

## APPENDIX D

### GENERAL CONDITIONS FOR AGREEMENTS NEW YORK STATE OFFICE OF VICTIMS SERVICES

**These general conditions apply to the administrative aspects of the agreement and reflect New York State's contract record keeping and payment procedures. These general conditions cannot be changed.**

#### **I. ORDER OF PRECEDENCE**

The Order of Precedence for this Agreement is as follows:

Appendix A (NYS Standard Clauses)

Agreement Cover Page

Appendix E (Federal Award Letter and Associated Conditions)

Appendix D (General Conditions)

Appendix F (Minority and Women-Owned Business Enterprises)

Appendix G (Service-Disabled Veteran-Owned Businesses)

Appendix H (EO 177 Certification)

Appendix C (Work Plan)

Appendix B (Itemized Budget)

#### **II. AGREEMENT IN ITS ENTIRTY**

This Agreement and its attached appendices constitute the entire Agreement between OVS and the Contractor and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained or referenced shall be binding or valid.

#### **III. MODIFICATION**

This Agreement may not be modified unless such modification is made in writing and executed by OVS and the Contractor. If required by State Finance Law, modifications may also be subject to the review and approval of the Office of the Attorney General and the Office of the State Comptroller of the State of New York.

#### **IV. NECESSARY SIGNATURES**

The financial limit under this Agreement exceeds Fifty Thousand Dollars (\$50,000), therefore after execution by both OVS and the Contractor, this Agreement shall not be binding and effective unless and until approved by the Attorney General and the Comptroller of the State of New York.

#### **V. SCOPE OF WORK**

The Contractor shall perform all the work as described in Appendix C, in an efficient and expeditious manner and in accordance with all the terms and provisions of this Agreement. The Contractor shall perform the work in accordance with professional standards and with the diligence and skill expected of a party with extensive experience in the performance of the work herein described. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the work in accordance with this Agreement.

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### VI. DEVIATION FROM WORK

The Contractor shall perform the work under this Agreement as described in Appendix C. Any substantial deviation from the plan of work shall require the prior written approval of OVS.

### VII. DELIVERABLES

Ownership of all deliverables, end product(s) and work completed or partially complete, pursuant to this agreement, shall vest in the Contractor provided that Contractor shall grant the State of New York the non-exclusive, royalty-free right and license to use all deliverables, end product(s) and work completed or partially completed for educational, non-commercial purposes or to meet its obligations from the federal funding received for this Agreement.

### VIII. FINANCIAL LIMIT

The financial limit of State appropriated funds under this Agreement shall not exceed the amount indicated on the latest executed version of the first page (Agreement Cover Page) of this Agreement and OVS shall not be obligated to make any payment to the Contractor in excess of that amount.

### IX. AGREEMENT EXPENDITURES

Expenditures under this Agreement shall conform to the Itemized Budget annexed as Appendix B.

### X. PAYMENT TERMS

Payment shall be made by the Office of Victim Services (OVS) only after receipt and approval of itemized invoice(s) submitted by the Contractor. Contractor shall provide complete and accurate billing invoices to OVS, in order to receive payments. Billing invoices submitted must contain all information and supporting documentation. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by OVS. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the Comptroller of the State of New York's procedures to authorize electronic payments. Authorization forms are available at the Comptroller's website: [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm) by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at (518) 474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the Comptroller of the State of New York's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.

The Parties agree that reimbursement for travel, meals or lodging expenses associated with this agreement shall not exceed: (i) the rates authorized by the NYS Office of the State Comptroller for State employee travel and (ii) the amount set forth in Appendix B.

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All reimbursement for travel shall be based on Contractor's presentment of an invoice in a form acceptable to OVS and the NYS Office of the State Comptroller. The Parties agree that Contractor shall present an invoice for payment of travel in accordance with invoicing detailed above.

### **XI. NON-DUPLICATION OF PAYMENTS**

The payments received by the Contractor under this Agreement shall not duplicate payments received from any other source for the work performed under this Agreement. In the event of such duplication, the Contractor shall remit to OVS the amount which duplicates payment received from other sources.

### **XII. TAXES**

A. OVS represents that the purchases on behalf of the State of New York are not subject to any state or local sales or use taxes, or to federal excise taxes.

