

**NEW YORK EQUINE DRUG TESTING & RESEARCH PROGRAM
CONTRACT #C202404**

THIS AGREEMENT made effective the 1st day of July, 2024 by and between the New York State Gaming Commission (the “Commission”), an executive agency of the State of New York having an office at 354 Broadway, P.O. Box 7500, Schenectady, New York 12301-7500 (the "Commission"), and Morrisville Auxiliary of State University College of Agriculture and Technology at Morrisville, N.Y., Incorporated (“Morrisville Auxiliary Corporation”) a not-for-profit corporation that provides services to SUNY Morrisville College (“Morrisville”), having an office at P.O. Box 901, 80 Eaton Street, Morrisville, New York 13408. The Commission and Morrisville Auxiliary Corporation are hereinafter referred to collectively as the “Parties.”

WHEREAS, the Commission is duly authorized by law to supervise, regulate and administer all horse racing and pari-mutuel activities in New York State, pursuant to §§ 103(2)(d) and 104 and Articles two through eleven of the New York Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”);

WHEREAS, Morrisville is a State college within New York State that is qualified to conduct equine drug testing at race meetings, in order to assure the public’s confidence and continue the high degree of integrity in racing at the pari-mutuel betting tracks, pursuant to Racing Law § 902;

WHEREAS, Morrisville is a State college within New York State with an equine drug testing laboratory which provides equine drug testing and related research in support thereof for New York racing which is currently in operation and providing equine drug testing; and

WHEREAS, such equine drug testing and related research is compatible with the educational purposes of Morrisville and Morrisville’s not-for-profit auxiliary services corporation, Morrisville Auxiliary Corporation, which pursuant to its agreement with Morrisville is authorized by Morrisville to enter into this Agreement and perform the services contained in this Agreement on behalf of Morrisville to ensure Morrisville’s compliance with the Racing Law. Although Morrisville Auxiliary Corporation will perform the services contained herein, the obligation to perform such services remains with, and shall be designated as being held by, Morrisville in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

ARTICLE I – SERVICES TO BE PROVIDED AND RESPONSIBILITY OF PARTIES

a. Program Description. Morrisville will conduct an equine drug testing and research program, to be known as the New York Drug Testing and Research Program (“Program”), in a manner satisfactory to the Commission and consistent with accepted professional and technical standards that will meet or exceed equine industry standards for such programs. The scope, direction and detail of the Program shall be determined by the Commission in consultation with Morrisville. The Program shall include testing based upon the statutory authority and rules of the Commission regarding horses engaged in horse training and racing activities, at tracks within the

jurisdiction of the Commission, including testing of samples from Standardbred horses and testing for drugs newly-revealed to be used in harness racing and any changes relating to Section 9.3 of this Agreement that may affect testing. As funding permits, either through the Commission or other sources, the Program shall include a research and development component to facilitate new methods of detecting known restricted or prohibited substances, methods, and drugs, and the identification of substances, methods, and drugs in the future that may be used to influence the performance of a horse in a race or that may otherwise be prohibited, with corresponding development of effective detection systems.

b. **Tracks Outside Jurisdiction.** If the Commission requires testing to be conducted from additional tracks outside of the Commission's jurisdiction, Morrisville will use its best efforts to conduct such additional testing under this Agreement, subject to the limit of funds available from the Commission to support the additional requirements. Such requirements shall be made known to Morrisville by the Commission at a reasonable time in advance of implementation of testing and Morrisville will use its best efforts to obtain staffing and satisfactory facilities.

c. **Facilities and Operation.** Morrisville shall provide suitable space for the operation of the Program that complies with applicable professional, technical and safety needs and standards for the conduct of an equine drug testing and research program. Morrisville shall be responsible for the management of the drug testing laboratory and the research and development component of the Program, as approved by the Commission. Unless otherwise specified herein, Morrisville shall provide the facilities, staff, equipment, and supplies necessary to operate the Program.

d. **Sample Collection and Delivery.** The Commission or its designees shall prescribe the equine subjects from which blood, urine, or other biologic samples ("samples") are to be collected, shall provide for the acquisition of such samples, and shall provide for the secure delivery of samples to Morrisville's representative at the facilities where the testing is conducted, in accordance with procedures specified by the Commission. Samples to be tested may include, but not be limited to, "special samples" of drugs or substances obtained by Commission representatives during investigation or enforcement of Commission rules.

e. **Sample Security.** Morrisville will provide for the security of samples delivered to its representatives and provide for the prompt examination and reporting of the results of these examinations as herein provided.

f. **Damaged Samples.** Morrisville will report any samples not properly sealed or identified when delivered, or which reveal any evidence that the seal or identification have been disturbed or altered, to the Commission or to the official or officials designated by the Commission to receive such reports.

g. **Anonymity.** Morrisville will make no inquiry with respect to the identity of the equine from which any samples are derived, nor with respect to any owner, trainer, or any entity or individual associated with the source of sample.

h. **Screening Tests.** If, upon examination or laboratory analysis of the sample or samples, evidence of the presence of a drug or drugs, their metabolites, unknown foreign substances, or unusual condition is found, Morrisville shall record those findings, together with the identifying number of each such sample and an indication of the laboratory technique or

techniques employed and shall proceed to scientifically test and analyze the findings in such sample.

i. Confirmation Testing. If upon such scientific examination the presence of a drug or drugs or their metabolites or an unknown foreign substance is confirmed, that information, together with the identifying number, the date on which the sample was taken, and an assessment of the measurement uncertainty and imprecision of the quantitative threshold for the substance, shall be immediately forwarded by Morrisville to the Commission's Equine Medical Director, or to the official or officials designated by the Commission to receive such reports, and to no other person or persons, at any time, unless specifically authorized by the Commission.

j. Preservation of Remaining Positive Samples. Samples which show confirmation evidence of a drug or drugs, their metabolites, or an unknown foreign substance when tested shall be promptly resealed, identified by number and date, and stored in a secure manner.

