



## Revocable Permit for Noncommercial Use of University Facilities

THIS REVOCABLE PERMIT, made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the STATE UNIVERSITY OF NEW YORK, an educational corporation organized and existing under the laws of the State of New York, and having its principal place of business located at SUNY Plaza, Albany, NY 12246, by and on behalf of the State University of New York Empire State College, having its principal place of business at 2 Union Ave., Saratoga Springs, NY 12866-4390 (hereinafter referred to as "SUNY Empire") and \_\_\_\_\_, a noncommercial organization having its principal place of business located at \_\_\_\_\_, hereinafter referred to as "the Permittee." The Permittee and SUNY Empire may be referred to collectively as "the Parties."

**WHEREAS**, the Permittee will be conducting an on-Empire State College activity which requires certain facilities; hereinafter referred to as the "Event;" and

**WHEREAS**, SUNY Empire has such facilities; and

**WHEREAS**, the parties desire to enter into an agreement whereby SUNY Empire will make such facilities available to the Permittee for the Event.

**NOW, THEREFORE**, be it known that a Revocable Permit ("Permit") is hereby granted to the Permittee, subject to the terms and conditions as hereinafter provided, to use the facilities and services designated in *Exhibit B*, attached hereto and made a part hereof, on the date(s) and at the times specified thereon.

1. SUNY Empire shall supply all ordinary and necessary water, gas, electricity, light, heat and sewerage facilities for the premises. Unless specifically indicated otherwise in *Exhibit B*, no phone service shall be provided by SUNY Empire to Permittee.
2. The Permittee shall take good care of the premises, fixtures and appurtenances to preserve the premises in good order and condition.
3. The Permittee agrees to provide SUNY Empire with a copy of its [Incorporation Papers or Receipt of Filing as a nonprofit agency filed with the Secretary of State, or Papers Filed with the appropriate County Clerk for Conducting Business in its Name].
4. In consideration of the facilities and services to be provided by SUNY Empire as enumerated herein, the Permittee agrees to reimburse SUNY Empire in accordance with the costs or services stipulated on *Exhibit C*, attached hereto and made a part hereof, and any other extraordinary costs incurred by SUNY Empire to meet the requirements of the Permittee. Payment shall be made by the Permittee payable upon receipt of an official billing statement from SUNY Empire. The form and manner of presentation of the statement shall be mutually agreed upon by the Parties.
5. The Permittee shall be responsible for any and all damages or loss by theft or otherwise of property whether such property shall belong to SUNY Empire or to others. Permittee shall be responsible for injury to persons (including death) which may in any way result from the operation or conducting of the Event or by Permittee's use of the facilities, premises, appurtenances and surrounding grounds, or may be caused by any of the persons involved in the Event, whether or not directly caused by the Permittee.
6. The Permittee shall be responsible for and shall maintain good discipline and proper behavior on the part of all persons in any way involved with the Event and agrees to remove any personnel involved in the Event whose actions, or failure to act, shall in the sole judgment of SUNY Empire, after consulting with the Permittee, be deemed to be detrimental to SUNY Empire.