B. Contractor remains liable and solely responsible without exemption for social security, unemployment insurance, workers' compensation and other taxes and obligations to which Contractor may be subject to by law.

C. Section 5-a of the New York State Tax Law requires that any contract valued at more than \$100,000 entered into by a State agency shall not be valid, effective, or binding against the agency unless the Contractor certifies to the Department of Taxation and Finance that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Department of Taxation and Finance that each affiliate and subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, "affiliate" means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The Contractor also must certify to the procuring state entity that it filed the certification with the Department of Taxation and Finance and that the certification is correct and complete. Accordingly, in the event the value of this Agreement exceeds \$100,000 and Contractor's sales delivered by any means to locations within New York State of tangible personal property or taxable services have a cumulative value in excess of \$300,000, measured over a specific period, the Contractor must file a properly completed Form ST-220-CA with OVS and a properly completed Form ST-220-TD with the Department of Taxation and Finance before the Agreement may take effect. In addition, after the Agreement has taken effect, the Contractor must file a properly completed Form ST-220-CA with OVS if the Agreement's term is renewed. Further, a new Form ST-220-TD must be filed with the Department of

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Taxation and Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete. Further information about this requirement is available at:

[https://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/st/section\\_5a.htm](https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/section_5a.htm). Contractor agrees to cooperate fully with the State in administering these requirements.

D. Should Contractor be exempt from any or all of the requirements in this section, the Contractor shall provide documentation of such exemption to OVS.

### **XIII. DISPUTES AND DISSATISFACTION/CONFLICT RESOLUTION**

A. In the event OVS is dissatisfied with the Contractor's performance pursuant to the terms of this Agreement, including but not limited to any breach of the Agreement on the part of the Contractor, OVS shall notify the Contractor of the dispute in writing. In the event the Contractor has any disputes with OVS, the Contractor shall notify OVS in writing. Such notification in both cases shall hereinafter be referred to as "Notice of Conflict," or in the case of breach of the Agreement, "Notice of Default."

B. If either OVS or the Contractor notifies the other of such dispute or dissatisfaction, the party receiving the notification shall then make good faith efforts to amicably resolve the problem or settle the dispute, including meeting with the notifying party's representatives to diligently attempt to reach a mutually satisfactory result.

C. In the event of a dispute, both OVS and the Contractor will continue to fulfill their performance obligations under the Agreement.

D. Nothing shall limit either OVS' or Contractor's ability to pursue all legal remedies. If the parties are unable to amicably resolve the dispute after the steps described above, then either party may seek legal or equitable relief in a court of competent jurisdiction located in New York State.

### **XIV. FORCE MAJEURE**

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

### **XV. GOVERNING LAW/STANDARD CLAUSES**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York as at the time in effect without giving regard to any rules, principles or canons concerning conflicts of laws and, to the extent of any federal pre-emption, the

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laws of the United States of America, as well as any amendments thereto as may be enacted from time to time. Appendix A, Standard Clauses for NYS Contracts, is expressly made a part of this Agreement as fully as if set forth at length herein.

Any action at law, suit in equity, or other judicial proceeding for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of New York.

### **XVI. RESPONSIBILITY REQUIREMENTS**

A. OVS is required to undertake an affirmative review of the responsibility of any vendor to which it proposes to make a contract award. Such review shall be designed to provide reasonable assurances that the proposed contractor is responsible. In undertaking such review, OVS must comply with the following standards:

1. In all cases, OVS must consider any information that has come to its attention from the proposed contractor or any other source that would raise issues concerning the proposed contractor's responsibility.
2. In the case of any contract valued at \$100,000 or more, OVS must affirmatively require disclosure by the proposed contractor of all information that OVS reasonably deems relevant to a determination of responsibility by completing a Vendor Responsibility Questionnaire.

B. The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by OVS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

C. OVS at its discretion, reserves the right to suspend any or all activities under this Agreement, at any time, if information is discovered that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Agreement must comply with the terms of the suspension order. Agreement activity may resume at such time as OVS issues a written notice authorizing a resumption of performance under the Agreement.

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

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### **XVII. TERMINATION**

The Agreement may be terminated by mutual written agreement of the Parties.

This Agreement may be terminated by OVS, upon written notice if: key employees leave the employment of Contractor; the Contractor is adjudged bankrupt; the Contractor makes a general assignment for the benefit of creditors; a receiver is appointed due to the Contractor's insolvency; a petition in bankruptcy or insolvency is filed, by or against the Contractor; or the Contractor persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction.