k. Natural Causes. If upon examination, no foreign substance is found present or the substance detected is of a nature that, in the judgment of Morrisville, indicates that the presence of the substance is the probable result of normal dietary or environmental influence, Morrisville shall notify the Commission's designee.

l. Extraordinary Testing. In the event the Commission requires further examination beyond the resources or scope of this Agreement, then Morrisville may, with prior approval of the Commission, enter into agreement with an outside source to conduct further testing that may be required to satisfy inquiry by the Commission. Funding for such testing shall be subject to prior approval of the Commission.

m. Records and Testimony. Morrisville will maintain records of all samples received, results of all laboratory testing and the type of tests employed. Morrisville shall provide records relating to such testing, including laboratory reports, and shall furnish, at no additional cost, such testimony relating to testing and analysis, including expert testimony concerning chemistry, pharmacology and pharmacokinetics, as shall be requested by the Commission. Morrisville will provide such testimony regarding analysis of samples tested in the predecessor N.Y.S. Racing and Wagering Commission Drug Testing and Research Program at Cornell University.

n. Record Retention. Records of tests that show evidence of the presence of a prohibited drug or drugs and their metabolites, unknown substances, or unusual conditions will be maintained by Morrisville for seven years after the conclusion of testing. Records that do not show such evidence, will be maintained by Morrisville for three years. Samples shall be retained by Morrisville pursuant to a schedule established by the Commission.

o. Ethics and Integrity. With respect to Morrisville employees participating in the Program, Morrisville shall provide the Commission with such information and documents including, but not limited to, fingerprints, employment applications, and license applications, as the Commission may request. The Commission's Equine Medical Director may recommend dismissal of a Morrisville employee on the grounds of possible security risk, conflict of interest, previous criminal record, or other conduct detrimental to the program. Recruitment, appointment, and retention of the employees for the Program are the responsibility of Morrisville. The final decision regarding personnel action will be consistent with Morrisville policy.

p. Special Projects. The Commission may from time to time specify additional special projects relative to testing or of a research nature relating to drug detection to be performed, which shall be incorporated in the Program herein described subject to the limit of funds available. Research shall be limited to areas reasonably related to equine drug detection and performance. The Commission may, in its discretion after consultation with Morrisville, direct the Program to participate in quality testing studies or related equine programs, to the extent monies for such participation are available and such participation will not diminish the effectiveness of the Program.

q. Grants. Grants or contracts with third parties involving direct participation in, or direct benefit from the conduct of this Program, shall be agreed upon only with the mutual consent of the Commission and Morrisville.

ARTICLE II – COMPENSATION AND PAYMENT

Section 2.1 – Compensation

a. The amount to be paid under this Agreement shall not exceed \$3,956,162 for the Agreement Term. In full consideration of the services to be provided under the Agreement, the Commission agrees to pay, and Morrisville agrees to accept, compensation for goods and services required herein, including operational costs.

Salaries and benefits	\$1,352,265
Supplies	\$1,370,000
Maintenance/Operating Expenses	\$508,000
Research	\$432,700
MAC Administrative Fee 8%	\$293,197

b. The laboratory budget must be reviewed and approved by the Director of the Laboratory and the Equine Medical Director. The budgets include all overhead and operating expenses, including but not limited to, the following:

- Laboratory and Tower Road facility expenses.
- Salary and benefits. Increase in salary and benefits shall be based on the Director of the Laboratory's recommendations. Laboratory testing staff shall be set at a total of nineteen (19) and includes sixteen (16) lab employees and three (3) farm staff, (an example of possible staffing structure is shown on the organizational chart – **Exhibit 1**), with no increase in headcount of staff. Morrisville shall hire research staff at their discretion to meet the Commission's needs. This budget allocation shall include all costs for staff, including benefits.

Laboratory Technicians shall be paid a minimum of \$22.00 per hour at a wage that shall be comparable, at the time of hiring, with the salaries paid for similar positions at the State Diagnostic Laboratory in Ithaca, New York. The baseline staff of 19 employees shall include a Director of Equine Drug Testing, a Laboratory Screening Supervisor, a Confirmation Supervisor, a Senior Laboratory Manager, a Facility Support Associate, an Analytical Chemist, an Associate Analytical Chemist and nine (9) support Laboratory Technicians (I, II and III). Additionally, the Laboratory

shall employ three (3) employees who will work at the Tower Road facility comprised of a Supervisor and two (2) farm laborers. Any additional staff above nineteen (19) shall also need the approval of Morrisville.

Morrisville may supplement laboratory personnel at their own cost.

- Administrative Fee. Eight percent (8%) Morrisville Auxiliary Corporation (“MAC”) administrative fee.
- Research Budget. The Commission understands the importance and significance of drug testing research. Accordingly, \$432,700 is allocated to be directed by the Equine Medical Director and the Director of the Laboratory for research to be conducted at the Laboratory and Tower Road facility. Ten (10) percent of any funds remitted pursuant to Section 2.2 shall be allocated to the research budget, in addition to the \$432,700 designated herein.
- Research expenses to comply with Racing Medication and Testing Consortium accreditation. A research budget for Morrisville must be presented for review and approval by the Commission by August 15, 2024. Research funding will be provided upon contract execution.
- Capital acquisitions that are not research-based will not be covered.

