DATA ACCESS AND SECURITY AGREEMENT

This agreement ("Agreement") is made this _____ day of _____, 20____ by and between the New York State Higher Education Services Corporation ("HESC"), with its primary business location at 99 Washington Avenue, Albany, New York 12255 and _____ ("Charter School"), with its primary business location at _____.

HESC and the Charter School, collectively, may hereinafter be referred to as "the parties."

WHEREAS, completing the Free Application for Federal Student Aid (FAFSA) form is a critical factor in helping students access higher education;

WHEREAS, key studies indicate that FAFSA completion correlates strongly with college enrollment, particularly among low-income students;

WHEREAS, HESC has entered into an agreement with the U.S. Department of Education to receive and share certain prescribed FAFSA filing status data to help improve the number of New York State students who complete the FAFSA;

WHEREAS, HESC has agreed to share certain Tuition Assistance Program (TAP) application filing status data to help improve TAP application completion among eligible students residing in the State; and

WHEREAS, receipt of such FAFSA and TAP filing status data will enable the Charter School to encourage students to complete such financial aid forms.

NOW, THEREFORE, HESC and the Charter School, intending to be bound, DO HEREBY AGREE AS FOLLOWS:

1. Scope of Services:
   A. HESC agrees to provide access to certain student financial aid information to the Charter School as set forth in Exhibit A ("Data Access"), in accordance with the terms and conditions of this Agreement.

   B. In exchange for the Data Access provided by HESC to the Charter School, the Charter School shall use its best efforts to encourage its students to complete the FAFSA form and TAP application.

   C. The parties may, from time to time, request changes in the Scope of Services. Any such changes shall be documented by a written amendment to this Agreement signed by both parties. Such amendment must be consistent with the terms of HESC's agreement with the U.S. Department of Education and applicable law.

2. Compensation:
   Each party agrees to provide the services described in Section 1 ("Scope of Services") at no cost or at no reimbursement of expenses to the other party.

3. Term of Agreement:
This Agreement shall be deemed effective on the date it is executed by the authorized representative of HESC. The authorized representative of the Charter School must sign this Agreement prior to execution by HESC. This Agreement shall continue in full force and effect until either party terminates the Agreement.

4. Termination:
   A. Either party may terminate this Agreement, or any part of this Agreement, at any time upon 30 days prior written notice to the other party.

   B. Either party may immediately terminate this Agreement or any part of this Agreement if it reasonably determines that the other party has committed misconduct, fraud or malfeasance.

   C. If either party terminates the Agreement, both parties agree to take commercially reasonable efforts to complete and reconcile any outstanding transactions within 60 days of the effective date of such termination.

5. Protection and Non-Disclosure of Confidential Information:
   A. Confidential Information: All information received or accessed by the Charter School, either directly or indirectly, in writing, electronically, orally or by any other means (collectively "Confidential Information"), shall be deemed to be proprietary and confidential to HESC.

   B. Use of Confidential Information: The Charter School warrants and represents that it shall not use Confidential Information for any purpose not specifically identified in this Agreement. Any use of Confidential Information not specifically contemplated in this Agreement shall be considered a material breach of this Agreement.

   C. Maintenance of Confidential Information: The Charter School shall take all reasonable measures to protect the privacy of and avoid unauthorized disclosure, access or use of Confidential Information. In doing so, the Charter School shall use at least the same standard of care in the protection of Confidential Information as it uses to protect its own highly confidential information, but in any event such Confidential Information shall be protected in at least a commercially reasonable manner.

   D. Security Incidents: The Charter School shall immediately report to HESC all known or suspected Security Incidents at SecurityIncidents@hesc.ny.gov with overnight written notification to Chief Financial Officer, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1500, Albany, New York 12255. A "Security Incident" shall mean any unauthorized action by a known or unknown person which, if successfully completed, should reasonably be considered one of the following: an attack, penetration, denial of service, unauthorized disclosure or use of Confidential Information or other sensitive information, misuse of system access, unauthorized access or intrusion (hacking), virus intrusion, scan of systems or networks, or any other activity that could affect either of the party's systems or data, or the security, confidentiality or integrity of the data received, stored, processed, or maintained. "Security Incident" shall also include any contact by a law enforcement agency regarding any data. For purposes hereof, "the Charter School" shall include any of its employees, volunteers, agents, contractors or third parties including, without limitation, any vendors used by it that have access (either

authorized or unauthorized) to the data. The parties shall comply with the provisions of section 208 of the New York State Technology Law. The Charter School shall be liable for the costs associated with a breach of information under this law if caused by the Charter School's negligent or willful acts or omissions, or the negligent or willful act(s) or omission(s) of its employees, officers, volunteers, agents, contractors, or third parties.

