

CONSULTING AGREEMENT FOR PROFESSIONAL SERVICES

This Consulting Agreement for Professional Services (this "Agreement"), effective as of July 14, 2024 (the "Effective Date"), is by and between The City University of New York, on behalf of John Jay College of Criminal Justice ("Consultant"), a body corporate established by Section 6203 of New York Education Law, with an address at 524 W. 59th Street, New York, NY 10019; and DataKind, Inc. ("Company") POL sec.87(2)(b) with a mailing address of POL sec.87(2)(b) POL sec.87(2)(b) each of which may sometimes be referred to in this Agreement as a "Party" or collectively as the "Parties."

1. Services and Change Management. Consultant shall undertake and complete the consulting services specified in Schedule A (the "Services") in accordance with the timetables and other terms and conditions set forth in Schedule A. Company may, at any time, by written notice to Consultant, request changes to the Services, which shall become effective only upon mutual written agreement of the Parties. Within a commercially reasonable period of time, but in any event no longer than ten (10) business days, Consultant will provide Company with an estimate of the impact, if any, of such requested change on the payment terms, completion schedule, and any other applicable provision of this Agreement. If the Parties mutually agree to such changes, a written description of the agreed change (a "Change Authorization") will be prepared, and will become effective upon signature by both Parties. The terms of a Change Authorization prevail over those contained in this Agreement.

2. Acceptance of Deliverables. Company's acceptance of the deliverables to be provided by Consultant hereunder (the "Deliverables") will be subject to Company's determination that each Deliverable complies, in all material respects, with any specifications set forth in Schedule A. If Company determines that a Deliverable does not meet the applicable acceptance criteria, Company will notify Consultant within thirty (30) days of the date Consultant delivers such Deliverable to Company (or within such other time period as the Parties may agree), specifying its reasons in reasonable detail, and Consultant will, at no additional cost, promptly conform the Deliverable so that it meets the applicable acceptance criteria. Any corrected Deliverables may be evaluated over an additional thirty (30) day period and accepted or rejected by Company in accordance with the provisions of this Section. All rejected Deliverables will be safeguarded or destroyed by Company as requested by Consultant.

3. Payment: Audit Rights

3.1 Payment. In full and complete consideration to Consultant for entering into this Agreement, performing Consultant's obligations hereunder, and for all rights granted by Consultant to Company hereunder, Company agrees to pay, and Consultant agrees to accept, the fees set forth in Schedule A. Unless otherwise set forth in Schedule A, Consultant shall invoice Company monthly in a form that includes project(s), dates, hours, and an activity report on the deliverables included in Schedule A, and Company shall pay all amounts due and owing within thirty (30) days of its receipt of each such invoice. Any terms contained on Consultant's invoice that are inconsistent with or supplemental to this Agreement are null and void. All payments will be made in U.S. dollars and will require registration with Company's payment provider, Justworks.

3.2 Audit Rights: During the Term (as defined below) and for one (1) year thereafter, upon receiving thirty (30) days written notice from Company, Consultant will allow Company and its authorized auditors, attorneys, and accountants to inspect its records which document the receipt of the fees set forth in Schedule A as well as the records of the project(s) dates, hours, and activity reports on the deliverables included in Schedule A, for the limited purpose of ensuring that the fees paid to Consultant and the incentive funds paid out to focus group participants are

aligned. Consultant shall not allow access to any personally identifiable information. If, as a result of any audit it is determined that the fees and expenses are not aligned, Company shall notify Consultant of the amount of any such overcharge or shortfall. Consultant shall promptly return to Company the amount of the overcharge and Company shall promptly pay Consultant any shortfall. Company may perform only one (1) audit during the Term of the Agreement and the 12-month period immediately following the end of the Term of the Agreement. Company will perform any and all audits at its sole expense.

