

**INDEPENDENT CONTRACTOR AGREEMENT**

This Agreement ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 201 , by and between The City University of New York on behalf of \_\_\_\_\_ ("University"), located at \_\_\_\_\_, New York \_\_\_\_\_, and \_\_\_\_\_ ("Contractor"), located at \_\_\_\_\_.

1. The University engages Contractor to provide the services set forth in the Scope of Work in Exhibit 3 attached (the "Services"), and Contractor agrees to perform the Services as directed by the University and to provide all necessary staff support and administrative services connected therewith in accordance with the terms and conditions herein, including New York State Appendix A. The term of this Agreement is through \_\_\_\_\_.

2. In return for satisfactory performance of the Services, Contractor shall receive \_\_\_\_\_ in consideration: \$ \_\_\_\_\_, to be paid according to the Payment Terms in Exhibit 3 attached hereto. In order to be paid, Contractor shall complete, sign, and submit the Independent Contractor Service Claim for Payment attached hereto as Exhibit 1, together with each invoice, to the address set forth in Exhibit 3. Exhibit 3, attached, is \_\_\_\_\_ pages.

3. Contractor is obligated to submit New York State-required forms described in Exhibit 2 if it is receiving payment of at least \$20,000 from the University. See paragraph 15 of Terms and Conditions (page 5).

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the day and year first written above.

CONTRACTOR  
EIN (leave blank if SSN): \_\_\_\_\_

THE CITY UNIVERSITY OF NEW YORK  
on behalf of \_\_\_\_\_

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print name of authorized representative)

Name: \_\_\_\_\_  
(print name of authorized representative)

Title: \_\_\_\_\_  
(print title of authorized representative)

Title: \_\_\_\_\_  
(print title and College of authorized representative)

\* \* \* \* \*

This Agreement was prepared and submitted to the Purchasing Department by:

\_\_\_\_\_

\_\_\_\_\_

print name and title of preparer

signature

and processed by the following individual in the Purchasing Department:

\_\_\_\_\_

\_\_\_\_\_

print name and title of Purchasing Department processor

signature

This agreement contains this cover page, a notary page, eight pages of terms and conditions, and the following exhibits:  
Exhibit 1 – Independent Contractor Service Claim for Payment  
Exhibit 2 – Disclosure of Employment and Annual Employment Report  
Exhibit 3 – Scope of Work and Payment Terms

**CERTIFICATE OF ACKNOWLEDGMENT OF THE CONTRACTOR - INDIVIDUAL, CORPORATION, PARTNERSHIP, or LIMITED LIABILITY COMPANY:**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 201\_, before me, the undersigned, \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and further that.

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.
- (If a corporation): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- (If a partnership): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- (If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Stamp

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

\_\_\_\_\_  
Registration No.

## TERMS AND CONDITIONS

1. Time is a material term of Contractor's performance of the Services; without limiting the generality of the foregoing, Contractor shall complete the Services by the final date specified in this Agreement and shall complete the corresponding portion of such Services by every interim date, if any, specified in the Scope of Work (Exhibit 3) attached hereto.

2. Notwithstanding any other provisions of this Agreement, Contractor's status shall be that of an independent contractor and not that of an employee or agent of the University. Contractor shall be expected to work, without the full complement of support facilities, working conditions, and supervision given to employees of the University. All persons engaged by Contractor to assist Contractor shall at all times be deemed to be employees of Contractor, and Contractor shall be responsible for their work, direction, and compensation. Contractor may not subcontract the Services or any portion thereof without the prior written consent of the University. Contractor shall at all times utilize appropriately qualified and skilled personnel to perform the Services. Nothing in this Agreement shall be construed to impose any liability or duties upon the University for the performance of services by any third party hired or otherwise engaged by Contractor.

3. Neither Contractor nor any persons engaged by Contractor shall receive health insurance, sick leave, annual leave, pension, or any other fringe benefits associated with employment with the University.

4. Nothing in this Agreement shall impose any tax liability upon the University, including, but not limited to, federal, state, and local income taxes, unemployment insurance, or social security tax, incurred by Contractor or any persons engaged by Contractor. Contractor agrees to indemnify the University, the City of New York, and the State of New York and hold them harmless from any and all claims for such payments by taxing authorities, including, but not limited to, fines, penalties, levies, and assessments, for failure to withhold or remit such payments.

5. Contractor affirms that to the best of Contractor's knowledge there exists no actual or potential conflict between the Services and Contractor's family, business, or financial interests, or those of any employee of Contractor, and no trustee, officer, or employee of the University, or other director, officer, employee, or person whose salary is payable in whole or in part from the treasury of the City of New York or the State of New York, is directly or indirectly interested in this Agreement or in any portion of the profits thereof. Should this situation change during the term of this Agreement, Contractor shall promptly notify the University. The University reserves the right in its sole discretion to determine whether or not any of the interests required to be disclosed under this paragraph 5 shall disqualify Contractor from performing the Services.