E. Accessing and Storing Confidential Information:

i. HESC shall provide the Charter School with access to certain Confidential Information through participation in HESC's Electronic Financial Aid Network (EFAN);

ii. The Charter School shall designate in writing a Chief Authorizing Official ("CAO") who shall be responsible for identifying and authorizing access to HESC information systems for the Charter School's authorized personnel responsible for providing the scope of services under this Agreement. Authorized personnel includes employees, volunteers, and authorized agents, such as contractors or other parties to whom the Charter School has outsourced any of its services or functions and who are under the Charter School's direct control and supervision with respect to the use and maintenance of the Confidential Information;

iii. The CAO and authorized personnel will be assigned a User ID and password whose use shall be in compliance with relevant provisions of the HESC User ID and Password Rules and Requirements and shall be kept confidential;

iv. The Charter School shall limit access to Confidential Information to only those authorized personnel who need to have access to such information for the purpose of performing their duties under this Agreement. The Charter School warrants and represents that Confidential Information will only be used for purposes consistent with section 483(a)(3)(E) of the Higher Education Act and this Agreement;

v. The Charter School shall inform the CAO and all authorized personnel of his/her responsibilities with respect to Confidential Information and criminal sanctions for noncompliance under applicable Federal, State, or local laws;

vi. In the event an authorized individual no longer requires access to HESC information systems pursuant to the terms of this Agreement, the authorized individual or the CAO shall inform HESC of the change in status;

vii. On an annual basis the CAO shall recertify that current authorized personnel still require access as provided;

viii. The Charter School shall not reverse engineer or otherwise exploit any software or other tangible objects which embody Confidential Information in performing the services under this Agreement;

ix. The Charter School shall keep any physical copies (paper or other physical representations) of Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access. The Charter School shall not leave Confidential Information unsecured;

x. The Charter School shall encrypt any Confidential Information stored on electronic media, such as CDs, DVDs, tape, flash drives, etc. Further, such electronic media shall be kept locked, or otherwise have sufficient physical access control measures to prevent unauthorized access. The Charter School shall not leave Confidential Information in any electronic format unsecured;

xi. The Charter School shall password protect any laptop or computer that contains Confidential Information. Additionally, any laptop or computer that contains Confidential Information shall have its full hard drive encrypted. The Charter School shall not leave any laptop or computer unattended without enabling a screen-lock or otherwise blocking access to the laptop or computer. The Charter School shall ensure that no password or other information sufficient to access a laptop or computer containing hardware Confidential Information is attached or located near the laptop or computer at any time; and

xii. All Confidential Information shared pursuant to this Agreement must be stored securely so that only authorized personnel have access to it. This means that precautions are taken to ensure that access through modems, networks, and the Internet is carefully monitored and limited to authorized personnel; and that data tapes, paper files and other storage media are kept in secure locations and access is limited to authorized personnel.

F. Dissemination of Information: The Charter School shall not disseminate any Confidential Information to a third party, without the prior written consent of HESC. The Charter School shall not issue publicity news releases or grant press interviews related to this Agreement, except as may be required by law or with the prior written consent of HESC. If the Charter School is presented with a request for documents pursuant to a subpoena, court order, the Freedom of Information Law (Public Officers Law, Article 6), or other mandated disclosure regarding any Confidential Information which may be in the Charter School's possession (including volunteers, agents, contractors, etc.), the Charter School shall immediately give notice to HESC with the understanding that HESC shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. The Charter School shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. The Charter School shall cause its authorized personnel to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by both parties under this Agreement.