Section 2.2 – Payment

Research Budget and Funds. This Agreement provides for a monthly fixed funding schedule, with reimbursement to the Commission of unexpended funds which shall be remitted to the Commission upon termination or expiration of this Agreement. In accordance with this Agreement, the Commission shall pay Morrisville the applicable funds and expenses for performing the research set forth in a “Research Budget,” which funds shall include without limitation the direct and indirect costs of the research, supplies, equipment, and a proportionate share of the Principal Investigator's salary. The Laboratory Director, in consultation with the Commission’s Equine Medical Director, shall have the sole discretion to reallocate any portion of the funds in furtherance of the research which shall not exceed the repurposed amount without Morrisville’s approval. During the term of the research, if the Laboratory discovers that the expenditures are expected to exceed the amount of funds, Morrisville may request additional funds from the Commission which may elect to provide in its reasonable discretion, subject to contract amendment. Should the Commission elect not to provide such additional funds, Morrisville shall not be obligated to continue performance under the research budget beyond the agreed upon amount of funds, and Morrisville shall provide the Commission with the results of the research performed up to such point.

Research funding will be provided upon contract execution. Funds for drug testing related expenses will be paid in equal installments at the start of each month, upon invoicing. The Commission is responsible only for actual expenses incurred by Morrisville for research and to administer the drug testing program. Morrisville shall submit a detailed accounting of expenditures for the month following each month. Any unexpended funds shall be remitted to the Commission upon termination or expiration of this Agreement or apply such funds toward any subsequent agreement.

Any funds due the Commission from prior agreements shall be applied to the first invoice, and any consecutive invoices, as a credit, until such funds due the Commission have been exhausted. Ten (10) percent of funds due shall be directly allocated to additional research, pursuant to Section 2.1.b.

Morrisville shall submit to the Commission's Finance Office an invoice equal to the amount due. Each monthly invoice shall be accompanied by a detailed summary by track, including the race date, number of tests performed and a detailed breakdown of applicable purchases, salaries, and all associated fees for the preceding month. It shall also include a separate itemization for approved research expenditures.

Payment under this Agreement will be in accordance with New York's Prompt Payment Law (Article 11-A of New York's State Finance Law). Payment for services will be made upon completion of the services, in accordance with the terms of this Agreement, and upon receipt by the Commission of a proper invoice.

Invoices shall be submitted, on a monthly basis, as a PDF email attachment and directed to the N.Y.S. Business Service Center at accountspayable@ogs.ny.gov and copied to the Commission's Finance Office at accountspayable@gaming.ny.gov.

The Commission shall promptly process all payments due to Morrisville that conform to the provisions of this Agreement and are approved by Commission staff.

ARTICLE III – TIME AND MANNER OF PERFORMANCE

Section 3.1 – Term of Agreement

This Agreement shall be in effect from July 1, 2024 through June 30, 2025, unless sooner terminated as herein specified.

Section 3.2 – Personnel, Equipment and Supplies

Morrisville shall provide all resources, personnel, equipment and supplies necessary to perform the services set forth in this Agreement.

Section 3.3 – Standards of Performance

Morrisville warrants that it possesses the experience, knowledge, character, and licenses necessary to perform the scope of services described in the Agreement. Morrisville shall perform such services in a competent and professional manner to the satisfaction of the Commission.

Section 3.4 – Independent Contractor

The relationship of Morrisville to the Commission arising out of this Agreement shall be that of an independent contractor. Morrisville, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission or the State by reason hereof, and that it will not by reason hereof, make any claim, demand or application for any right

or privilege applicable to an officer or employee of the Commission or the State, including, but not limited to, Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage, or Retirement membership or credit. All personnel of Morrisville shall be within the employ of Morrisville only or shall be duly contracted subcontractors of Morrisville, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Agreement shall impose any liability or duty on the Commission or the State, on account of any acts, omissions, liabilities or obligations of Morrisville or any person, firm, company, agency, association, corporation, or organization engaged by Morrisville as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation, and Morrisville hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities.

Section 3.5 – Insurance Requirements

Insurance requirements are provided in **Attachment 1** of this Agreement. Morrisville Auxiliary Corporation and Morrisville (referenced collectively as “Contractor” within **Attachment 1**) must comply with these requirements to remain responsible under the terms of the Agreement.

Section 3.6 – Reports

Reports will be submitted to the Commission’s Equine Medical Director, or to the official, or officials designated by the Commission, which shall include, but not be limited to (a) monthly reports of the drug testing under the Program, (b) quarterly progress reports of the research under the Program, (c) updates of research status and utilization of discovery and inventions, and (d) an accounting of equipment purchased through this Agreement, as described in Section 3.8 of this Agreement. The format of such reports, except for item (d) of this paragraph, shall be established by agreement of the parties.

Section 3.7 – Invention or Discovery

a. Any invention or discovery made or conceived by Morrisville or its employees in the performance of this Agreement shall be the property of Morrisville. An invention or discovery is defined as any technology, innovation, or thing conceived or first actually reduced to practice in the course of or under this Agreement and includes any method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country. With respect to any such subject invention or discovery, the Commission shall have a non-exclusive, non-transferable, irrevocable, paid-up license for itself, the State of New York and all political subdivisions and other instrumentalities of the State of New York, to practice or have practiced for or on their behalf of the subject of invention or discovery throughout the world. Within six months of the time a subject invention or discovery is made, Morrisville shall submit to the Commission a written invention or discovery disclosure.

b. Morrisville, with agreement of the State, may sell any of its invented or discovered technologies made or conceived under the performance of this Agreement. Any revenues from such sale shall be used exclusively for the benefit of the Program with approval of the Commission.