This Agreement may be terminated by OVS for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, provided OVS gives the Contractor not less than thirty (30) days notice and an opportunity to cure all items not in compliance with the terms and conditions of this Agreement, including the attachments hereto. Termination shall be immediately effective upon receipt of such written notice. The Contractor agrees to incur no new obligations or to claim for any expenses made after receipt of the notification of termination. Termination for cause may create a liability upon the Contractor for legal damages.

OVS may terminate this Agreement without cause, for convenience or as may be determined to be in the best interests of the State, for reasons, including, but not limited to changes in law or program administration and budgetary constraints. OVS shall give written notice to the Contractor not less than thirty (30) days prior to the date upon which termination shall become effective. Such written notice shall be provided via registered or certified mail, return receipt requested or hand-delivered to the other party. The date of such notice will be deemed to be the date of postmark in the case of mail or the date of Contractor's receipt of notice in the case of hand delivery. In the case of termination under this subsection, OVS agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith. The Contractor agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible.

OVS reserves the right to terminate this Agreement in the event it is found that any of the certifications filed by the Contractor with the State of New York were intentionally false or intentionally incomplete. Upon such finding, OVS may exercise OVS termination right by providing written notification to Contractor.

If OVS determines that funds are unavailable through lack of continued lawful appropriation therefor, OVS shall deem the Agreement terminated immediately. OVS agrees to give timely notice to the Contractor in the event of termination under this paragraph. If the initial notice is oral notification, OVS shall follow this up immediately with written notice. OVS will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from OVS.

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In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion and the Contractor shall cancel as many outstanding obligations as possible.

Termination under any provision of this Agreement shall not relieve the Contractor of any liability to OVS which it has under this Agreement, or for damages sustained by OVS by reason of any breach of this Agreement. OVS may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due OVS from the Contractor is determined.

In the event of termination of any services or the Agreement in its entirety, the Contractor will not take any action to intentionally destroy any OVS assets or any work product related to this Agreement. Any OVS assets or any work product related to this Agreement shall be returned or delivered to OVS no later than 30 days after notice of such termination. Final payment to the Contractor may be withheld until the return or delivery of such assets or work product.

Termination of the Agreement, with or without cause, may not create any liability on the part of OVS or the State for payment of any penalty, or any other liability.

### **XIX. COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS**

The Contractor is responsible for complying with all local, state and federal laws applicable to work performed under this Agreement.

### **XX. CONTRACTOR STAFF**

It is understood and agreed that the legal status of Contractor, OVS agents, resellers, officers and employees under this Agreement is that of an independent Contractor, and in no manner shall they be deemed employees of the State or OVS, and therefore are not entitled to any of the benefits associated with such employment. Contractor agrees, during the term of this Agreement, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide OVS with certification of such insurance upon request. Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

All Contractor Staff (including employees of the Contractor) who shall perform Services under this Contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform services under the Contract on behalf of Contractor shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.

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The State reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor performing work on this Agreement and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with the States security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Agreement terms. The State reserves the right to reject and/or bar from a State facility for cause any employee, Subcontractor, or agents of the Contractor.

### A. Staffing Changes

The Parties acknowledge that it is in the best interests of the Agreement to maintain the same individuals in their roles for the duration of the Agreement, to the extent possible.

NYS retains the right in its reasonable discretion to request replacement of any Contractor key employees assigned from this Agreement at any time.

If the Contractor wishes to replace any key employees assigned from the Agreement prior to commencement of his or her assignment or during his or her assignment period (Contract Period), the Contractor shall first, before proceeding with such replacement, notify the State and present the State with information about the replacement, Contractor key employees.

### B. Contractor Staff Conduct

For reasons of safety and public policy, the use of illegal drugs and/or alcoholic beverages by the Contractor or its agents, employees, partners or Subcontractors shall not be permitted while performing any phase of the work herein specified.

The State shall not be liable for any expense incurred by the Contractor or its agents, employees, partners or Subcontractors for any parking or towing fees or as a consequence of any traffic infraction or parking violations attributable to Contractor or its agents, employees, partners or Subcontractors.