G. Return or Destruction of Confidential Information: All Confidential Information received or accessed by the Charter School remains the property of HESC and shall be promptly returned, or destroyed, upon written request.

H. Survival: The provisions of this Section ("Protection and Non-Disclosure of Confidential Information") shall survive the termination of this Agreement.

6. Representations and Warranties of the Parties: Both parties represent and warrant that the following shall be true and correct as of the Effective Date of this Agreement and shall continue to be true and correct during the Term of this Agreement:

   Compliance with Laws: The parties are and shall remain in compliance with all applicable federal, State, county, and municipal, statutes, laws, ordinances, and regulations relating to this Agreement, as amended from time to time, including but not limited to the Family Educational Rights and Privacy Act ("FERPA") and the Protection of Pupil Rights Amendment.

   Authorization: Each party has taken all action necessary for the approval and execution of this Agreement, and execution by the persons signing on behalf of both parties is duly authorized and has been made with complete and full authority to commit both parties to all terms and conditions of this Agreement which shall constitute valid, binding obligations of each party.

7. Limitation of Liability:
   a) Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, HESC agrees to indemnify the Charter School against and agrees to protect, save, keep harmless and make whole the Charter School from any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal fees and expenses, imposed on, incurred by or asserted against the Charter School in connection with the terms of this Agreement or arising out of the acts or omissions of HESC, its employees, or its agent(s) in performing HESC's obligations under this Agreement. Nothing in this paragraph shall, however, indemnify the Charter School for its own acts or omissions.

   b) The Charter School agrees to indemnify HESC against and agrees to protect, save, keep harmless and make whole HESC from any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal fees and expenses, imposed on, incurred by, or asserted against HESC in connection with the terms of this Agreement or arising out of the acts or omissions of the Charter School, its authorized personnel in performing the Charter School's obligations under this Agreement. Nothing in this paragraph shall, however, indemnify HESC for its own acts or omissions.

   c) Neither party shall be responsible for liability, loss or damage of any kind resulting from any delay or error in the performance of, or its failure to perform, its responsibilities hereunder by reason of circumstances beyond its control, including but not limited to acts of civil or military authorities, national emergencies, labor difficulties, fire, flood or other catastrophes, acts of God, insurrection, war, riots, failure of transportation, communication or power supply, or malfunction provided that such non-performance could not have been prevented by reasonable precautions. In the event that a party is proved negligent, the prevailing party's recourse shall be restricted solely to actual

monetary losses incurred by the prevailing party and in no event shall a party be responsible for any punitive or consequential damages.

d) The indemnities set forth herein shall survive the termination of this Agreement.

8. Audit: Subject to State and federal laws regarding the disclosure of student information and the confidentiality provisions of this Agreement, all records maintained by the Charter School (including volunteers, agents, contractors, etc.) as part of this Agreement shall be subject to inspection and audit by HESC, federal and State auditors to monitor compliance with the terms of this Agreement.

9. Notices: All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses and/or persons as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally, or (ii) sent by email, or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

IF TO THE CHARTER SCHOOL:

Name
Title
Address
Email address

Copy to:

Name
Title
Address
Email address

IF TO HESC:

Cheryl B. Fisher, Supervising Attorney
NYS Higher Education Services Corporation
99 Washington Avenue
Albany, New York 12255
Email: cheryl.fisher@hesc.ny.gov

Copy to:

Thomas F. Brennan, General Counsel
NYS Higher Education Services Corporation
99 Washington Avenue
Albany, New York 12255
Email: thomas.brennan@hesc.ny.gov

10. Standard Clauses for NYS Contracts, Revised January 2014 (Appendix A)
The Charter School agrees to be bound by the requirements of this Agreement (Standard Clauses for NYS Contracts-Appendix A) including any future amendments to Appendix A. Appendix A is always available, in its current version, on the website of the NYS Office of General Services at http://www.ogs.state.ny.us.

11. Order of Precedence; Conflict; Inconsistency

This Agreement contains the entire understanding of the parties with respect to the matters contained herein. In the event of any conflict between the terms and conditions set forth in this Agreement, the following order of precedence shall apply:

a) Appendix A – Standard Terms for New York State Contracts;
b) This Agreement; and
c) Exhibit A: Data Access.

