



Services Agreement

This Services Agreement (the "Agreement") is made and entered into as of February 1, 2022 (the "Effective Date"), by and between DataKind, Inc., a corporation organized under the laws of the POL sec.87(2)(b), with a mailing address of POL sec.87(2)(b) ("DataKind"), and The City University of New York, a New York education corporation organized pursuant to Article 125 of the New York State Education Law, on behalf of John Jay College of Criminal Justice, having offices at 524 W 59th St, New York, NY 10019 ("Client"). Each of DataKind and Client is sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, DataKind is a nonprofit organization that offers data science services to high impact social organizations; and

WHEREAS, Client wishes to receive certain professional services from DataKind, subject to and in accordance with terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Provision of Services. DataKind shall provide Client with certain data science and consulting services relating to Client's business, as agreed upon by the Parties from time to time and detailed in a Statement of Work (the "SOW") substantially in the form of SOW #1, which is agreed to by the Parties and attached hereto as Schedule A (collectively, the "Services"). Each SOW shall include a description of Services, a project schedule and milestones and all fees to be paid for such Services.

2. Term and Termination.

(a) This Agreement shall commence on the Effective Date and continue in effect until terminated as set forth hereunder. Provided that no SOWs are then in effect, this Agreement may be terminated by either Party for convenience upon written notice to the other Party. The term for any Services shall remain in effect until the termination date as set out in the applicable SOW.

(b) This Agreement and/or any SOW may be canceled and terminated by either Party upon the other Party's material breach of any of the terms or conditions of this Agreement or the applicable SOW and failure to cure such breach within thirty (30) days after written notice thereof.

(c) In the event of termination of this Agreement as provided herein, all rights and obligations hereunder shall terminate on the effective date of such termination following notice as required above, except that the termination of this Agreement shall in no way relieve either Party from the obligation to pay the other Party any sums owing hereunder with respect to



Services properly performed prior to the date of such termination. In addition, Sections 4, 7, 8 and 9 shall survive the expiration or earlier termination of this Agreement.

3. Fees. No fees will be charged for the Services.

4. Intellectual Property.

(a) DataKind shall be the sole and exclusive owner of all rights, title, and interest in and to all results and/or proceeds of the Services created and provided to Client by DataKind under this Agreement, together with all related information and/or intellectual property rights (the "Work Product"). The Work Product shall include, without limitation, any ideas, concepts, images, graphics, artwork, and any other information, data, materials and intellectual property developed or prepared by DataKind in connection with the Services. If any Work Product is deemed to be a "work-made-for-hire," then Client hereby assigns to DataKind all of its right, title and interest in and to such Work Product. Client shall provide reasonable assistance to DataKind, at DataKind's request (i) to perfect DataKind's title in and to the Work Product, and (ii) where applicable, to enable DataKind or its nominee to obtain and maintain copyright, patent or other legal protection therefore anywhere in the world. For the avoidance of doubt, "Work Product" does not include any information, data, materials and/or intellectual property provided by Client to DataKind to assist DataKind with performing the Services (the "Client Content"), including, without limitation, any information, data, or materials provided by Client to DataKind under that Mutual Non-Disclosure Agreement between the parties dated June 21, 2021 (the "Mutual Non-Disclosure Agreement"). Client retains all rights to the Client Content and its use, including, to the extent that the Work Product contains Client Content, how the Work Product may be used by DataKind.

(b) DataKind hereby grants Client a non-exclusive, perpetual, royalty-free, paid-up license to any Work Product, with the right to grant sublicenses, to make, have made, use, sell, offer to sell, import, copy, distribute and modify such Work Product as necessary in connection with Client's business.

(c) Client hereby grants DataKind a non-exclusive, royalty-free, paid-up license, during the term of this Agreement, to use the Client Content solely as necessary for DataKind to perform the Services, and not for any other purpose.

5. Publicity. Client agrees that DataKind may issue press releases and make other public announcements or communications to third parties discussing its relationship with Client and the Services subject to the prior written approval of Client. DataKind agrees that Client may issue press releases and make other public announcements or communications to third parties discussing its relationship with DataKind and the Services subject to the prior written approval of DataKind.