4. Expenses. Company will reimburse Consultant for any reasonable, documented, out-of-pocket expenses actually incurred by Consultant in connection with the performance of Consultant's Services hereunder, provided that such expenses have been pre-approved by Company in writing. For the avoidance of doubt, Consultant will not seek and shall not be entitled to any expenses other than expenses pre-approved in writing by Company. Further, all air travel shall be "coach" class (and Consultant shall endeavor to take advantage of advance purchase discounts when practicable) and all hotel accommodations and dining expenses shall be standard "business class." Consultant shall invoice Company for any such expenses on a monthly basis, and Company shall pay the amount of each invoice within thirty (30) days of receipt of each invoice.

5. Ownership of Intellectual Property. Company shall not use the information or data elements provided by Consultant to Company pursuant to this Agreement (collectively, the "Data") or make, cause to be made, use or sell for any purpose, any product or other item using, incorporating or derived from the Data, other than for the permitted use set forth in Exhibit A to this Agreement. Company agrees that it will not apply or file for any intellectual property protection, including without limitation, copyright or patent protection, in any jurisdiction, for the Data or any patentable development or discovery resulting from its use of the Data, without the prior written approval of Consultant. Consultant retains ownership of the Data and all intellectual property rights therein. Consultant shall retain ownership of all Intellectual Property Rights to any invention, work, or other matter that has been or is created, conceived, or reduced to practice by Consultant independently of this Agreement.

6. Representations and Warranties; Disclaimer. Consultant hereby warrants to Company that: (i) Consultant's Services shall be performed in a competent, professional, and workman-like manner, in accordance with current industry standards; (ii) Consultant's employees and approved subcontractors, if any, who perform any Services shall be qualified to perform the tasks and functions which they are assigned; (iii) all Deliverables provided hereunder shall materially conform to the specifications set forth in Schedule A. Company represents, warrants, and covenants that: (i) Data provided under this Agreement shall be held in the strictest confidence and can be disclosed only in compliance with the terms of this Agreement; (ii) it will maintain the anonymity of the data provided; (iii) that if any person, family or household should be discovered inadvertently, no use will be made of this knowledge; (iv) Consultant will be advised of the incident; (iii) the information will be safeguarded or destroyed as requested by Consultant; and, (iv) that no person other than those associated with this project will be permitted access to the Data or any files derived from the Data.

7. Data Confidentiality. This Agreement may require Company to have access to certain personally identifiable information regarding the Consultant's students. Consultant hereby appoints Company as its agent for the sole purpose of assuming duties in connection with the processing of student records that would otherwise be provided by the Consultant. As the Consultant's agent, Company is subject to and shall comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and its prohibitions against

disclosure of personally identifiable information regarding students to third parties, except where permitted by the regulations of the United States Department of Education.

8. Indemnification. In no event will Consultant be liable for any use or disclosure of the Data by Company, Company's employees, representatives, agents and/or contractors or for any claims, damages, losses or liabilities, of whatever kind or nature, which may arise out of or in connection with the use or disclosures of the Data by Company, Company's employees, representatives, agents and/or contractors. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Consultant shall hold the DataKind, its affiliates and its officers, directors, employees and agents harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the Licensor or of its officers or employees when acting within the course and scope of their employment. DataKind shall defend, hold harmless, and indemnify Consultant, its affiliates and its officers, directors, employees and agents from and against any claim, suit or proceeding brought by a third party against any of the Licensor to the extent that it is based on any claim arising out of, or any breach by the DataKind of its representations, warranties, confidentiality for non-public information, or other obligations hereunder.

9. Confidentiality; Non-Solicitation; Non-Compete. Consultant shall not, directly or indirectly, use for its own benefit (other than to fulfill its obligations hereunder) or disclose to any third party any trade secret, customer information, confidential information, or financial information of Company without the prior, written permission of Company, unless required by law (including, without limitation, New York State's Freedom of Information Law or FOIL) or court order. These obligations shall not apply to information that (i) is or becomes public knowledge without any action by, or involvement of, Consultant; (ii) is documented as being known to Consultant prior to its disclosure by Company; (iii) is independently developed by Consultant without reference or access to the confidential information of Company and is so documented; or (iv) is obtained by Consultant without restrictions on use or disclosure from a third person who, to Consultant's knowledge, did not receive it, directly or indirectly, from Company.