Section 3.8 - Title to Equipment

a. Title to equipment purchased under this Agreement or with funds subject to this Agreement or transferred to Morrisville at the termination of the Agreement shall be retained by Morrisville or the Morrisville Auxiliary Corporation subject to reversion to the State of New York at such time the Agreement concludes. Title to all equipment or specific equipment shall revert to the State of New York only if the State elects to claim title and notifies Morrisville Auxiliary Corporation of this election in writing within thirty (30) days before the conclusion of this Agreement if the Agreement is terminated by the Commission, or within ten (10) days after the Commission's receipt of Morrisville's notice of termination, if Morrisville Auxiliary Corporation terminates the Agreement. Such final inventory shall be provided within fifteen (15) days prior to the Agreement's conclusion. The parties agree to establish a timetable for preliminary inventory no less than sixty (60) days prior to any anticipated conclusion of the Agreement, or as far in advance as possible prior to the conclusion of the Agreement if a good faith agreement sixty (60) days prior to conclusion is not feasible. The Commission has the right to make a preliminary election to claim title based on this preliminary inventory. During the term of this Agreement, Morrisville is responsible for the insurance, maintenance and updating of this equipment insofar as funds are appropriated and allocated for said purpose by the Commission or revenue from drug testing and related services provided by the Program for entities other than the Commission.

b. All equipment purchased pursuant to this Agreement shall be labeled NEW YORK DRUG TESTING AND RESEARCH PROGRAM. An accurate and current inventory of all equipment used and operated by Morrisville for the Program shall be maintained and transmitted to the Commission. Morrisville shall render to the Commission's Equine Medical Director, or to the official or officials designated by the Commission, an accurate accounting of all equipment purchased by this Agreement and by predecessor contracts which are disposed of through scrap, sale or transfer out of the Program. Such reports shall include any equipment acquired at the inception of the Program by transfer from the Commission. The reports shall be in writing and in a format consistent with the SUNY master inventory. The reports shall be submitted on August 1, 2024. The reports shall reflect all transactions for the previous fiscal year. Decisions regarding the disposal of equipment through scrap, sale or transfer shall be made by the Director of Equine Drug Testing in accordance with SUNY policy. Equipment shall be defined as any item, including computer equipment, with a total value of at least five thousand dollars (\$5,000.00), including the cost of modifications, attachments, and accessories necessary to make the equipment usable for the purpose for which it was acquired and the cost of training and installation, having an estimated useful life of at least two years.

ARTICLE IV – CONFLICTS OF INTEREST, PUBLIC OFFICERS LAW, ETHICS REQUIREMENTS, ANTI-DISCRIMINATION

Section 4.1 – Conflicts of Interest

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

b. Morrisville hereby reaffirms the attestations previously made and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent Morrisville's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. Morrisville shall have a duty to notify the Commission immediately of any actual or potential conflicts of interest.

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

Section 4.2 – Public Officers Law and Employment Restrictions

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

Furthermore, pursuant to §107 of the Racing Law, no member or officer of the Commission shall hold any direct interest in or be employed by any applicant for or by any corporation, association or person holding a license, registration, franchise, certificate or permit issued by the Commission for a period of four years commencing on the date his or her membership with the Commission terminates. In addition, no employee of the Commission may acquire any direct or indirect interest in, or accept employment with, any applicant for or any person holding a license, registration, franchise, certificate or permit issued by the Commission for a period of two years commencing at the termination of employment with the Commission.

Section 4.3 – Ethics Requirements

Morrisville shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the N.Y. Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Commission on Ethics and Lobbying in Government, or its predecessors (collectively, the “Ethics Requirements”). Morrisville certifies that all employees who are former employees of the State and who are assigned to perform services under this Agreement shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by Morrisville and who is disqualified from providing services under this Agreement pursuant to any Ethics Requirements may share in any net revenues of Morrisville derived from this Agreement. Morrisville shall identify and provide the State with notice of those employees of Morrisville who are former employees of the State that will be assigned to perform services under this Agreement, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that Morrisville provide it with whatever information the State deems appropriate about each such person’s engagement, work

cooperatively with the State to solicit advice from the New York State Commission on Ethics and Lobbying in Government, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Commission on Ethics and Lobbying in Government. The State shall have the right to terminate this Agreement at any time if any work performed hereunder conflicts with any of the Ethics Requirements.

Section 4.4 – Anti-Discrimination

Morrisville has provided a form (EO 177 Certification), signed by an authorized executive or legal representative attesting that Morrisville certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Section 4.5 – Compliance with State Finance Law § 139(i)

By signing this contract, Morrisville certifies, under penalty of perjury, that they have and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all employees. Such policy shall, at a minimum, meet the requirements of N.Y. Labor Law § 201-g.

Section 4.6 – Tax Compliance

As a condition under this Agreement, Morrisville must comply with the requirements of Tax Law Section 5-a, which requires persons awarded contracts valued at more than \$100,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors s have a valid certificate of authority to collect N.Y.S. and local sales and compensating use taxes. Morrisville, an affiliate, subcontractor, or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person has made sales delivered within New York of more than \$300,000 during the relevant period. The Office of the State Comptroller or other responsible approver cannot approve the Agreement unless Morrisville is registered with the N.Y.S. Tax Department to collect sales and compensating use taxes.

The contract certification forms ST-220-TD and ST-220-CA must be filed in compliance with N.Y. Tax Law Section 5-a.

ARTICLE V – LIABILITY, CONFIDENTIALITY, SECURITY

Section 5.1 – Liability and Indemnification

Morrisville shall be responsible for all damages to life and property due to activities of Morrisville, as well as the agents or employees of Morrisville in connection with performance of services under this Agreement. Morrisville shall indemnify, defend, and save harmless the Commission and the State of New York, and their officers, employees, agents, assigns and retailers from and against any and all third party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in

part by an actual or alleged act or omission of Morrisville, its officers, employees, agents, successors and assigns.

