

AFFILIATION AGREEMENT

THIS AFFILIATION AGREEMENT (this Agreement") is made this _____ day of March, 2016 ("Effective Date"), by and between CAMPUS WALK ONE, LLC, a New York limited liability company with its principal office located at 1131 Delaware Avenue, Buffalo, New York 14209, (the "Owner") and THE PEOPLE OF THE STATE OF NEW YORK through the STATE UNIVERSITY OF NEW YORK, an instrumentality of the State of New York with its principal office located at State University Plaza, Albany, New York 12246 ("SUNY").

WITNESSETH THAT:

A. Pursuant to the terms and conditions of a certain Contract (as defined below), BSCR has agreed to convey to Owner the BSCR Property and the Access Easement in exchange for Owner's conveyance to BSCR of the CW Property (as such terms are defined below).

B. Upon acquiring fee simple title to the BSCR Property, Owner intends on using the BSCR Property and certain Adjacent Property (as defined below), for the development, construction, equipping, and operation of a certain off-campus student housing facility for the students of Buffalo State College (collectively, the "Project" as further defined below); and

C. Owner desires to enter into this Agreement with SUNY, pursuant to which, among other things, SUNY will provide to Owner certain marketing and other services with respect to the Project's housing program and facilities.

NOW, THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and SUNY do hereby, subject to the terms hereof, covenant and agree as follows:

1.0 DEFINITIONS.

1.1. Access Easement means a certain non-exclusive easement for pedestrian and vehicular ingress, egress and access to and from the Project Facility over the access ways to be located on the real property commonly known as 144 Rees Street, in the form of Exhibit D attached to the Contract.

1.2. Adjacent Property means, individually and collectively, those certain parcels of real property in the City of Buffalo, New York, commonly known as 120, 122, 124, 126, 132, 134, 138 and 140 Rees Street and 631, 633, 637, 639, 641, 643 Grant Street.

1.3. BSCR means BSCR Corporation, a New York not-for-profit corporation.

1.4. BSCR Property means, individually and collectively, those certain parcels of real property in the City of Buffalo, New York commonly known as 649 and 651 Grant Street (SBL Nos. 88.51-3-48.1 and 88.51-3-48.21), 136 Rees Street (SBL No. 88.51-3-9), and 137 and 139 Hawley Street (SBL Nos. 88.51-2-45 and 88.51-2-46)

1.5. College means Buffalo State College.

1.6. Contract means a certain Contract for Transfer of Real Property, dated as of _____, 2016, between BSCR and Owner.

1.7. CW Property means, individually and collectively, those certain parcels of real property located in the City of Buffalo, New York commonly known as 663 Grant Street (SBL No. 88.51-3-52) and 144 and 148 Rees Street (SBL Nos. 88.51-3-6 and 88.51-3-5).

1.8. Equipment means the furniture, fixtures, machinery, equipment and other items of personal property which Owner shall acquire and install in the Facility, at Owner's cost and expense.

1.9. Facility means an approximately 318 bed, new, modern, off-campus student housing building, with possible retail and office space, to be located on the Land.

1.10. Land means, individually and collectively, the BSCR Property, the Adjacent Property and the appurtenant beneficial rights under the Access Easement.

1.11. Project means the development, construction and operation of the Facility on the Land, including the acquisition and installation of Equipment, by Owner for the purposes of providing new, modern, off-campus student housing for the students of the College and others, with possible retail and office space.

1.12. Project Facility means, collectively, the Equipment, the Land and the Facility.

1.13. Substantial Completion means the earliest date on which Owner has substantially completed the construction and equipping of the residential portion of the Project Facility, as further evidenced by either a permanent certificate of occupancy or a temporary or conditional certificate of occupancy, provided that such temporary or conditional certificate of occupancy contains only those conditions which are subject to the completion of seasonal work (such as landscaping or other exterior work) that cannot otherwise be completed at the time of issuance of such certificate due to existing weather conditions.