6. Representations and Warranties.

(a) DataKind hereby warrants, represents, and covenants to Client that DataKind has the right to enter into this Agreement and perform its obligations herein. DataKind further warrants, represents, and covenants to Client: (i) that DataKind and those acting on its behalf in performing the Services are expert in performing the Services referred to by this Agreement; (ii) that DataKind and those acting on its behalf in performing the Services are



licensed as may be required by all applicable authorities in the State of New York and the City of New York, as the case may be, to perform the Services and that all Services shall be performed in accordance with applicable law; and (iii) that DataKind and those acting on its behalf in performing the Services are not on the “Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list published by the New York State Office of General Services.

(b) Client hereby warrants, represents, and covenants to DataKind that Client has the right to enter into this Agreement and perform its obligations herein.

7. Confidentiality. The Purpose as defined by the Mutual Non-Disclosure Agreement effective as of June 21, 2021 (“MNDA”) is expanded to include the Services as defined by this Agreement. The Parties’ obligations with respect to confidentiality are set forth in the MNDA, which is incorporated herein by reference, in its entirety. Schedule B is a list of volunteers engaged by DataKind to perform the Services and bound by the MNDA, pursuant to paragraph 3 of the MNDA. DataKind shall, from time to time and as necessary, add individuals to Schedule B.

8. Liability: Indemnification.

(a) Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, Client shall hold DataKind, its parent companies, divisions, subsidiaries and affiliated divisions and companies, assigns, and the shareholders, directors, officers, employees, consultants and agents of the foregoing (the “DataKind Indemnified Parties”) harmless from and indemnify any DataKind Indemnified Party for any final judgment of a court of competent jurisdiction arising out of the actual or alleged infringement or misappropriation of any Client Content to the extent attributable to the negligence of Client or of its officers or employees when acting within the course and scope of their employment.

(b) DataKind assumes liability for, and shall indemnify, defend, protect, save and hold harmless Client, its parent companies, divisions, subsidiaries and affiliated divisions and companies, assigns, and the shareholders, directors, officers, employees and agents (excluding Client’s consultants and independent contractors) of the foregoing (the “Client Indemnified Parties”) from and against any third-party claims, actions or suits brought against any Client Indemnified Party, together with all related costs, liabilities, judgments, obligations, losses, penalties, expenses or damages (including, without limitation, legal fees and expenses) arising out of the actual or alleged infringement or misappropriation by any Work Product of any third party intellectual property right, unless such infringement is caused by any Client Content and would not have occurred but for such Client Content.

(c) EXCEPT TO THE EXTENT SET FORTH IN SUBSECTIONS 8(a) AND 8(b), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY LOST PROFITS OR LOST REVENUE, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR THIS AGREEMENT.



9. Miscellaneous Provisions.

(a) Independent Contractor. DataKind shall render services as an independent contractor and nothing contained herein shall create any association, partnership, joint venture, employee or agency relationship between DataKind and Client. DataKind shall not subcontract or otherwise delegate any of its obligations hereunder, in whole or in part, without prior notification to Client of the subcontractor's name and contact information. DataKind understands and agrees that it is responsible for ensuring that any subcontractor complies with those requirements of this Agreement that apply to the services to be provided by the subcontractor, including but not limited to Sections 6(a) and 7. DataKind further understands and agrees that Client's approval of a particular subcontractor does not relieve DataKind of its responsibility and liability for performance of this Agreement.

(b) Entire Agreement; Amendment. Except for the Mutual Non-Disclosure Agreement, this Agreement shall constitute the entire understanding between the Parties with respect to the subject matter hereof, shall supersede any prior agreements between Client and DataKind with respect thereto, and may not be amended except by a writing signed by both Parties.

(c) Governing Law; Dispute Resolution. This Agreement, and all matters arising directly or indirectly from this Agreement, shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws rules applicable to contracts to be performed entirely within the State of New York.