Section 5.2 – Confidentiality and Non-Disclosure

a. “Confidential Information” means any information not generally known to the public, whether oral or written, that the Commission identifies as confidential and discloses to Morrisville so that Morrisville can provide services to the Commission pursuant to this Agreement. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Commission deems confidential. The Commission will identify written Confidential Information by marking it with the word “Confidential” and will identify oral Confidential Information as confidential at the time of disclosure to Morrisville.

b. Confidential Information does not include information that, at the time of Commission disclosure to Morrisville: (a) is already in the public domain or becomes publicly known through no act of Morrisville; (b) is already known by Morrisville free of any confidentially obligations; (c) is information that the Commission has approved in writing for disclosure; or (d) is required to be disclosed by Morrisville pursuant to law so long as Morrisville provides the Commission with notice of such disclosure requirement and opportunity to defend prior to any such disclosure.

c. Morrisville may use Confidential Information solely for the purposes of providing services to the Commission pursuant to this Agreement. Morrisville shall not make copies of any written Confidential Information without the express written permission of the Commission. The Commission’s disclosure of Confidential Information to Morrisville shall not convey to Morrisville any right to or interest in such Confidential Information and the Commission shall always retain all right and title to such Confidential Information.

d. Morrisville shall hold Confidential Information confidential to the maximum extent permitted by law. Morrisville shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that Morrisville uses to maintain its own confidential information.

e. Upon written request by the Commission, Morrisville shall return all written Confidential Information to the Commission.

f. Nothing in this section shall be interpreted to limit or expand the Commission’s obligations pursuant to N.Y.S. Public Officers Law Articles 6 and 6-a, the Freedom of Information Law and Personal Privacy Protection Law, respectively. Similarly, nothing in this section shall be interpreted to limit or expand the applicability of these laws’ exemption to disclosure of records possessed by the Commission.

Section 5.3 – Security Requirements

Morrisville, including its employees, officers, and agents, shall be required to comply with all present and future security policies of the Commission. In addition, Morrisville, project

managers, their employees, officers and agents, and any and all persons involved in projects and work assignments under this Agreement will be required, prior to access to any of the Commission's sites, to be given a security clearance by the Commission. Anyone seeking access to a Commission site must provide his or her name, address, date of birth, company affiliation, and a company point of contact for employment verification, at least one week prior to any site visit. Once preliminary access approval is granted by the Commission, all visitors to a site must provide two (2) forms of valid identification, including one photographic information and written authorization that they are acting on behalf of a designated employer or Morrisville. Only after site authorization is confirmed will access to the Commission's site be approved.

a. Physical Security During the Delivery of Contracted Services

(1) Morrisville shall be solely responsible for the safety and security of the project sites, facilities, and components under this Agreement, with the exception that Morrisville is not responsible for overall building security at locations under the control and management of the Commission, State, local or federal agencies. Morrisville remains responsible, however, for security of project components or equipment within such buildings, e.g. secure equipment enclosures within the space provided by such agencies. Morrisville shall be responsible for and shall correct its failure or theft of any components or portion of the project due to Morrisville's inadequate physical and/or information security at its cost and expense.

(2) The physical security and the information security of project data shall be provided at a level commensurate with that normally established for a similar system in today's heightened security environment. All components of site security shall be of suitable strength and design and shall reasonably withstand attempts to gain unauthorized access.

b. Access by Personnel

(1) Morrisville, its officers, agents, and their employees and independent contractors, shall be required to comply with all applicable facility and information security policies and procedures of the Commission and the State in performing the scope of work under this Agreement. Such policies and procedures shall be communicated to Morrisville as a condition precedent to Morrisville's obligations under this paragraph.

(2) Morrisville warrants that each individual performing work under this Agreement is legally eligible to work in the United States and that such eligibility shall always be maintained during the Agreement's term while the individual is accessing any Commission site, information systems or data contained therein. In addition, prior to accessing any Commission site, project information systems or data contained therein, Morrisville and its officers, agents, and their collective employees and independent contractors performing work under this Agreement, shall be required to:

(i) Obtain security clearance from the Commission, which may include, at the Commission's discretion, a criminal history and/or background investigation of each individual proposed to perform work under this Agreement. Each individual assigned to the project by or through Morrisville shall be required to submit identifying information to the Commission.

(ii) Obtain from the Commission and prominently display on their person, Commission-issued identification cards at all times while physically present at any Commission site.

(iii) When an emergency or other circumstance occurs, which renders immediate compliance with the foregoing requirements impractical, the Commission may, in its sole judgment, defer an individual's compliance with the foregoing requirements and grant temporary access. Such deferment shall not be construed as a waiver of the Commission's right to subsequently require security clearance as to any individual previously granted such temporary access; provided, however, that even in such circumstances, the Commission shall approve such individual's access prior to such individual accessing a site, system or data and the Commission may accompany such individuals at all times when on-site.

(iv) The Commission reserves the right, in its sole discretion, and without liability to Morrisville's officers, agents, and their collective employees and independent contractors assigned to work under this Agreement, to withhold approval of and refuse to permit access prior to such individual accessing a site, system or data and the Commission may accompany such individual at all times when on-site. The Commission reserves the right, in its sole discretion, and without liability to Morrisville's officers, agents, and their collective employees and independent contractors assigned to work under the Contract, to withhold approval of and refuse to permit access to Commission facilities, electronic information systems or data contained therein to any individuals proposed by or through Morrisville who refused to comply with security procedures outlined in this Section, or where the Commission determines that the individual may present a risk to the Commission's security interests. The Commission shall not be liable for payments or damages of any kind if Morrisville is delayed or unable to perform under this Agreement as a result of the Commission's denial of access to any individual(s) pursuant to this Section.

ARTICLE VI – REQUIRED CERTIFICATIONS

Section 6.1 – State Finance Law §§ 139-j and 139-k Certification

By execution of this Agreement, Morrisville certifies that all information Morrisville has provided to the Commission with respect to New York's State Finance Law §§ 139-j and 139-k is complete, true and accurate.