## **XXI. CONTRACTOR'S REPRESENTATIONS & WARRANTIES**

Contractor warrants and represents the following:

A. Where Contractor generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to the State.

B. Deliverables. Contractor warrants and represents that the services required by this Agreement shall be performed or provided in accordance with all the terms and conditions, covenants, statements and representations contained in this Agreement.

C. Compliance with laws. Prior to award and during the Contract period and any extensions, Contractor must establish to the satisfaction of OVS that it meets or exceeds all requirements of the Agreement and any applicable laws, including but not



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limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by OVS. Contractor warrants and represents that, throughout the term of the Agreement and any extensions, and in the performance of obligations under the Agreement, it will: (1) comply with all applicable laws, ordinances, rules and regulations of any governmental entity; (2) pay, at its sole expense, all applicable permits, licenses, tariffs, and tolls; and (3) give all notices required by any applicable laws, ordinances, rules and regulations of any governmental entity. Failure to do so may constitute grounds for OVS to terminate or suspend this Agreement, in whole or in part, or to take any other action deemed necessary by OVS.

D. Workmanship Warranty. Contractor warrants and represents that all components or deliverables specified and furnished by or through Contractor under the Agreement will meet the completion criteria set forth in the Agreement and any subsequent amendments, and that all services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards.

E. Personnel Eligible for Employment. Contractor warrants and represents that all personnel performing services under this Agreement are eligible for employment in the United States and shall remain so throughout the term of the Agreement and any extensions. Contractor is solely responsible for ensuring such eligibility and Contractor shall establish to the satisfaction of OVS that it meets or exceeds this requirement and that it and its personnel meet any other applicable laws relating to eligibility for employment in the United States. Contractor shall provide such proof of compliance as is required by OVS.

F. Service Guarantee. Contractor's failure to satisfy performance standards or requirements set forth in this Agreement may result in a Chargeback in an amount as determined in consultations between the Contractor and OVS. If a Chargeback amount cannot be agreed to by consultation, then OVS' determination of the amount is final and binding. The Chargeback shall be paid to OVS in the form of a credit to OVS against the Contractor's invoice submitted to OVS immediately following the month in which the Contractor failed to satisfy the standard or requirement.

G. Survival of Warranties. All warranties contained in the Agreement shall survive the termination of the Agreement.

### **XXII. COOPERATION WITH THIRD PARTIES**

The Contractor shall be responsible for coordinating and cooperating with any third parties including, but not limited to, suppliers or subcontractors of OVS.

### **XXIII. RECORDS MAINTENANCE, EXAMINATION AND RETENTION**

The Contractor shall maintain records and accounts in specific detail to identify all Agreement funds received and expended under this Agreement. The Contractor shall maintain the records required under this paragraph as set forth in Appendix A to this Agreement.

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### **XXIV. NON-SECTARIAN PURPOSE**

The Contractor shall not expend funds received under this Agreement for any purposes other than for performance of the work under this Agreement, and hereby represents that no Agreement funds shall be expended directly or indirectly for any private or sectarian purpose.

### **XXV. PRESS RELEASES**

Contractor agrees that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding its activities under this Agreement shall be disseminated in any way to the public, nor shall any presentation be given regarding those activities without prior written approval by OVS, provided, however, that OVS shall not unreasonably delay or withhold such approval. Further provided, however, that Contractor shall be authorized to provide copies of this Agreement and answer any questions relating thereto to any State or Federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

### **XXVI. PUBLIC INFORMATION**

Disclosure of items related to this Agreement shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Section 87 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are otherwise exempt from disclosure under that statute. Information constituting trade secrets or critical infrastructure information, for purposes of FOIL, must be clearly marked and identified as such upon submission.

If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of: (1) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor; or (2) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to §87(2) of FOIL. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to the availability of the identified information will be made in accordance with FOIL at the time a request for such information is received by the State.

### **XXVII. LEGAL REQUESTS**

The Contractor shall disclose to OVS a description of their roles and responsibilities related to electronic discovery, litigation holds, discovery searches and expert testimonies. The Contractor shall disclose to OVS process for responding to subpoenas, service of process and other legal requests. In the event that the Contractor is made aware of any possible or actual litigation related to this Agreement, the Contractor shall promptly notify OVS.

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### **XXVIII. WORKERS' COMPENSATION AND NYS DISABILITY INSURANCES**

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption may result in the termination of the Agreement.