2.0 INCORPORATION OF RECITALS.

2.1. The above recitals are hereby incorporated into this Agreement as if fully set forth herein.

3.0 EXCLUSIVE RIGHTS; CHANGE IN CAMPUS RESIDENCY POLICY.

3.1. Exclusive Off-Campus Housing Option. Beginning upon the date of Substantial Completion and continuing throughout the duration of the Term (as defined below), SUNY, through the College or otherwise, shall not market or offer to any students of the College, or otherwise place such students in, any off-campus housing options, other than those at the Project Facility; provided that there is available occupancy at the Project Facility.

3.2. Change in Campus Residency Policy. In conjunction with the renovation of certain existing on-campus housing facilities, SUNY, through the College, has agreed to temporarily modify its on-campus housing policy for a total of four consecutive academic years, commencing with the first fall semester following both (a) the date of Substantial Completion and (b) the students of the College have commenced occupancy of the Project Facility (which is currently targeted to occur prior to the 2017 fall semester), to limit on-campus housing to freshmen, sophomores and juniors only. SUNY covenants and agrees that such modification will remain in effect for a total of four consecutive academic years (which, assuming the Project has achieved Substantial Completion and students of the College have commenced occupancy of the Project Facility prior to commencement of the 2017 fall semester, such modifications will remain in effect for the 2017-2018, 2018-2019, 2019-2020 and 2020-2021 academic years) to accommodate such renovations. For the duration of such policy modification, because of the unique proximity of the Project Facility to the College, to the extent that beds are available in the Project Facility, SUNY shall, and shall cause the College to, direct students of the College to the Project Facility as the preferred alternative for meeting off campus housing needs of any students affected by such change in campus residency policy.

4.0 OWNER'S RESPONSIBILITIES.

4.1. Development and Construction. Owner shall be exclusively responsible for implementing, overseeing, and effecting the development, construction, and financing of the Project to attain Substantial Completion. In connection therewith, Owner shall be responsible for obtaining all entitlements, including, but not limited to rezonings, variances, special use permits, zoning modifications, certificates of occupancy, or similar actions relating to the development of the Project.

4.2. Submission of Plans and Specifications to SUNY. Owner shall submit the initial plans and specifications with respect to the Project to SUNY for its review. Owner shall, at all times, provide such documents, proposals, plans, specifications, designs, and other related design and construction information as may be reasonably requested by SUNY (to the extent such information is neither the subject of non-disclosure obligations of Owner nor pertaining to Owner's financial or confidential information), provided that SUNY shall have no right of approval of same. Under no circumstances shall SUNY's review of any plans and specifications for the Project create any duty or responsibility on the part of SUNY for determining the adequacy of or legality of any such plans and

specifications, it being understood and agreed that such duty shall at all times remain the responsibility of Owner.

4.3. Operation and Management. Owner shall be exclusively responsible for the operation and management of the Project Facility including, without limitation, coordinating the procurement of facility management services for the ongoing management and operation of the Project Facility, beginning upon the date of Substantial Completion and continuing throughout the duration of the Term, including, without limitation, employing staff, maintaining the physical plant, obtaining and paying of all utilities, maintaining insurance, developing operating and capital budgets, planning for and carrying out capital improvements, securing signed licenses or leases from Project occupants, and assessing and collecting room charges and security deposits.

4.4. Ongoing Maintenance. Beginning upon the date of Substantial Completion and continuing throughout the duration of the Term, Owner shall maintain and operate the Project Facility in a high quality and first rate manner for a project of its type, including, without limitation, compliance with the following requirements:

- (a) Keep the Project licensed in accordance with all applicable local, state, and federal laws and regulations, including the issuance of permanent, unconditional certificates of occupancy;
- (b) Enforce a smoke-free environment at the Project Facility as long as the College enforces a "smoke-free" campus; and
- (c) Arrange for and ensure completion of resident satisfaction surveys, which surveys will be updated regularly with content utilized by professional housing associations, such as the Association of College and University Housing Officers – International. SUNY will provide the forms of such surveys for use by Owner. Owner will report the results of those surveys to the College on a periodic basis.