Section 6.2 - Vendor Responsibility

a. Morrisville shall always during the Agreement term remain responsible within the meaning of the New York's State Finance Law. Morrisville has provided a Vendor Responsibility Questionnaire and acknowledges that any misrepresentation of fact in the Questionnaire and attachments, or in any vendor responsibility information that may be requested by the Commission, may result in termination of this Agreement. During the term of this Agreement, any changes in the provided Questionnaire shall be disclosed to the Commission, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract.

b. Morrisville agrees, if requested by the Commission's Executive Director or his or her designee (collectively referred to herein as "Executive Director"), to present evidence of his

or her continuing legal authority to do business in New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

c. The Executive Director, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of Morrisville. In the event of such suspension, Morrisville will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Morrisville must comply with the terms of the suspension order. Morrisville activity may resume at such time as the Executive Director issues a written notice authorizing a resumption of performance under the Agreement.

d. Should it be determined at any time that Morrisville is not responsible, nonresponsible, or non-responsible, the Commission will notify Morrisville in writing setting forth the basis for the determination and affording Morrisville reasonable time in which to refute the determination, justify why the basis for the determination is not relevant to this Agreement or to take corrective action to eliminate the responsibility impediment. If the responsibility condition cannot be reconciled to the satisfaction of the Commission, the Agreement will be terminated by written notification given by the Commission to Morrisville.

ARTICLE VII – APPROVALS AND MUTUAL COOPERATION

Section 7.1 – Approvals Required

This Agreement or any amendment of the provisions of this Agreement, shall not be effective and binding upon the Commission, the State of New York, or Morrisville unless and until approved by the Office of the New York State Attorney General and Office of the New York State Comptroller. The Commission agrees to exercise its best efforts to obtain such approval.

Section 7.2 – Mutual Cooperation

The objective of this Agreement is to provide for equine drug testing and research. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, to accomplish that objective.

ARTICLE VIII – SUSPENSION OR TERMINATION

a. The Commission shall have the right to terminate this Agreement for convenience or for any of the following causes:

- i. A material breach by Morrisville of any of the provisions of this Agreement;
- ii. A determination by a court of competent jurisdiction that Morrisville is bankrupt or insolvent;
- iii. A good faith determination by the Commission that continuation of the Agreement could place the integrity of the Commission in jeopardy; or
- iv. A conviction of Morrisville or any of its directors, officers, or employees of any criminal offense connected to Morrisville's business which, in the sole

reasonable opinion of the Executive Director, would be prejudicial to public confidence in the Commission.

b. If the Commission decides to exercise the right to terminate this Agreement for cause, the Commission shall give Morrisville advance written Notice of Intention to Terminate for Cause (“Notice”). Such Notice shall state clearly and specifically the cause for which termination is sought, and Morrisville shall be entitled to a period of thirty (30) days from receipt of such Notice to correct or cure the cause so described to the reasonable satisfaction of the Commission in which case such Notice shall be deemed withdrawn and a nullity. If termination is sought because of a criminal conviction as described in subparagraph (iv) of Paragraph (a) of this Article 8, the cause for termination shall be deemed to be cured if Morrisville causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

c. The Commission reserves the right to terminate this Agreement in the event it is found that the certification filed by Morrisville in accordance with New York’s State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Commission may exercise its termination right by providing written notice to Morrisville in accordance with the written notice terms of this Agreement.

d. Morrisville shall, at all times during the Agreement term and any extended term, remain responsible as “responsible” and “non-responsible” or “nonresponsible” are treated in New York’s State Finance Law. Morrisville agrees, if requested by the Executive Director to present evidence of its continuing legal authority to do business in New York, integrity, experience, ability, prior performance, and organizational and financial capacity.

e. Upon written notice to Morrisville, and a reasonable opportunity to be heard with appropriate Commission officials or staff, the Contract may be terminated by the Commission’s Executive Director at Morrisville’s expense where Morrisville is determined by the Executive Director to be nonresponsible or non-responsible. In such event, the Executive Director may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

f. Morrisville may terminate this Agreement upon thirty days (30) written notice in the event there is a material change in circumstances or failure of the Commission to make payments pursuant to the Agreement. In such event, Morrisville shall be reimbursed for all expenses and all non-cancelable commitments prior to notification of termination of the Agreement.

g. Whether termination is for cause or convenience, the Commission shall pay Morrisville for services rendered prior to the effective date of termination and Morrisville shall provide to the Commission all records relating to services provided.

ARTICLE IX – MISCELLANEOUS

Section 9.1 – Records Retention

Records required by this Agreement to be retained by Morrisville shall be retained for the periods specified in **Appendix A**, attached hereto. Such records may be retained in their original form or in any other reliable and readily retrievable format, at the option of Morrisville.

Section 9.2 – Notices

All notices required by this Agreement shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

- (a) As to the Commission:

Executive Director
N.Y.S. Gaming Commission
354 Broadway
Post Office Box 7500
Schenectady NY 12301-7500

- (b) As to Morrisville Auxiliary Corporation:

Executive Director
Morrisville Auxiliary Corporation
Hamilton Hall
80 Eaton Street
P.O. Box 901
Morrisville, NY 13408

Section 9.3 – Change of Circumstances

Both Parties acknowledge that the Program is subject to numerous New York laws including, but not limited to, the Racing Law and the New York Tax Law. Both Parties agree that should any law be enacted during the term of the Agreement that alters the funding of the program, alters the requirement to use “a state college or at a land grant university within this state” or otherwise substantially changes the testing requirements or other terms of the Agreement, both Parties agree to negotiate in good faith to amend such Agreement to comply with the requirements of the law or end the Agreement at the request of either Party to terminate the Agreement.

Further, notwithstanding any other terms set forth in this Agreement, should the Horseracing Integrity and Safety Authority, or any other entity, assume any or all of the equine drug testing and/or investigative responsibilities in New York State, the Commission may terminate or amend this Agreement accordingly. If the Commission elects to terminate the Agreement, the Commission shall be refunded any unearned portion of the total Compensation paid, pro-rated as of the last date of Morrisville’s performance under the Agreement. The

Commission shall not be liable for any Compensation beyond the date of termination of the Agreement.

Section 9.4 - Force Majeure

A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As herein used, Force Majeure means fire, explosion, action of the elements, governmental interference, rationing or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent.