A. Proof, of Compliance with Workers' Compensation Coverage Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to 'provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

1. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
2. Obtain such coverage from an insurance carrier; or
3. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

B. A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to OVS:

1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not required, which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)); (Reference applicable IFB/RFP and Group #s on the form.)
2. Certificate of Workers' Compensation Insurance:
  - a. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of Victim Services, or
  - b. Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of Victim Services.
  - c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.

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d. Form GSI-1 05.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

3. Proof of Compliance with Disability Benefits Coverage Requirements: In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a contractor shall:
  - a. Be legally exempt from obtaining disability benefits coverage; or
  - b. Obtain such coverage from an insurance carrier; or
  - c. Be a Board-approved self-insured employer.

C. A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to OVS:

1. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)); (Reference applicable IFB/RFP and Group #s on the form.)
2. Form DB-1 20.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of Victim Services; or
3. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

### **XXIX. ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Contractor for this Agreement for commodities, services or technology is strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Agreement. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

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Contractor needs to be aware that all authorized users of this Agreement will be strongly encouraged; to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its New York State business partners. New York State businesses will promote the Contractor's optimal performance under the Agreement, thereby fully benefiting the public-sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects Contractor to provide maximum assistance to New York businesses in their use of the Agreement. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

### **XXX. OSC EMPLOYMENT DATA REPORTING**

Contractor hereby acknowledges that State Finance Law Section 163(4) (g) imposes certain reporting requirements on contractors doing business with New York State. In furtherance of these reporting requirements, if applicable, Contractor agrees to complete and submit an initial planned employment data report and an annual employment report, referred to as Consultant Disclosure Forms A and B, to the addresses listed in OSC Bulletin G-226. Complete instructions and forms may also be accessed at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm>

ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, S1-12 & DB-155 MUST NAME: New York State Office of Victim Services, 80 S Swan Street, 2<sup>nd</sup> Floor, Albany NY 12210, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder)

### **XXXI. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE)**

A. OVS is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

B. Contractor agrees, in addition to any other nondiscrimination provision of this Agreement and at no additional cost to OVS, to fully comply and cooperate with OVS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New

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York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII Appendix F and such other remedies are available to OVS pursuant to this Agreement and applicable law.

### **XXXII. SERVICE-DISABLED VETERAN-OWNED BUSINESSES (SDVOB)**

Article 3 of the New York State Veterans’ Services Law provides for more meaningful participation in public procurement by certified SDVOBs, thereby further integrating such businesses into New York State’s economy. OVS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OVS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractor is strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of this Agreement. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this Agreement, OVS has determined this contract is exempt from setting specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Agreement for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>.

Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Agreement.

### **XXXIII. IRAN DIVESTMENT ACT**

By assuming the responsibility for performance of this Agreement, Bidder/Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS web site at:

<https://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and that it will not utilize on such 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

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contract awarded, it must provide the same certification at the time the contract is renewed or extended.

During the term of the Agreement, should OVS receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, OVS 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 OVS 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.

OVS 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 contract and appears on the Prohibited Entities list after contract award.

### **XXXIV. CONFLICTS OF INTEREST**

A. The Contractor has provided a form (Att. 1, Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with the State of New York, that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

B. The Contractor hereby represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. The Contractor shall have a duty to notify the OVS immediately of any actual or potential conflicts of interest.

C. In conjunction with any subcontract under this Agreement, the Contractor shall obtain and deliver to the OVS, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form (Att. 1), signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to OVS a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form (Att. 1) for each of its subcontractors prior to entering into a subcontract.

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

### **XXXV. PUBLIC OFFICERS LAW**

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a “lifetime bar” from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

### **XXXVI. ETHICS REQUIREMENTS**

The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). The Contractor certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Agreement shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Agreement pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Agreement. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Agreement, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Agreement at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.



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### **XXXVII. SUBCONTRACTING**

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of OVS. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities under this Agreement to be subcontracted to qualified, responsible subcontractors, subject to approval of OVS. If the Contractor determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this Agreement must be fully explained by the Contractor to OVS. As part of this explanation, the subcontractor must submit to OVS a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form (Att. 1), as required by the Contractor prior to execution of this Agreement.