4.5. Rental Amounts. Commencing with the first fall semester following the date of Substantial Completion (which is currently targeted to occur prior to the 2017 fall semester) and continuing for a total of four consecutive academic years (which, assuming the Project is completed prior the commencement of the 2017 fall semester, would be the 2017-2018, 2018-2019, 2019-2020 and 2020-2021 academic years), Owner shall charge rental amounts at the Project which (i) are never more than twenty percent (20%) less than the monthly rental amounts charged by the College at the on-campus Student Apartment Complex (STAC), and (ii) take into consideration comparable rents or license fees offered for similar student housing buildings of its type within the Western New York region.

4.6. Project Advisory Board. As part of its operation of the Project, Owner shall form an advisory board, the members and number of whom will be determined by Owner (other than the single member to be named by SUNY, through the College), which will determine and set policies for the Project, including, but not limited to, rental

amounts and housing rules and regulations. Owner shall grant SUNY, through the College, a seat on the advisory board. Owner hereby agrees that the advisory board will use its reasonable business judgment in setting rental amounts in accordance with Section 4.5 above.

5.0 SUNY'S RESPONSIBILITIES.

5.1. Marketing Information to Students: SUNY, through the College, agrees to provide Owner with the following marketing activities and opportunities for the Project during the Term:

(a) Provide the College's upper-class students (i.e., those students who are not freshmen or sophomores) and prospective upper-class students marketing materials for the Project, as provided by Owner, to be included in the College's student housing application packages and responses to requests for information about the College (where possible through all methods of communication pursued with students and prospective students);

(b) Permit Owner to post its employees or agents at prominent on-campus locations at the College, including in the student gathering areas or other similar heavy traffic areas or any other areas that Owner reasonably requests, for marketing efforts, including while the Project is under construction,

(c) Permit Owner to advertise the Project on-campus,

(d) Provide Owner with the contact information for the College's upper-class students and prospective upper-class students who indicate an interest in, and grant approval to, receiving information from third parties regarding on or off-campus housing opportunities,

(e) Notify Owner about, and include the Project in, campus tours and communications for marketing efforts for upper-class students and prospective upper-class students of the College, including while the Project is under construction,

(f) Provide Owner with reasonably prominent wall and floor space in appropriate areas throughout the College's buildings, including, but not limited to, the student lounge area(s) and the Student Affairs office areas for Project related marketing and information distribution purposes, and

(g) Install and maintain a direct web link between the College's applicable "student success" and housing web sites (and any other current or future forms of social media and electronic communication) and the Project's web site(s) (and any other current or future forms of social media and electronic communication).

5.2. Student Services: Beginning upon the date of Substantial Completion and continuing throughout the duration of the Term, SUNY, through the College, shall provide the following student services at the College to promote and support the Project:

(a) Provide support, visibility, and co-sponsorship opportunities for Owner and the Project at resident student activities in cooperation with Owner and subject to the College's prior approval; and

(b) Provide a designated person from the College's Students Affairs Office to serve as a liaison between the College and Owner with respect to the Project.

5.3. Security. Beginning upon the date of Substantial Completion and continuing throughout the duration of the Term, SUNY shall cause the New York State University Police at the College (the "University Police") to patrol the College's campus properties, and the public streets that abut or cross the College's campus properties, and are adjacent to the Project. While the City of Buffalo Police have primary jurisdiction at the Project, the University Police, at the request of the City of Buffalo police, will respond to emergency situations and situations involving criminal activity at the Project. The University Police shall monitor the four existing blue light phones installed on campus parking lots immediately adjacent to the Project.

