

# **APPENDIX A**

STANDARD CLAUSES FOR THIRD-PARTY CONTRACTS FOR NEW YORK STATE

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

## TABLE OF CONTENTS

- 1. Limitation of State's Liability**
- 2. Non-Assignment Clause**
- 3. Comptroller's Approval**
- 4. Workers' Compensation Benefits**
- 5. Non-Discrimination Requirements**
- 6. Wage and Hours Provisions**
- 7. Non-Collusive Bidding Certification**
- 8. International Boycott Prohibition**
- 9. Rights to Recover Monies Owed to the State**
- 10. Records**
- 11. Equal Employment Opportunities For Minorities and Women**
- 12. Conflicting Terms**
- 13. Governing Law**
- 14. No Arbitration**
- 15. Service of Process**
- 16. Prohibition on Purchase of Tropical Hardwoods**
- 17. MacBride Fair Employment Principles**
- 18. Omnibus Procurement Act of 1992**
- 19. Reciprocity and Sanctions Provisions**
- 20. Compliance with New York State Information Security Breach and Notification Act**
- 21. Compliance with Consultant Disclosure Law**

## STANDARD CLAUSES FOR THIRD-PARTY CONTRACTS FOR NEW YORK STATE

The contract ("the Contract" or "this Contract") to which this is attached has been determined to be a contract "for" the State of New York ("the State"). The Contract is between an entity (the "State Contractor") acting for the State pursuant to an agreement with the State and another entity (the "Third-Party Contractor", which refers to any party other than the State Contractor or the State, whether a contractor, licensor, licensee, lessor, lessee or any other party), acting pursuant to an agreement with the State Contractor pursuant to a contract for the State. Nothing herein shall create an independent right by the Third-Party Contractor against the State nor provide the Third-Party Contractor with beneficiary status with respect to the State. In light of the foregoing, the parties to the Contract (whether it may be a license, lease, amendment or other agreement of any kind) agree to be bound by the following clauses which are hereby made a part of the Contract:

**1. LIMITATION OF STATE'S LIABILITY.** The State shall have no liability hereunder to the Third-Party Contractor. The State's liability, if any, is to the State Contractor pursuant to an agreement between the State and the State Contractor ("the Agreement") which is separate and apart from this Contract, and, in accordance with the executory clause to the Agreement the State's liability is limited to the funds appropriated and available for such Agreement.

**2. NON-ASSIGNMENT CLAUSE.** Consistent with the provisions of Section 138 of the State Finance Law, this Contract may not be assigned by the Third-Party Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State Contractor and the State and any attempts to assign the Contract without such written consent are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract for the State may be waived at the discretion of the contracting agency, 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 contracting agency and the State retain their right to approve an assignment and to require that any Third-Party Contractor demonstrate its responsibility. Additionally, the Third-Party Contractor may, however, assign its right to receive payments without the contracting agency's and 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, except where this is a contract for SUNY, CUNY or OGS, (or the minimum thresholds agreed to by the Office of the State Comptroller for certain SUNY and CUNY contracts that are not exempt from approval by the Office of the State Comptroller), or if this is an amendment for any amount to a contract which, as so amended, exceeds said threshold, or if the Contract involves consideration other than the payment of money for the State and the consideration being given for the State has a value or reasonably estimated value that exceeds \$10,000, it shall not be valid, effective or binding until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let for the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163(6-a)). Pursuant to Education Law §§ 355(5) and 6218 certain contracts for SUNY and CUNY, including contracts for: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; or (vii) goods for SUNY health care facilities, including contracts for goods made with

joint or group purchasing arrangements are exempt from Comptroller's approval, and certain other contracts, including contracts for services are subject, to higher thresholds for Comptroller approval. Failure to obtain the Comptroller's approval of this Contract, where required, will preclude any payment by the State to the State Contractor under the Agreement which would be used to fund this Contract.

**4. WORKERS' COMPENSATION BENEFITS.** Consistent with the provisions of Section 142 of the State Finance Law, this Contract shall be void and of no force and effect unless the Third-Party 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 Third-Party Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity 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, the Third-Party 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 contract for building service work as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Third-Party 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. The Third-Party 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 the Third-Party 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, the Third-Party 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 Third-Party 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 due and owing for work done upon the project.

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

**8. INTERNATIONAL BOYCOTT PROHIBITION.** Consistent with the provisions of Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this Contract exceeds \$5,000, the Third-Party Contractor agrees, as a material condition of the Contract, that neither the Third-Party 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 Third-Party Contractor, or any of the aforesaid affiliates of Third-Party 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 Third-Party Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. RIGHT TO RECOVER MONIES OWED TO THE STATE.** The State Contractor, at the request of the State, shall have the right to withhold, for purposes of set-off, any moneys due to the Third-Party Contractor under this Contract in order to satisfy any obligation owed by the Third-Party Contractor to the State. The right of the State to request set-off shall include, but not be limited to, the State's option to withhold for the purposes of set-off 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 Third-Party 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 Third-Party 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 Third-Party 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. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** Consistent 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 the State Contractor 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 State Contractor; or (ii) a written agreement in excess of \$100,000.00 whereby the State Contractor 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 Third-Party Contractor certifies and affirms that it is Third-Party Contractor's equal employment opportunity policy that:

(a) The Third-Party 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 contracts for the State 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 State, the Third-Party 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 Third-Party Contractor's obligations herein; and

(c) the Third-Party Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the 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.

The Third-Party 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 Third-Party 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 Third-Party Contractor or subcontractor with the requirements of any federal law

concerning equal employment opportunity which effectuates the purpose of this section. The State 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 State shall waive the applicability of Section 312 to the extent of such duplication or conflict. The Third-Party 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.

**12. 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.

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

**14. 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.

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

**16. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Third-Party Contractor certifies and warrants that all wood products to be used under this Contract award will be consistent 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 Third-Party 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 Third-Party Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specification and provisions regarding use of tropical hardwoods as detailed in State Finance Law §165. 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 Third-Party Contractor to meet with the approval of the State.

**17. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** Consistent with the provisions of the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Third-Party Contractor hereby stipulates that the Third-Party 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.

**18. 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  
30 South Pearl St -- 7th Floor  
Albany , New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

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  
30 South Pearl St -- 2nd Floor  
Albany , New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

Consistent with the provisions of Omnibus Procurement Act of 1992 by signing this bid proposal or Contract, as applicable, Third-Party Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Third-Party 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 Third-Party Contractor has acted consistent with the provisions of the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Third-Party 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 Third-Party Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Third-Party 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.

**19. 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, consistent with the provisions of the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively), they will 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.

**20. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Third-Party 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).

**21. 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, consistent with Section 163 (4-g) of the State Finance Law , the Third-Party Contractor shall timely, accurately and properly submit an annual employment report for the Contract to the agency that awarded the contract to the State Contractor, the Department of Civil Service and the State Comptroller.