The Contractor retains ultimate responsibility for all services performed under the Agreement.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this Agreement including, but not limited to, the body of this Agreement, Appendix A – Standard Clauses for New York State Contracts and the Itemized Budget (Appendix B). Unless waived in writing by OVS, all subcontracts between the Contractor and subcontractors shall expressly name the State, through OVS, as the sole intended third party beneficiary of such subcontract and shall clearly describe the goods or services to be provided and the total cost of such goods or services. Subcontracts for services only shall separately state the rate of compensation on a per-hour or per-day basis. OVS reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make OVS or the State a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against OVS.

OVS reserves the right, at any time during the term of the Agreement, to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this subdivision and any subcontract provisions contained in this Agreement.

The Contractor shall give OVS immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Contractor's duties under the Agreement. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the Agreement.

If at any time during performance under this Agreement total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

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### XXXVIII. STATE AND FEDERAL WHISTLEBLOWER PROTECTIONS

#### A. STATE

1. Every staff person of the Contractor shall promptly report to the New York State Inspector General any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to those dealings. The knowing failure of any officer or employee to so report shall be cause for removal from office or employment or other appropriate penalty.
2. Any employee who makes such a report to the New York State Inspector General shall not be subject to dismissal, discipline or other adverse personnel action.
3. All such staff is encouraged, but not required, to bring such concerns to the attention of OVS.

#### B. FEDERAL

1. Every staff person of the Contractor with the responsibility of overseeing the use of Federal (VOCA) funds, is protected from reprisals for disclosing to certain persons or bodies any information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant under the Federal Procurement Policy.
2. All such staff is encouraged, but not required, to bring such concerns to the attention of OVS.

### XXXIX. FEDERAL FUND REQUIREMENTS

To the extent that any of the goods or services provided by the Contractor under the Agreement may be funded, in whole or in part, by federal funds, the Contractor and OVS subcontractors shall comply with the following requirements set forth herein and further, agrees to comply with any additional federal requirements that shall be required for the receipt and/or expenditure of such funds. The Contractor shall comply with all applicable federal requirements, including:

- A. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375 as supplemented by 41 CFR 60.

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B. Copeland “Anti-Kickback Act” (18 USC 874 and 40 USC 3145) which provides that all contracts/subgrants greater than \$2,000 must have a provision requiring compliance with 18 USC 874 as supplemented by 29 CFR Part 3, which prohibit contractors or subrecipients from inducing by any means any person employed in construction, completion or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the Federal awarding agency.

C. Davis-Bacon Act, as amended (40 USC 276a to a-7) which requires all construction contracts awarded by recipients of more than \$2,000 to comply with the Act as supplemented by USDOL Regulations 29 CFR Part 5 requiring all contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the “prevailing wage”) in each solicitation and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the Federal awarding agency.

D. Contract Work Hours and Safety Standards Act (40 USC 3701 – 3708) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers require compliance with 40 USC 327-333 as supplemented by USDOL Regulations 29 CFR 5 when said contracts exceed \$100, 000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

E. Rights to Inventions Made under a Contract or Agreement which requires that Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by USDHHS or USDA.

F. Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 USC 1251 et seq.) which require that contracts and subgrants in excess of \$100, 000 shall require the recipient to comply with the Acts recited herein and that violations must be reported to USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.

G. Byrd Anti-Lobbying Amendment (31 USC 1352) which requires that every contractor under a contract for more than \$100, 000 and every tier of contractors or subcontractors thereunder shall file certification, as required, that said contractor will not and has not used any Federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or

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award covered by such Amendment. A contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR Part 93.) The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As evidenced by execution of the Contract, the Contractor as a sub-recipient, understands and agrees to the Federal requirements for certification and disclosure.

H. Debarment and Suspension (Federal E.O.s 12549 and 12689) which requires that certain contracts shall not be awarded to parties listed on the nonprocurement portion of the U.S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with E.O.s 12549 and 12689. (See 48 CFR Chapter 28) Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

I. Indirect costs. The Contractor shall provide calculation of all indirect costs and their budgeted amounts. The indirect cost rate agreement used by the Contractor shall be federally approved and must be retained on file for audit purposes.

### **XL. SEVERABILITY**

The invalidity or the unenforceability of any provision of this Agreement shall not affect the validity or enforceability of all other provisions of this Agreement, which shall remain in full force and effect.