5.4. Project Support: During the Term, consistent with its educational mission and responsibilities as a State agency, SUNY, through the College, shall:

(a) Upon request by Owner, at no out-of-pocket cost to SUNY, provide a written, general statement of support for the Project for use by Owner for development and/or financing matters relating to the Project,

(b) Upon request by Owner, at no out-of-pocket cost to SUNY, appropriate level College staff shall attend in-person meetings in connection with Owner's development and/or financing of the Project; and

(c) Abstain from appearing or filing any documentation in opposition to any proposed municipal or other approval for the Project, and

(d) Abstain from passing, enacting or approving (or introducing or threatening such passage, enactment or approval) resolutions or executive orders opposing the Project.

5.5. Internet: Beginning upon the date of Substantial Completion and continuing throughout the duration of the Term, SUNY, through the College, shall allow where technically feasible and at Owner's sole cost, internet connectivity between the Project and the College's campus network for Project residents, who are students of the College only, which may at the College's discretion, include installing and maintaining within the Project (at Owner's reasonable cost and as coordinated with Owner) a connection to the College's intranet so as to provide residents of the Project with direct internet access (wired) into each apartment unit at the Project Facility in accordance with the College's policies and procedures, as well as wireless access to the College's intranet in common areas of the Project Facility;

5.6. Student Parking. SUNY shall make available to the College's student residents of the Project, 24/7 parking in designated overnight parking lots at a cost which is the same as that charged to all other students of the College for 24/7 parking on campus. At least 150 of such parking spaces will be provided, on a first-come, first-served basis (whether that is the parking policy of the College or not), beginning upon the date of Substantial Completion and continuing throughout the duration of the Term, in campus-controlled parking lots located adjacent to the Project on Rees Street and/or Grant Street. Upon the mutual agreement of both SUNY and Owner, this parking provision may be independently extended for an additional 15-years.

6.0 TERM.

6.1. Initial Term. The initial term of this Agreement shall commence on the Effective Date and end on the date which is the fifteenth (15th) anniversary of the date that Owner has achieved Substantial Completion of the Project Facility and students of the College have begun their initial occupancy of the Project Facility (the "Initial Term"). The Initial Term shall continue for additional periods of one year after the end of the Initial Term, unless terminated by either party upon the terminating party giving to the other party at least one hundred and eighty (180) days prior written notice of the date of such termination. The Initial Term, and such extension(s) thereof are collectively referred to in this Agreement as the "Term".

7.0 DEFAULT; REMEDIES.

7.1. Default Due to Breach; Remedies. Upon the happening of any material breach of this Agreement by a party hereto, the non-breaching party may give notice of such breach to the breaching party specifying in detail such failure. If such breach has not been cured within thirty (30) days of the delivery of such notice, or if the breach is of a nature that it cannot be cured within said thirty (30) day period, but can be cured within a reasonable time thereafter, so long as efforts to cure such breach have commenced and are being continued diligently both during and after such thirty (30) day period prior to the breach being cured (provided in no event shall the total cure period exceed one hundred and twenty (120) days), then the non-breaching party may exercise any and all rights it may have against the breaching party, at law and/or in equity including, without limitation, termination of this Agreement. The parties may attempt to resolve any dispute, claim or controversy arising out of or relating to this Agreement by non-binding mediation, which shall be conducted under any procedure upon which the parties may mutually agree. Undertaking non-binding mediation regarding any particular issue shall be subject to the mutual consent of both parties. The parties agree to share equally the costs and expenses of the mediation (which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation). The parties further acknowledge and agree that non-binding mediation proceedings are settlement negotiations, and that, to the extent allowed by applicable law, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties or their agents shall be confidential and inadmissible in any arbitration or other legal proceeding involving the parties; provided, however, that

evidence which is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

8.0 INDEPENDENT CONTRACTOR.

8.1. No Partnership. In taking an action under this agreement, SUNY shall be acting on its own behalf, as independent contractor, and nothing in this agreement shall be construed as creating a partnership, joint venture or agency relationship between Owner and SUNY.