(d) Counterparts. This Agreement may be executed in counterparts (which may be exchanged by facsimile), each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(e) Severability. The illegality, invalidity, or unenforceability of such provision shall not in any manner affect or render illegal, invalid or unenforceable any other provision of this Agreement, and that provision, and this Agreement generally, shall be reformed, construed and enforced so as to most nearly give lawful effect to the intent of the parties as expressed in this Agreement.

(f) Conflicts of Interest. DataKind affirms that to the best of DataKind's knowledge there exists no actual or potential conflict between the Services and DataKind's business or financial interests, or those of any employee of DataKind, and no trustee, officer, or employee of Client, or other director, officer, employee or person whose salary is payable in whole or in part from the treasury of the City of New York or the State of New York is directly or indirectly interested in this Agreement. Should this situation change during the term of this Agreement, DataKind shall promptly notify Client. Client reserves the right in its sole discretion to determine whether or not any of the interests required to be disclosed under this subsection 9(f) shall disqualify DataKind from performing the Services.

(g) NYS Appendix A. Appendix A: Standard Clauses for New York State Contracts ("Appendix A") is attached hereto, and its terms and conditions are hereby incorporated by reference. The term "State" in Appendix A includes the State of New York and The City University of New York, which is a "contracting agency" and "State agency" for



purposes of Appendix A. If there is any conflict between Appendix A and the terms and conditions of this Agreement, the conflict shall be resolved by giving precedence to Appendix A.

IN WITNESS WHEREOF, each Party has, as of the Effective Date, caused this Agreement to be executed by its duly authorized representative.

DataKind, Inc.

By _____

Name (printed):

Title:

Date of Signature:

CLIENT

By _____

Name (printed):

Title:

Date of Signature:

Approved as to Form:

POL sec.87(2)(b)

CUNY Office of the General Counsel

Date: 2/15/2022



SCHEDULE A

In partnership with John Jay College, DataKind will conduct the following activities:

1. Draft a project brief that provides guidelines and expectations on the project.
2. Conduct a project partner orientation in which DataKind will provide an overview on project process and the role and responsibilities of participants at a project partner.
3. When projects require volunteer teams, DataKind will conduct volunteer recruitment and orientation in order to resource the project appropriately.
4. Draft a project plan based on the project brief as well as the initial findings of our data audit. The project plan will include high level milestones with estimated dates for completion.
5. Conduct exploratory data analysis (EDA) based on the project plan and finalize the plan as appropriate based on this analysis.
6. Once the project is complete, DataKind will provide an insight report and presentation to the project partner. The project partner and DataKind will discuss the best format for the insight report and presentation. This may be in the form of a written report, a webinar, conference call, or powerpoint.

No fees are required in the provision of these services.

Introduction and Overview of Needs

Community colleges or junior colleges across the United States offer many types of educational programs, including those that lead to degrees and certificates and that serve as job-entry educational experience, as well as associate degrees that prepare students for transfer to a four-year college where graduates can earn a bachelor's degree. This degree typically takes 2 years to achieve.

Senior colleges or universities provide students with a Bachelor's degree, which takes 4 years of full-time study to complete. Students who graduate from community colleges with an Associate's Degree can then transfer to senior colleges to work towards their bachelor's degree for an additional 4 years. As a result, it will take students 6 years to complete both their Associate's and Bachelor's degree.

John Jay College of Criminal Justice (JJC) – a senior college of The City University of New York (CUNY) – has evolved into the preeminent international leader in educating for justice in its many dimensions. The College offers a rich liberal arts and professional curriculum that prepares students to serve the public interest as ethical leaders and engaged citizens. The College is dedicated to educating traditionally underrepresented groups and committed to increasing diversity in the workforce. With a community of over 15,000 students, in an array of undergraduate, graduate and doctoral programs, John Jay College is the most diverse among the City University of New York's senior colleges. The student body — 60% female 40%



Hispanic and 25% African American — today produces leaders, scholars and heroes in policing and beyond, including forensic science, law, fire and emergency management, social work, teaching, private security, forensic psychology and corrections.

