder/Contractor and that the foregoing statements are true and accurate.

Signature of Authorized Representative \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX C  
DATA COLLECTION PLAN**

A. The Data Requestor is requesting <insert data being requested>

More specifically, is requesting the following Confidential Data, on [specify specific data elements requested and time period for which requested]

- 
- 

B. The Data Requestor will transfer to NYSDOL, on a [specify frequency] basis, a request file in a format approved by NYSDOL containing a list of participants for whom the Data Requestor needs Confidential Data. The file will include:

- 
- 
- 
- 

C. On a [specify frequency] basis for the time period specified herein, NYSDOL will provide the Data Requestor with a return file containing the following individual level Confidential Data:

- 
- 

D. NYSDOL shall determine the format of the electronic file in which it shall disclose Confidential Data to the Data Requestor and the timing of the NYSDOL response in consultation with the Data Requestor. The Parties agree that all data disclosed to each other, including the Confidential Data disclosed by NYSDOL as described in the Data Collection Plan, will be done via a secure electronic transmission process to be determined by NYSDOL.

**APPENDIX D**  
**AUTHORIZED EMPLOYEES OF THE DATA REQUESTOR**

The Data Requestor shall limit access to the Confidential Data obtained under this MOU to the authorized employees (identified by name or position) of the Data Requestor listed below for authorized purposes as described in this MOU:

Name:

Position/Organization:

**APPENDIX E**  
**SECURITY/CONFIDENTIALITY PLAN**



NEW YORK STATE  
DEPARTMENT OF LABOR

Formal Modification

Charity Registration #  
\_\_\_\_\_

APPENDIX X

Agency Code 14000

Contract No. \_\_\_\_\_

Modification No. \_\_\_\_\_

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through the Department of Labor, having its principal office at State Office Building Campus, Building 12, Albany, New York (herein referred to as the STATE,) and \_\_\_\_\_ (hereinafter referred to as the CONTRACTOR), for modification of Contract Number \_\_\_\_\_.

This contract shall be for the period \_\_\_\_\_ through \_\_\_\_\_.

If Not for Profit: Contractor has  has not  timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports.

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR SIGNATURE

STATE AGENCY SIGNATURE

\_\_\_\_\_

\_\_\_\_\_

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

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

STATE OF NEW YORK)

) SS.:

County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me personally appeared

\_\_\_\_\_ to me known, who being by me duly sworn, did depose and say that he/she

resides at \_\_\_\_\_ that he/she is the \_\_\_\_\_ of the

\_\_\_\_\_ the corporation described herein which executed the foregoing instrument; and that

he/she signed his/her name thereto by authority of the Board of Directors of said corporation.

(Notary) \_\_\_\_\_

COMPTROLLER'S SIGNATURE

\_\_\_\_\_

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