7. If in the judgment of SUNY Empire the activities of any personnel in any way involved in the Event should be such that SUNY Empire, after consultation with the Permittee, shall determine that the continuation of the Event for the then remaining period covered by this Permit shall be contrary to the best interest of SUNY Empire, SUNY Empire may terminate this Permit without liability of any kind whatsoever therefore, and the Permittee and all personnel so involved shall be thereupon removed from SUNY Empire premises.
8. This Permit shall be interpreted according to the laws of the State of New York. The Permittee shall comply with established State University of New York and SUNY Empire regulations and policies and with all laws, rules, orders, regulations and requirements of Federal, State and municipal governments applicable thereto including the provisions contained in the rider attached hereto and made a part hereof as *Exhibit A*. If necessary, Permittee shall obtain and keep in force at its sole cost and expense, any permits or licenses which may be required by any local, State or Federal Governmental body.
9. The Permittee agrees that the issuance of this Permit shall in no way diminish the statutory authority of the State University of New York or SUNY Empire to possession, pursuant to the Education Law, of the State controlled property to which this Permit relates; nor shall the dominion and control by the State University of New York over the said State property be in any way diminished.
10. The Permittee specifically agrees that this Permit does not create the relationship of landlord and tenant between SUNY Empire and the Permittee regarding the use of the State controlled property to which this Permit relates. The relationship of the Permittee to State University of New York and the State of New York arising out of this Permit shall be that of licensee.
11. The Permittee specifically agrees that this Permit shall be void and of no further force and effect upon any use of the State controlled property to which this Permit relates which is inconsistent with State Law or which in any way conflicts with the purposes or objectives of SUNY Empire.
12. Upon removal from said premises, the Permittee shall, at its sole cost and expense, restore the premises as nearly as possible to the condition in which these premises were in when the use by the Permittee began, other than ordinary wear and tear to the premises.
13. The Permittee shall have the right, so long as this Permit shall remain in force, to enter upon said State lands for the purpose of maintaining, operating and using facilities designated in *Exhibit B*.
14. The Permittee specifically agrees not to hold itself out as representing the State of New York or State University of New York in connection with the use of the State-owned property to which this Permit relates, nor shall the name of the State of New York, the State University of New York, or SUNY Empire be used by Permittee for any purpose without prior approval of the SUNY Empire.
15. The Permittee assumes all risk incidental to the use of said facilities and shall be solely responsible for any and all accidents and injuries to persons and property (including death) arising out of or in connection with the Event, use of facilities, its appurtenances and the surrounding grounds and hereby covenants and shall be responsible to and shall fully defend, indemnify, and hold harmless the State of New York and the State University of New York and their respective officers, trustees, directors, agents and employees without limitation, from any and all losses, expenses, damages and liabilities, including reasonable attorneys' fees, arising out of the intentional or negligent acts or omissions of the Permittee, its officers, employees, agents or licensees arising out of or relating to the use of the facilities, the premises, its appurtenances and the surrounding grounds or the violation by said Permittee, its agents, employees or contractors of any law, code, order, ordinance, rule or regulation in connection therewith. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, SUNY Empire shall hold Permittee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State University of New York or of its officers or employees when acting within the course and scope of their employment.

16. Permittee agrees to obtain and maintain insurance coverage throughout the term of this Permit as provided in this paragraph and shall deliver Certificates of Insurance for the stated coverage upon execution of this Permit. The policies of insurance set forth below shall be written by companies authorized by the New York Department of Financial Services to issue insurance in the state of New York (“admitted” carriers) with an A.M. Best company rating of “A-” or better.
- (a) Workers Compensation, Disability Benefits and Paid Family Leave coverage for the life of this Permit for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits Law. Evidence of coverage must be provided on forms specified by the Commissioner of the Workers Compensation Board.
  - (b) General Liability Insurance with limits no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate. Such policy shall name the State University of New York as an additional insured and shall contain a provision that the State University of New York shall receive at least thirty (30) days written notice prior to material change, cancellation or expiration of such policy .
17. The Permittee specifically agrees that if this permit is cancelled or terminated for any reason, the Permittee shall have no claim against SUNY Empire, its officers and employees, nor any claim against the State of New York, its officers and employees, and both the State University of New York and the State of New York and their officers and employees shall be relieved from any and all liability.
18. **Permittee Responsibility.** (a) *General Responsibility.* The Permittee shall at all times during the term of this Permit remain responsible. The Permittee agrees, if requested by the SUNY chancellor or his or her designee, to present evidence of its continuing legal authority to do business in New York state, integrity, experience, ability, prior performance, and organizational and financial capacity. (b) *Suspension of Work for Nonresponsibility.* The SUNY chancellor, in his or her sole discretion, reserves the right to suspend any or all activities under this Permit at any time when he or she discovers information that calls into question the responsibility of the Permittee. In the event of such suspension, the Permittee will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Permittee must comply with the terms of the suspension order. Activity under this Permit may resume at such time as the SUNY chancellor or his or her designee issues a written notice authorizing a resumption of performance under the Permit. (c) *Termination for Nonresponsibility.* Upon written notice to the Permittee and a reasonable opportunity to be heard with appropriate SUNY officials or staff, this Permit may be terminated by the SUNY chancellor or his or her designee at the Permittee’s expense, where the Permittee is determined by the SUNY chancellor or his or her designee to be nonresponsible. In such event, the SUNY chancellor or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

19. Any notice to either party hereunder must be in writing signed by the party giving it and shall be served either personally or by certified mail addressed as follows:

TO SUNY Empire	SUNY Empire State College Joseph L. Garcia 2 Union Ave. Saratoga Springs, NY12866-4390 518-587-2100
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TO THE PERMITTEE \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Or to such other addressee as may be hereafter designated by notice. All notices become effective only when received by the addressee.