Neither Morrisville nor the Commission shall be liable to the other for any delay in or failure of performance under the Agreement due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute a default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Commission to be necessary to enable complete performance by Morrisville if reasonable diligence is exercised after the cause of delay or failure has been removed.

Section 9.5 – Documents Incorporated

Appendix A, Standard Clauses for N.Y.S. Contracts, dated June 2023, is hereby incorporated herein to the same force and effect as if set forth at length hereat.

Section 9.6 – Order of Precedence

Any conflict between the provisions of this Agreement and the documents incorporated herein shall be resolved according to the following order of precedence, from the highest to the lowest:

- a. Appendix A – Standard Clauses for N.Y.S. Contracts, dated June 2023;
- b. Any amendments to the Agreement;
- c. The Agreement, attachments and exhibits.

Section 9.7 – General

a. This Agreement constitutes the entire agreement between the Parties and no statement, promise, condition, understanding, inducement or representation, oral or written, express or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed in any manner except by written instrument executed in the same manner by both parties. A waiver of enforcement of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement nor shall it preclude the affected party from subsequently enforcing such provision.

b. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected, but shall remain binding and effective as against all parties hereto.

c. The headings contained in this Agreement are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Agreement.

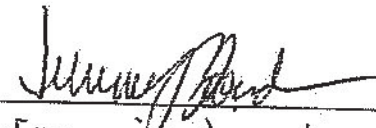

d. This Agreement shall not be assigned or otherwise transferred by either party without prior written consent of the Parties.

e. This Agreement may be executed in counterparts, each of which shall be deemed an original. Executed copies of this Agreement may be sent by PDF copies sent by email, and any signatures thereon shall be considered for all purposes to be binding as originals.

Section 9.8 – Dispute Resolution

In the event that any dispute arises between the parties with respect to the performance required of Morrisville under the Contract, the Commission’s Executive Director shall issue a written determination to Morrisville Auxiliary Corporation. That interpretation shall be final, conclusive, and not subject to review in all respects unless Morrisville Auxiliary Corporation, within thirty (30) days of receipt of said writings, delivers a written appeal to the Executive Director. The decision of the Executive Director on any such appeal shall be made within thirty (30) days and shall be final and conclusive and Morrisville shall thereafter in good faith and due diligence render such performance as the Executive Director has determined is required of it. Morrisville Auxiliary Corporation’s options with respect to any such decision on appeal shall be whether 1) to accept the determination of the Executive Director as a correct and binding interpretation of the Agreement or 2) to make such claims as it may desire before the appropriate court of competent jurisdiction in the State of New York. Pending a final judicial resolution of any such claim, Morrisville shall proceed diligently and in good faith with the performance of this Agreement as interpreted by the Executive Director, and the Commission shall compensate Morrisville pursuant to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

<p>MORRISVILLE AUXILIARY OF STATE UNIVERSITY COLLEGE OF AGRICULTURE AND TECHNOLOGY AT MORRISVILLE, N.Y., INCORPORATED</p> <p>By: <u></u></p> <p>Title: <u>Executive Director</u></p> <p>Date: <u>7/9/24</u></p>	<p>NEW YORK STATE GAMING COMMISSION</p> <p>By: <u></u></p> <p>Title: <u>Executive Director</u></p> <p>Date: <u>10 July 2024</u></p>
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APPROVED
DEPT. OF AUDIT & CONTROL

Jul 26 2024
Mark DiFiore

FOR THE STATE COMPTROLLER

NY STATE ATTORNEY GENERAL	NY STATE COMPTROLLER
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

[end]

Acknowledgement

ACKNOWLEDGEMENT BY INDIVIDUAL

STATE OF _____)
) ss.:
 COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

 Notary Public

ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION

STATE OF _____)
) ss.:
 COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person described in and who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____ and that he/she executed the foregoing instrument in the firm name of _____, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

 Notary Public

ACKNOWLEDGEMENT BY CORPORATION

STATE OF New York)

COUNTY OF Madison) ss.:

On this 9th day of July, in the year 2024, before me personally came Jennifer Bowden, to me known, who, being by me duly sworn did depose and say that he/she resides in New Woodstock, NY; that he/she is the Executive Director of the Woodsville Auxiliary Corp., the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he he/she signed his/her name thereto by like order.

Michelle Marie Jones (Bishton)
Notary Public

Michelle Marie Jones (Bishton)
Notary Public, State of New York
Registration No. 01J06218606
Qualified in Madison County
Commission Expires March 8, 2026

INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS

Insurer Qualifications

All insurance required under this Agreement as specified within this Attachment 1, must be written by a company with a current rating of "A-" or better as rated by A.M. Best & Co., have a record of successful continuous operation, are licensed, admitted, and authorized to do business in the State of New York, and are approved by the Commission. Non-admitted carriers will only be accepted when coverage cannot be secured from an admitted carrier, as evidenced by appropriate Excess Line Association of New York ("ELANY") documentation (see Certificate of Insurance Requirements).

Required coverage and limits must be put into effect as of the effective date of the Agreement and must remain in effect throughout the term of the Agreement, as determined by the Commission.

Insurance Requirements

Prior to the start of work the Contractor shall procure at its sole cost and expense and shall maintain in force at all times during the term of the Agreement, policies of insurance as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York (Admitted Carriers). The Commission may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed ELANY Affidavit; provided that nothing herein shall be construed to require the Commission to accept insurance placed with a non-authorized carrier under any circumstances.

The required coverage must be obtained to provide insurance benefits to the Commission based on the actions or omissions of both Morrisville Auxiliary Corporation and Morrisville (referred to collectively herein as "Contractor"), whether occurring simultaneously or independently.

Upon award, the Contractor shall deliver to the Commission evidence of such insurance coverage as defined below. In the event there is a claim asserted that is covered by insurance, the Contractor shall make available for inspection to the Commission upon the Commission's request, at Commission headquarters, during reasonable business hours, any applicable policy required by this Agreement.