6. The University may at any time, upon prior written notice, terminate this Agreement with or without cause. Contractor shall be paid on a prorated basis for those Services rendered up to the date of termination. The rights and obligations of both parties that expressly or by their nature would survive beyond the termination or expiration of this Agreement, including, but not limited to, Contractor's representations and warranties and the provisions dealing with payment, ownership, indemnification, and confidentiality, shall so survive.

7. (a) Contractor acknowledges that Contractor and Contractor's employees, agents, or representatives may, in the course of the performance of this Agreement, be exposed to or acquire information that is confidential to the University or its employees or students. Contractor shall treat all information obtained from the University or disclosed to Contractor while performing this Agreement as "Confidential Information" in accordance with this paragraph 7, except for any such information that the University designates to Contractor in writing as excluded from Confidential Information. This obligation of confidentiality does not extend to any information that: (i) was in the possession of or rightfully known by Contractor prior to the time of disclosure by the University without any obligation to maintain its confidentiality; (ii) is or becomes available to the general public without violation of this Agreement; (iii) is obtained by Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; (iv) is independently developed by Contractor without the participation of individuals who have had access to it; or (v) is required to be disclosed by court order, provided Contractor gives the University prior written notice of such required disclosure (to the extent legally permitted) and reasonable assistance if the University wishes to contest the disclosure.

(b) Contractor shall treat the Confidential Information with the same degree of care that Contractor would treat Contractor's own confidential information, and with no less than reasonable care. Contractor shall not use the

## Independent Contractor Agreement

Confidential Information for purposes other than rendering the Services and shall limit access to Confidential Information to those of Contractor's employees, agents, and representatives having a need to know such Confidential Information to perform the Services. Contractor shall not directly or indirectly disclose, distribute, republish or allow any third party to have access to any Confidential Information without such third party's executing a confidentiality and non-disclosure agreement with the University under the same terms, or terms at least as restrictive, as set forth in this Agreement.

(c) Upon termination or completion of the Services, or at any time the University requests, Contractor shall return to the University, or destroy, all copies of the Confidential Information, in whatever media, and shall provide the University with a sworn certification that Contractor has complied with Contractor's obligations under this paragraph 7. It is understood and agreed that, in the event of a breach, threatened or actual, of this paragraph 7, damages may not be an adequate remedy and the University shall be entitled to injunctive relief to restrain any such breach without having to post an undertaking.

8. Contractor shall protect, indemnify, and hold the University, the City of New York, and the State of New York harmless from and against any and all claims, suits, causes of action, liabilities, losses, damages and expenses (including, but not limited to, attorney's fees and court costs in connection with any such matters) to which the University, the City of New York, and/or the State of New York may be subjected arising out of or relating to: (a) injury to person or property, or wrongful death, that may result from any negligence, willful misconduct, intentional wrongdoing, malpractice, or incompetence of Contractor, or anyone employed or engaged by Contractor, in connection with the performance of this Agreement; and (b) any breach by Contractor of this Agreement or any of Contractor's representations or warranties set forth herein.

9. Any invention or discovery, whether or not patentable, that is conceived or reduced to practice by Contractor and arises out of Contractor's performance of the Services shall be reported to the University with complete information concerning such invention or discovery. The University retains all right, title, and interest to any such invention or discovery and retains the sole right to determine whether a patent application shall be filed. Contractor shall cooperate fully with the University or its designee to enable it to secure the rights retained under this paragraph 9 and shall execute all documents necessary to do so.

10. All copyrightable works (including, but not limited to, reports, compilations of data, software, pictorials, or graphics) created or prepared by Contractor or Contractor's personnel in the course of the performance of the Services ("Copyrightable Works") shall be "works made for hire" (as that term is defined in the copyright laws of the United States) for the University, and all copyright therein is expressly intended to be wholly owned by the University. To the extent that any Copyrightable Works may not, by operation of law, be works made for hire, Contractor hereby assigns to the University the ownership of copyright in such Copyrightable Works, and the University shall have the right to obtain and hold in its own name copyrights, registrations, and similar protections that may be available in such Copyrightable Works. Contractor agrees to give the University or its designee all assistance reasonably required to perfect such rights. Contractor represents and warrants that Contractor is and shall be sole author of any and all Copyrightable Works, and that they are and shall be original works not subject to any prior agreement, lien, or other rights. Contractor further represents and warrants that the Copyrightable Works do not and shall not contain libelous, plagiarized, injurious, or other unlawful matter, and that they do not and shall not infringe on copyright or violate any other right of any person or party whatsoever.