9.0 MUTUAL INDEMNITY.

9.1. SUNY agrees to indemnify Owner and hold Owner harmless from any claim, loss, liability and expense, including reasonable fees and expenses of Owner's counsel, to the extent resulting from or arising out of the performance by SUNY of this Agreement.

9.2. Owner agrees to indemnify SUNY and hold SUNY harmless from any claim, loss, liability and expense, including reasonable fees and expenses of SUNY's counsel, to the extent resulting from or arising out of the performance by Owner of this Agreement.

10.0 RIGHT OF FIRST REFUSAL.

10.1. Terms of Right of First Refusal. Owner hereby grants to SUNY and BSCR, on the terms and conditions set forth below, an exclusive and irrevocable right of first refusal (the "Right of First Refusal") throughout the Term, to purchase the Facility or Land on the following terms and conditions:

(a) If Owner shall accept the bona fide offer of any third party, other than any Owner Related Third Party (as defined below in Subsection 11.1), to purchase all or any part of Owner's fee interest in the Facility or Land (each such offer, an "Offer"), Owner shall make as a condition thereof that such purchase shall be subject in all respects to the rights of SUNY and BSCR under this Agreement, and shall promptly and in good faith fully communicate to each of SUNY and BSCR the terms and provisions of such Offer.

(b) SUNY or BSCR shall have the right to purchase all or a portion of such interest in the Facility or Land upon the terms and provisions of such Offer, and, otherwise, in accordance with customary and standard terms and conditions of commercial real estate sales transactions in Erie County, New York.

(c) Upon receipt by SUNY of notice of any such Offer and the terms and provisions thereof, SUNY shall have fifteen (15) days in which to elect to exercise its Right of First Refusal as to such Offer, and shall within such time notify Owner and BSCR, at the addresses and in the manner set forth in **Subsection 11.2** below, of its election. If SUNY elects not to exercise its Right of First Refusal as to such Offer within such 15 day period, then BSCR shall have fifteen (15) additional days following the

earlier of (i) receipt of SUNY's notice not to exercise its Right of First Refusal as to such Offer, or (ii) the end of SUNY's 15-day period to exercise its Right of First Refusal, to exercise BSCR's Right of First Refusal.

(d) If SUNY and BSCR both elect not to exercise the Right of First Refusal as to any such Offer or fail to notify Owner of its election to exercise such Right of First Refusal as set forth in **Subsection 10(c)** above, Owner may sell the Facility or Land in accordance with such Offer. Any such sale, however, shall be subject to this Agreement and to SUNY's and BSCR's continuing Right of First Refusal hereunder as to the portion of the Facility or Land sold and to any and all other portions of the Project Facility.

(e) The parties hereby agree to cooperate in the recording of a memorandum of the Right of First Refusal in the land records of the Erie County Clerk's office simultaneously with the execution of this Agreement.

11.0 MISCELLANEOUS.

11.1. Assignment. Neither party shall assign, transfer, convey, or otherwise dispose of this Agreement or its right, title and duties under or interest in this Agreement, without the prior approval of the other party; provided, however, Owner may (a) enter into or grant one or more leases, subleases, licenses or other possessory interests in the residential units of the Project Facility to individual occupants, without the prior written approval of SUNY and/or (b) assign, transfer, convey, or otherwise dispose of its ownership in and to all or any portion of the Project Facility to an Owner Related Party (as hereinafter defined), without the prior written approval of SUNY. The term "Owner Related Party" means an entity which is directly or indirectly owned or controlled by James Swiezy. SUNY's prior approval shall not be required with respect to the following, provided that Owner has engaged in prior consultation with SUNY regarding the same: (y) any management, marketing and/or other contracts relating to the overall management or operation of the Project Facility or (z) any leases, subleases, licenses or other possessory interests in the commercial portions of the Project Facility. Owner shall not enter into any master lease, sublease or any other conveyance of all or substantially all of its interest in the residential portion of the Project Facility, without obtaining the prior written approval of SUNY, except that a master lease, sublease or other conveyance with an Owner Related Party which shall not require SUNY's prior approval.