Throughout the Agreement period, the Contractor shall notify the Commission of any material changes to the policy coverages, or any cancellations prior to the expiration date. The carrier shall also send notification of cancellation, termination, or failure to renew any policy in accordance with the policy provisions when practicable.

General Conditions

A. **Conditions Applicable to Insurance.** All policies of insurance required by the Agreement must meet the following requirements:

1. Coverage Types and Policy Limits. The types of insurance coverage and policy limits required from the Contractor are specified in Paragraph B below – Specific Coverages and Limits.

2. Policy Forms. Policies must be written on an **occurrence** basis, except as may be otherwise specifically provided herein, or agreed to in writing by the Commission. Under certain circumstances, the Commission may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Agreement. If the policy is cancelled or not renewed during that time, the Contractor must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the Agreement. Written proof of this extended reporting period must be provided to the Commission prior to the expiration or cancellation of the policy.

3. Certificates of Insurance/Notices. Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commission, before any work commences under this Agreement. Certificates shall be mailed using the contact information provided in the Agreement. Copies of the full policy shall be provided to the Commission by the Contractor upon request.

Unless otherwise agreed, insurance policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days' prior written notice to the Commission.

Certificates of Insurance shall:

- a. Be in the form approved by the Commission.
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Agreement.
- c. Specify the Additional Insureds and Named Insureds as required herein.
- d. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit.
- e. Be signed by an authorized representative of the insurance carrier or producer.

4. Primary Coverage. All insurance policies, including umbrella liability and excess liability policies, shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the Commission for any claim arising from the Contractor's work under this Agreement, or as a result of the Contractor's activities. Any other insurance maintained by the Commission shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in the Commission's own policy of insurance.

5. Policy Renewal/Expiration Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in the Agreement shall be delivered to the Commission. If, at any time during the term of the Agreement, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Agreement, or proof thereof is not provided to the Commission, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by the Commission.

6. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the Commission's Contract Unit upon award, renewal, and/or upon request. This requirement means that the Contractor shall provide the applicable insurance document to the Commission as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days from request or renewal, whichever is later;
- For information on self-insurance or self-retention programs: 15 calendar days from request or renewal, whichever is later;
- For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
- For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the Commission, the Commission shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

7. Self-Insured Retention/Deductibles. Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within any self-insured retention or deductible.

8. Subcontractors. Should the Contractor engage a subcontractor, the Contractor shall endeavor to impose the insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent coverage for specific subject matters) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and shall be provided to the Commission upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies. Proof thereof shall be supplied to the Commission.

9. Additional Insured. The Contractor shall cause to be included in each of the liability policies required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or CG 20 38 04 13 and CG 20 37 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): the Commission, and their respective officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the Commission within 30 days of renewal or upon request, whichever is longer. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

10. Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

B. Specific Coverages and Limits. The types of insurance and minimum policy limits shall be as provided below.

1. General Liability. Commercial General Liability Insurance (CGL), covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Agreement. The limits under such policy shall not be less than the following:

- Each Occurrence limit: \$1,000,000

- General Aggregate: \$2,000,000
- Products/Completed Operations should equal the General Aggregate limit
- Personal Advertising Injury \$1,000,000
- Property Damage \$50,000
- Medical Expense \$5,000

Coverage shall include, but not be limited to, the following: premises liability; independent contractors; blanket contractual liability, including tort liability of another assumed in a contract; defense and/or indemnification obligations, including obligations assumed under this Agreement; cross-liability for additional insureds; products/completed operations for a term of no less than three years, commencing upon acceptance of the Contractor's and any subcontractor's work, as required by the Agreement; and liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO form must be endorsed to the policy:

- CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form

2. Property Insurance. The Contractor must maintain insurance on all property, including, but not limited to, all buildings, furniture, fixtures, laboratory equipment, supplies, and computers used to effectuate the Agreement or that are referenced within the Agreement, whether utilized or not, in an amount equal to or greater than the actual replacement cost thereof. Coverage must include a Property Floater to insure personal property including, but not limited to, contents, equipment, and mobile items, against fire, theft, collision flood, etc. The Commission will not be responsible for insuring any equipment.

3. Workers' Compensation and Disability. For work to be performed in New York State, the Contractor shall provide and maintain insurance coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law (www.wcb.ny.gov).

Evidence of New York State Workers' Compensation and Employers Liability coverage and New York State Disability Benefits coverage, or exemption from coverage, must be provided on **one** of the following forms specified by the Commissioner of the New York State Workers' Compensation Board. For forms and guidance, the Board's website is:

http://www.wcb.ny.gov/content/main/forms/Forms_EMPLOYER.jsp

- A. Workers' Compensation and Employers Liability Coverage:

- **Form CE-200** - Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required); or
- **Form C-105.2** - (September 2015, or most current version) – Certificate of Workers' Compensation Insurance, sent to the Commission by the Contractor's insurance carrier upon request; or
- **Form U-26.3** – Certificate of Workers' Compensation Insurance from the State Insurance Fund. Bidder must request that the State Insurance Fund send this form to the Commission; or
- **Form SI-12** – Certificate of Workers' Compensation Self Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office; or
- **Form GSI-105.2** – Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Bidder's Group Self-Insurance Administrator.

B. Disability Benefits:

- **Form CE-200** - Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required); or
- **Form DB-120.1** (September 2015 or most current version), Certificate of Insurance Coverage under the NYS Disability Benefits Law. Bidder must request its business insurance carrier to send this form to the Commission.
- **Form DB-155**, Certificate of Disability Benefits Self-Insurance.

All forms must name THE NEW YORK STATE GAMING COMMISSION as the Entity Requesting Proof of Coverage (i.e., the entity being listed as the Certificate Holder).

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier. (ACORD forms are NOT acceptable proof of Workers' Compensation insurance coverage).

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law, 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 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 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: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.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.