11. Contractor represents, covenants, certifies, and warrants: (a) that Contractor is expert in performing the Services referred to by this Agreement; (b) that Contractor is licensed as may be required by all applicable authorities in the State of New York and the City of New York, as the case may be, to perform the Services and that all Services shall be performed in accordance with applicable law; (c) that every other person that Contractor retains to perform any of the Services shall be licensed as may be required by all applicable authorities; (d) that Contractor will take all steps necessary and advisable to maintain such licenses and give the University prompt notice of any lapse of any such license; and (e) that Contractor is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list published by the New York State Office of General Services.

12. Contractor shall procure and maintain commercial general liability insurance issued in Contractor's name by a licensed carrier authorized to do business in New York, in an amount not less than one million dollars (\$1,000,000) per occurrence combined single limit. Such insurance shall name the University, the City of New York, and the State of New

York, and such additional persons or entities required by the University from time to time, as additional insureds. If the Scope of Work (Exhibit 3) attached hereto contains alternate insurance requirements, such requirements shall control. Contractor shall provide the University with certificates of all required insurance and, upon the University's request, copies of policies and all endorsements.

13. The University shall pay Contractor for the Services in accordance with amounts and rates set forth in Exhibit 3 attached hereto and in accordance with these terms and conditions. Contractor shall submit properly documented invoices and a completed "Independent Contractor Service Claim for Payment" (see Exhibit 1) for the Services to the Accounts Payable Department indicated on Exhibit 3, but only following acceptance of the Services and at time intervals and in form and substance acceptable to the University. The University reserves the right to request additional information at any time, and Contractor shall provide such information promptly. Following the University's receipt of such invoices, the University (or the State of New York or the City of New York, as applicable) shall pay Contractor in accordance with ordinary University (and State or City) procedures and practices. Contractor agrees to accept payments under this Agreement by electronic funds transfer, and Contractor shall provide all information and documentation requested by the University or the State or City to effectuate electronic funds transfers.

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

(b) If there is any conflict between the terms and conditions of this Agreement, and the provisions of any exhibit or appendix hereto, the conflict shall be resolved in the following order of precedence: (i) Appendix A (Standard Clauses for New York State Contracts), (ii) the terms and conditions of this Agreement, and (iii) Exhibit 3 (Scope of Work and Payment Terms).

(c) Contractor's obligations under this Agreement may not be assigned, subcontracted, or transferred without the prior written consent of an authorized representative of the University.

(d) This Agreement, including its exhibits and appendices, all of which are incorporated herein, contains the entire understanding of the parties hereto, supersedes all previous oral or written understandings, representations, or agreements to the extent that they relate to the subject matter hereof, and may not be modified by either party unless such modification is in writing and signed by an authorized representative of each party.

(e) Waiver by either party of a breach of any provision of, or right under, this Agreement shall not operate or be construed as a waiver of any other or subsequent breach of the same provision or right, or of any other provision or right under this Agreement.

(f) If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision that can be given effect without the invalid provision or application, and to this end the provisions hereof shall be severable.

(g) This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting the Agreement.

(h) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. If Contractor is providing consulting services to the University for an amount equal to \$20,000 or more, the following shall apply:

Contractor is obligated under this Agreement to complete, sign, and submit Appendix C, Form A "Disclosure of Planned Employment" attached hereto before Contractor may begin providing the Services. Contractor also is obligated under this Agreement to complete, sign, and submit promptly after March 31 of each year that the Agreement is in effect Appendix C, Form B "Contractor's Annual Employment Report" attached hereto. These forms are available at [https://www.osc.state.ny.us/procurement/contractor\\_instr\\_forms\\_a\\_b.doc](https://www.osc.state.ny.us/procurement/contractor_instr_forms_a_b.doc).

**APPENDIX A**  
**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the

State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract.

Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the

United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend

or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider



compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants

that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, New York 10017  
Telephone: 212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<http://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

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

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

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

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

of Economic Development for a current list of jurisdictions subject to this provision.

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

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

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

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

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

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

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

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

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

January 2014

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**EXHIBIT 2**

**DISCLOSURE OF EMPLOYMENT and ANNUAL EMPLOYMENT REPORT**

Chapter 10 of the Laws of 2006 amending State Finance Law §§ 8 and 163(1) (Consultant Disclosure Legislation) imposes new reporting requirements. Contractors providing services under a contract for consulting services are required to disclose, by employment category for itself and for its subcontractors, the number of persons employed to provide services, the number of hours worked, and the amount paid to the Contractor by the University as compensation for work performed by these employees.