12. Severability: If any provision of this Agreement is determined to be void or legally unenforceable, HESC and the Charter School will consider that provision severed from this Agreement. In such case, all remaining provisions of this Agreement shall remain in full force and effect.

13. Modification of Agreement: This Agreement may not be amended, changed or modified, in whole or in part, unless such modification is in writing, signed by duly authorized representatives of both the Charter School and HESC.

14. Waiver and Excuse of Performance: Nothing in this Agreement shall be construed to waive any provision in applicable statute or regulation. In the event any provision of this Agreement is in conflict with an applicable statute or regulation, the terms of the statute or regulation shall govern. The parties agree that if any applicable statutes or regulations are revised or enacted during the term of this Agreement, such statute or regulation will apply to this Agreement.

15. No Waiver: A waiver of enforcement of any provision of this Agreement will not constitution a waiver of any other provision of the Agreement, nor will it preclude a party from subsequently enforcing such provision later. The remedies provided in this Agreement are cumulative and not exclusive of any remedies that may be available in law or equity. No waiver of any provision of this Agreement or excuse of any performance as required by this Agreement shall be valid unless in writing signed by duly authorized representatives of both the Charter School and HESC.

16. Venue; Jurisdiction; Governing Law: Any action to construe or enforce this Agreement must be brought in the New York Court of Claims pursuant to New York Education Law §653(4) and the Charter School agrees to subject itself and the subject matter of this Agreement to the jurisdiction of such court for that purpose. The laws of New York will govern this Agreement without regard for New York's choice of law statute.

17. Entire Agreement: This Agreement constitutes the complete written Agreement between the parties, superseding all written or oral, prior or contemporaneous communications between the parties relating to the subject matter of this Agreement.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

_____	**NEW YORK STATE HIGHER EDUCATION SERVICES CORPORATION**
By:_____	By: _____
Name:_____	Name:_____
Title:_____	Title:_____
Date: _____	Date: _____

Acknowledgment

STATE OF NEW YORK)

COUNTY OF _____) ss:

On this _____ day of _____, 20____ before me came _____, personally known to me or proved to me by satisfactory evidence to be the individual whose name is subscribed in this Agreement, and said individual acknowledged to me that s/he executed this Agreement in her/his capacity as _____ of the Charter School.

_____
Notary Public, State of New York

EXHIBIT A
DATA ACCESS

In accordance with the authority provided under HESC's Student Aid Internet Gateway (SAIG) Participation Agreement for State Grant Agencies with the U.S. Department of Education that allows data sharing in order to facilitate the filing of the federal Free Application for Federal Student Aid (FAFSA) form and in accordance with the consent provided by a Tuition Assistance Program (TAP) applicant that authorizes HESC to share TAP application status information with secondary educational institutions (effective as of January 1, 2015), HESC shall share the following data with the Charter School via a Customized Report on HESC's secure web site:

A. A list of all students who have completed the FAFSA form and TAP Application and whose National Center for Educational Statistics (NCES) code matches the School code associated with the user ID entered; and

B. For each student listed, the report will include (1) the student's last name; (2) the student's first name and middle initial; (3) the student's date of birth; (4) the student's zip code (not full address); (5) the NCES School Code; (6) if filed, the date the FAFSA form was submitted to the Department; (7) the date the Department processed the FAFSA form, if applicable; (8) a FAFSA Completion Status Code; (9) if filed, the date the TAP Application was submitted to HESC; and (10) a TAP Application Completion Status Code.

   The FAFSA Completion Status Codes are as follows:

   i) FAFSA submitted but not processed due to missing signature(s);

   ii) FAFSA processed with an EFC calculated; or

   iii) FAFSA processed with errors.

   The TAP Application Completion Status Codes are as follow:

   i) TAP Application submitted but not processed due to missing signature(s);

   ii) TAP Application processed and eligibility determined; or

   iii) TAP Application processed with errors.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

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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. <u>CONFLICTING TERMS</u>. 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. <u>GOVERNING LAW</u>. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. <u>LATE PAYMENT</u>. 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. <u>NO ARBITRATION</u>. 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. <u>SERVICE OF PROCESS</u>. 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. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

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

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.