The Challenge

Across the United States, 4-year graduation rates for transfer students who move from community college to a senior (4 year) institution are poor. Data from the American Institutes for Research shows that only about 60% of college students graduate from four-year colleges and universities within six years¹. Additionally, the longer students stay in a community college, the less likely they are to transfer to a 4 year university, therefore blocking their academic path to graduating with a degree from a senior institution.

While John Jay College has the highest transfer graduation rate of any NYC higher education institution (in and outside of the CUNY system), identifying individuals who could benefit from an intervention to support their academic path to increase student graduation rates is time consuming and resource intensive.

Currently, no data pipeline or tool exists to provide student-level information on the junior to senior college transfer program, where the students come from (i.e. which community college), and where they might need additional support in order to graduate from the 4 year program within 6 years.

The Opportunity

DataKind would like to work in partnership with the John Jay College (JJC) team to use students' information prior to and after transferring to John Jay College in order to predict which transfer students are most at risk of not graduating. John Jay will, in turn, offer these students additional support toward completing their degrees, enabling the solid foundation of a Bachelor's Degree to strengthen their stability and future economic well being.

Specifically, the tool will aim to generate data driven insights into which students might be at highest risk of not completing their degree, and when the intervention(s) would need to take place (e.g., the semester before they transfer, the summer before, throughout the first academic year at JJC etc.). The specific nature of the intervention(s) taken is not in scope of this project, and will be addressed by the subject-matter experts within JJC, based in part on already existing and successful intervention programs at JJC.

¹ Source:

<https://www.communitycollegereview.com/blog/the-catch-22-of-community-college-graduation-rates>



DataKind Problem Statement

Using student demographic and enrollment information from 2005 - 2021, student performance information prior to enrollment at John Jay, and student performance information after enrollment at John Jay College, DataKind aims to create a model that will provide the John Jay team (academic advisors, financial aid counselors) with data-driven information to identify transfer students who have defined risk characteristics so that they can receive direct support to help ensure their academic success

The model will generate the probability of a transfer student not completing their degree (with an emphasis on completion within six years) based on historical data provided and machine learning algorithms, and will also provide recommendations on when this risk is highest (e.g., semester or summer pre-transfer, first transfer semester etc.). This will allow the CUNY team to directly support students most at-risk of not graduating, ensuring that transfer students from associates programs will graduate from John Jay College's baccalaureate programs within the prescribed 6 years.

Background and Context: Previous DataKind Partnership

DataKind previously partnered with John Jay College at CUNY to build a predictive model using John Jay's data to identify students with advanced standing who are at risk of dropping out. Leveraging historical student data, the DataKind DataCorps team used statistical analysis and machine learning to understand and identify factors that may affect students' decisions to drop out after having completed 90 credits (75 percent of the credits needed to earn a degree) [see previous project plan [here](#), the final project presentation video [here](#), and the final project presentation deck [here](#)].

For each student with a given set of characteristics recorded in the data, the model computed a dropout risk score. This allowed the John Jay administration to identify students with a high risk of dropping out early on. The statistical analysis also revealed student characteristics that are most likely to be associated with the decision to drop out. This analysis helped inform the design of effective interventions for the population of students at risk to help reduce dropout and improve graduation rates.

This model is at the heart of the JJC's Completion for Upper-division Student Program (CUSP). 5 years after the kick start of the intervention, 4-year graduation rates are 41% for the first time in college history. At the start of this project, graduation rates were closer to 25%.

The existing model is currently being run effectively by a small team, using Jupyter notebooks. This process involves data extraction from source-systems, data wrangling in non-project-controlled SAS scripts, execution of the project code in notebooks, and the further SAS (or other language) work to prepare the outputs for use by the team. Some or all of this pipe



could be consolidated into a robust data pipeline within this project, for either the transfers or for all student types.

Further understanding and reviewing the way in which this CUSP tool is used and the general approach to its implementation will be necessary to build a similarly sustainable product generating risk scores for transfer students specifically.



SCHEDULE B

DataKind has engaged the following volunteers for this project:

POL sec.87(2)(b)

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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 (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 \$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 is required when such contracts exceed \$85,000 (State Finance Law § 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, 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 subcontractor 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
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 (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 October 2019, 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 State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-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.