The definition of contracts for consulting services has been expanded by Chapter 10 of the Laws of 2006 to include any contract entered into by the University for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

If Contractor is receiving at least \$20,000 from the University, then:

1. Contractor must complete, sign, and submit Form A - State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term (follows) before providing any Services under this Agreement.
2. Also, for each year the Contract is in effect, Contractor must complete and submit timely the information required in Form B - State Consultant Services Contractor's Annual Employment Report (follows), providing detailed information, including historical information, regarding actual employment data for the most recently concluded State fiscal year (April 1 – March 31).

Forms A and B are available at

[https://www.osc.state.ny.us/procurement/contractor\\_instr\\_forms\\_a\\_b.doc](https://www.osc.state.ny.us/procurement/contractor_instr_forms_a_b.doc).

**EXHIBIT 3**

**SCOPE OF WORK**

**and**

**PAYMENT TERMS**

**and**

**ADDRESS FOR INVOICES**

*[College to attach]  
[samples available upon request]*

## Independent Contractor Agreement

*[instructions for using the Independent Contractor Agreement follows]*



## **Instructions for Using the Form Independent Contractor Agreement**

Attached is the form of the University's Independent Contractor Agreement ("ICA"), which the Office of the General Counsel ("OGC") has prepared to provide a model document for use throughout the University and to simplify the contract preparation process for consultant services. The ICA must be processed only through the College's/University's purchasing department. The ICA form should be used by colleges and University departments for consultant services except legal services and services related to construction (including architectural and engineering services).

OGC will make available a modified version of the ICA form for college associations and auxiliary enterprise corporations, and the attached form should not be used by such entities.

The ICA form may be used whether the Contractor is an individual or a partnership, corporation, or other legal entity. The ICA form should be used only in instances where total compensation payable to the Contractor is less than \$100,000. For compensation of \$100,000 or more, OGC must be consulted to determine an appropriate form of agreement.

### Working with the Purchasing Department

The ICA form does not supersede or replace the required procurement process regardless of the source of funding. The College or University department will prepare Exhibit 3 with the guidance of its Purchasing Department after submission of a requisition for the services. The Purchasing Department will handle all procurement issues related to the transaction with the Contractor and must review and approve the Scope of Work and Payment Terms. Any questions regarding procurement issues and the preparation of Exhibit 3 should be addressed to the Purchasing Department. Requests for OGC assistance with regard to preparation of Exhibit 3 should be presented by the Purchasing Department to OGC.

### Providing the ICA Form to Contractors

It is important that the ICA form be provided to the prospective Contractor by the college/university Purchasing Department as early as possible in the procurement process to expedite the transaction and avoid any expectation that the University would consider using the Contractor's form of agreement. It is mandatory that the ICA form be referenced in any advertisements for procurements of consultant services and incorporated in its entirety in any related solicitation documents.

**Do not include these instructions for using the ICA form when providing the ICA form to prospective contractors and bidders.**

### Contents of the ICA Form

Basic information about the transaction can be provided by completing the "form-fills" on page 1. Page 1 also provides blocks for signatures of both parties and spaces to indicate the identity of the preparer and purchasing department processor. Page 2 provides the notarization form that must

be completed by all Contractors. CUNY's terms and conditions are set forth on pages 3 through 5, and pages 6 through 11 contain NYS Appendix A (Standard Clauses for New York State Contracts). **The provisions in this ICA are not subject to change.**

The ICA form includes as Exhibit 1 (page 13) the form to be used by the Contractor for claims for payment (contractor must submit a completed Claim for Payment form together with each invoice) and, as Exhibit 2 (page 14), instructions regarding certain disclosure requirements if the Contractor is receiving payment of at least \$20,000.

The Scope of Work, the Payment Terms, including the Address for Invoices, should be incorporated as Exhibit 3, beginning on page 15. Insurance requirements specified in Section 12 (page 5) may be supplemented by including such additional requirements in the Scope of Work; insurance requirements set forth in Section 12 may not be reduced or deleted.

### Signatures

ICAs that have been reviewed and processed by the college's/university's purchasing department may be signed by the college/university without review or approval by OGC in accordance with Senior Vice Chancellor Frederick P. Schaffer's Memorandum on Contract Signing Authority, dated January 31, 2011, which is available at:

<http://www.cuny.edu/about/administration/offices/la/ContractSigningAuthority.pdf>

The signatory for the college/university must indicate his/her official title and his/her college where indicated in the signature block (for example: Jane X. Doe, President, Baruch College; John Z. Smith, Controller, CUNY).

### Questions about the ICA Form

If you have any questions about the use of the ICA form, please refer them to OGC by e-mail at [ogc@mail.cuny.edu](mailto:ogc@mail.cuny.edu) or by phone at (646) 664-9200.