10. Termination.

10.1 Termination. Unless terminated earlier pursuant to this Section, this Agreement shall begin on the Effective Date and automatically terminate following Consultant's successful completion of tasks outlined in Schedule A, or September 30, 2024, whichever occurs earlier, and Company's payment of all monies due and owing (the "Term"). Notwithstanding the foregoing, if either Party breaches a material provision of this Agreement, the other Party may terminate this Agreement upon ten (10) days' prior, written notice, unless the breach is cured within such notice period. In addition, Company may terminate this Agreement at any time, with or without cause, upon thirty (30) days' prior, written notice to Consultant.

10.2 Effect of Termination. In the event of any termination of this Agreement: (i) Company will promptly pay Consultant for all amounts payable hereunder as of the effective date of termination; and (ii) Consultant and Company shall return to the other, or, at either Party's request, provide a written certification of the destruction of all of the other Party's confidential information, including all copies thereof, within the Party's possession or control. Sections 5, 6, 7, 8, 9, and 10-15 shall survive any termination or expiration of this Agreement.

11. Limitation of Liability.

11.1 Liability Exclusion. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM SUCH OTHER PARTY'S RIGHTS) FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF

ANY KIND (INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS, OR LOSS OF GOODWILL OR REPUTATION) WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

11.2 Limitation of Damages. EACH PARTY'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE), WILL NOT EXCEED THREE (3) TIMES THE AGGREGATE AMOUNT OF THE FEES PAID OR PAYABLE TO CONSULTANT BY COMPANY UNDER THIS AGREEMENT.

11.3 Exceptions. THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 10.1 AND SECTION 10.2 SHALL NOT APPLY TO (I) LIABILITY RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, (II) LIABILITY RESULTING FROM CONSULTANT'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, OR (III) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

12. Relationship of the Parties. Consultant and Company are independent entities with separate employees. Consultant is solely responsible for the manner and hours in which the Services are performed. Company and Consultant are each solely responsible for each company's individual taxes, withholdings and other statutory, regulatory, or contractual obligations of any sort (including, but not limited to, those relating to workers' compensation, disability insurance, Social Security, unemployment compensation coverage and income taxes). The Parties shall have no right to legally bind the other, and neither Party shall hold itself out to third parties as having the right to legally bind the other Party.

13. Assignment. This Agreement and the Services contemplated hereunder are personal to the Parties and neither Party shall not have the right or ability to assign, transfer, or subcontract any obligations under this Agreement without the prior, written consent of the other Party. Any attempt to do so shall be void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

14. Notice. All notices (other than routine operational communications) under this Agreement shall be in writing and shall be deemed given when personally delivered, when delivered by fax or e-mail, or three (3) days after being sent by first class U.S. mail to the address of the Party to be noticed as set forth herein or to such other address as such Party last provided to the other by written notice.

15. Miscellaneous. This Agreement, the attached Schedule, and the Standard Clauses for New York State Contracts, version June 2023 ("Appendix A," attached hereto and incorporated herein) is the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior agreements, negotiations, representations, and understandings between the Parties with respect to such subject matter. To the extent there are any conflicts between the terms of this Agreement and the attached Schedule, the terms of this Agreement shall govern. To the extent there are any conflicts between Appendix A and any other term of this Agreement, Appendix A shall govern. The failure of either Party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. No changes or modifications or waivers to this Agreement will be effective unless in writing and signed by both Parties. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Neither Party may issue any