20. This Permit constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this contract are hereby superseded. In the event of any inconsistency or conflict among the documents comprising this Permit, such inconsistency or conflict shall be resolved by giving precedence to the documents in the following order:

1. Exhibit A, State University of New York Standard Contract Clauses
2. This Revocable Permit
3. Exhibit B, Designated Facilities and Services
4. Exhibit C, Costs and Services

21. The permission hereby granted shall be effective during the dates and times shown in Exhibit B and may be revoked at any time without cause. Upon revocation of the permission hereby granted and notice thereof served either in person or by registered mail, return receipt requested, said Permittee shall and will promptly discontinue the use of the premises and shall thereupon remove all of its property from the premises and shall restore the premises to the same condition it was in before use by the Permittee commenced, except that this permit shall terminate at the conclusion of each period of use shown in Exhibit B in any event, if not sooner revoked. Under no circumstances shall State University of New York be held liable for damages of any kind, either direct or indirect, for termination of this permit.

IN WITNESS WHEREOF, the Permittee has caused this instrument to be sealed and signed by its duly authorized officer, and SUNY Empire has caused this instrument to be executed by its duly authorized officer.

STATE UNIVERSITY OF NEW YORK  
EMPIRE STATE COLLEGE

PERMITTEE

By \_\_\_\_\_  
Joseph L. Garcia  
Executive Vice President for Administration

By \_\_\_\_\_  
Authorized Signer Name  
Title

Example

**State University of New York  
Notary Acknowledgement**

(ACKNOWLEDGEMENT BY INDIVIDUAL)

STATE OF NEW YORK )  
COUNTY OF ) SS.:

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 NEW YORK )  
COUNTY OF ) SS.:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally came \_\_\_\_\_ to me known and known to me to be the person 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 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 ) SS.:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally came \_\_\_\_\_ to me known, who duly being sworn, did depose and say that he/she resides in \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

\_\_\_\_\_  
Notary Public

**Standard Contract Clauses**  
**State University of New York**

**EXHIBIT A**

**February 11, 2014**

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

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

**2. PROHIBITION AGAINST ASSIGNMENT**

Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

**3. COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. 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.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding

upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

**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 SUNY of any SUNY-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 on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief 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 SUNY 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 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, 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 SUNY and its representatives and entities 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. SUNY 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 SUNY 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, SUNY's or the State's right to discovery in any pending or future litigation.

#### 11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

Identification Number(s). Every invoice or New York State Claim for Payment submitted to the State University of New York 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 University of New York 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 State University of New York 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.

(a) 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) 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:

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, 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;

(2) at SUNY's request, 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

(3) 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.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY 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, SUNY 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 Exhibit A, the terms of this Exhibit 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 State Finance Law §165 (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 Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, 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 Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have 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(5) of the 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  
30 South Pearl St., 7th Floor  
Albany, NY 12245  
Tel: 518-292-5100  
Fax: 518-292-5884  
email: opa@esd.ny.gov

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414

email: mwbecertification@esd.ny.gov  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 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 SUNY;

(b) The Contractor has complied with the Federal Equal Employment 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 Search 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 SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY 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 of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, 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, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

**24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT.** In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

**25. 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.

**26. 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 SUNY 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 SUNY determines that such action is in the best interests of the State.

**27. 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.oqs.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.

#### **THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY**

28. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

29. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

**EXHIBIT B**  
**Designated Facilities and Services**

State University of New York Empire State College  
and

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The following facilities and services at SUNY Empire are provided by the State University to the above-named Permittee in accordance with the terms and conditions of this Permit.

**Facilities to which Permittee is being given access:**

**Locations(s)** \_\_\_\_\_

**Conference room(s)** \_\_\_\_\_

**Other Areas** \_\_\_\_\_  
\_\_\_\_\_

**Date(s) of use** \_\_\_\_\_

**Start time** \_\_\_\_\_

**End time** \_\_\_\_\_

**EXHIBIT C**  
**Costs and Services**

State University of New York Empire State College  
and

\_\_\_\_\_

The Permittee agrees to pay SUNY Empire the amount of \$ \_\_\_\_\_

for the use of facilities described in Exhibit B. Payment is determined on the following basis:

DATE(S) \_\_\_\_\_

USE OF FACILITIES \$ \_\_\_\_\_

START TIME / END TIME \_\_\_\_\_

OVERTIME SURCHARGE \_\_\_\_\_ hours X \_\_\_\_\_ p/h \$ \_\_\_\_\_

**BALANCE DUE** \$ \_\_\_\_\_

**Payable to**

State University of New York Empire State College  
2 Union Avenue  
Saratoga Springs, NY 12866  
Attn: Facilities