press release or make any public announcement or marketing-related communication to third parties discussing the Parties' relationship under this Agreement or the terms of this Agreement or referencing the other Party without obtaining the prior written consent of the other Party, in each instance. This Agreement, and any and all disputes directly or indirectly arising out of or relating to this Agreement, will be governed by and construed in accordance with the laws of the State of New York, without reference to the choice of law rules thereof. Each of the parties hereby irrevocably consents and submits to the exclusive jurisdiction of the state and federal courts located in the State of New York for any such disputes, and waives any objections to the laying of venue in such courts. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement. This Agreement may be executed in counterparts (which may be exchanged by facsimile or PDF), each of which shall be deemed an original, but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on their behalf by their duly authorized representatives.

DataKind, Inc.

Signed by:
By: POL sec.87(2)(b)

Print Name: POL sec.87(2)(b)

Title: POL sec.87(2)(b)

Date of Signature: 8/13/2024

**The City University of New York, on behalf of
John Jay College of Criminal Justice**

POL sec.87(2)(b)
By:

Print Name: Paula Davis

Title: Sergeant's Chamberlain

Date of Signature: August 19, 2024

Approved As To Form
POL sec.87(2)(b)
The City University of New York
Office of the General Counsel
Date: 8/15/24

SCHEDULE A**Objective –**

Consultant will deploy the surveys and conduct the focus groups to develop the program measurement assets to inform DataKind's Student Success Tool program, supported by Google.org and its program evaluation grant deliverables.

Scope of Work –

Using the survey templates and focus group guidance developed with DataKind, John Jay College will complete the following activities:

- Hold a minimum of 1 focus group of 10-20 alumni
- Send 1 survey to 1,500 students in CUSP and CUST programs
- Send 1 survey to 7,000 alumni of CUSP and CUST programs
- Recruit CUSP/T program advisors to participate in a focus group facilitated by DataKind (no incentive funds will be provided for the program advisor focus group)
- Send follow up communications to remind recipients to fill out surveys and sign up for focus groups
- Administer incentive funds for survey and focus group participants per the terms below
- Share the anonymized survey results and focus group notes with DataKind in a manner that does not permit re-identification of any student or parent.

Using the anonymized survey results and focus group notes provided by Consultant, DataKind will complete the following activities:

- Analyze the Data and the Deliverables to produce a report for John Jay College that will review the participants' perceptions of the Completion for Upper Division Program (CUSP) academic advising, grant, and career support and what aspects of the CUSP programs were most helpful. The report will contain recommendations for the College based on the Data.
- Company shall not make any attempt to use the Data to re-identify any individual, either using the Data itself or in combination with other data that may be available to Company.
- The report will enable John Jay College to understand CUSP program impact metrics and will include analysis on recurring themes including information related to the efficacy and areas of improvement to inform future implementation efforts.

Schedule/Deliverable Milestones/Timeline –

The Consultant's work will start on July 14, 2024 and be completed on or before September 30, 2024. DataKind shall produce its report by December 30, 2024.

Payment Terms–

Consultant will provide DataKind with an invoice upon completion of the services. This invoice should be submitted to POL sec.87(2)(b) with cc to a DataKind program representative to review and approve the payment. All payments will be made in U.S. dollars and will require online registration with Company's payment provider, Justworks. Once the invoice is approved and the Justworks payment profile is complete, DataKind will render payment within thirty (30) days. DataKind will pay Consultant at POL sec.87(2)(d) per survey participant and POL sec.87(2)(d) per focus group participant, up to a maximum of \$15,000 total. Consultant will use these funds to provide a financial incentive to each survey participant and focus group participant.

If survey and focus group participation exceeds the \$15,000 total, John Jay College will reach out to a DataKind program representative to request written approval for an increased budget by September 30, 2024.

SCHEDULE B

Background IP Incorporated into Any Deliverable:

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, 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, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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 33rd Floor
New York, NY 10017
646-846-7364
email: mwbusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddir/ectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

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

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

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

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

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