11.2. Purchase Option of Project Facility. Should the residential portion of Project Facility, at any time, cease to be used for the purpose of operating off-campus student housing for students of Buffalo State College, Owner (and its successors and/or assigns) hereby agrees to grant to SUNY and BSCR a one-time option to purchase the Project Facility for its fair market value, in accordance with the terms and conditions set forth in the Access Agreement. This Section shall survive the termination of this Agreement indefinitely.

11.3. Notices. Any notices under this Agreement shall be in writing and addressed as follows (or at such other address as SUNY and Owner individually may specify hereafter in writing):

If to Owner: CAMPUS WALK ONE, LLC
 c/o Greenleaf Development & Construction, LLC
 1131 Delaware Avenue
 Buffalo, New York 14209

With a copy to:

Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo., New York 14203-2887
Attention: Douglas W. Dimitroff, Esq.

If to SUNY: Office of General Counsel
 STATE UNIVERSITY OF NEW YORK
 State University Plaza
 Albany, New York 12246

With copies to:

BSCR Corporation
1300 Elmwood Avenue
Buffalo, New York 14222

Hodgson Russ LLP
140 Pearl Street, Suite 100
Buffalo, New York 14202
Attention: Terrence M. Gilbride, Esq.

Vice President for Finance and Administration
Buffalo State College
Cleveland Hall 505
1300 Elmwood Avenue
Buffalo, NY 14222

Such notice or other communication may be mailed by United States registered or certified mail, return receipt requested, postage prepaid, or may be deposited in a United States Post Office or a depository for the receipt of mail regularly maintained by the post office. Such notices, demands, consents, and reports may also be delivered by hand or by any other receipted method or means permitted by law. For purposes of this Agreement, notices shall be deemed to have been "given" or "delivered" upon personal delivery

thereof or forty-eight (48) hours after having been deposited in the United States mails as provided herein.

11.4. Entire Agreement; Governing Law; Venue. SUNY and Owner shall each perform all services and obligations required of them under this Agreement in accordance with all applicable federal, state and local laws, regulations and rules including without limitation the Labor Law of the State of New York. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to principles of conflict of laws. The parties agree that any action or proceeding arising out of or relating to this Agreement shall be commenced in the courts of competent jurisdiction of the State of New York venued in Erie County, New York. Each of the parties hereby waives any and all rights to change the venue of any action or proceeding brought to determine any claim or controversy involving this Agreement. Notwithstanding anything to the contrary in this agreement, the parties agree that this agreement shall be subject to the agreements, terms and conditions set forth in Exhibit A hereof to the same extent as if such agreements, terms, and conditions were set forth in full herein. In the event that any terms or conditions of this agreement shall be inconsistent with any agreements, terms, or conditions set forth in Exhibit A, then the agreements terms, and conditions set forth in Exhibit A shall control.

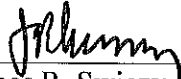
11.5. Counterparts; Captions. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is to be deemed as original, and all of which constitute, collectively, one agreement. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof. As used in this Agreement, the masculine includes the feminine and neuter, the singular includes the plural and the plural includes the singular, as the context may require.

11.6. Amendments in Writing. No change to this Agreement shall be valid unless made in writing executed and approved by SUNY and Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.


OWNER:

CAMPUS WALK ONE, LLC

By: 
Name: James R. Swiezy
Title: Member

SUNY:

**THE PEOPLE OF THE STATE OF
NEW YORK THROUGH THE STATE
UNIVERSITY OF NEW YORK**

By: 
Name: Katherine S. Conway-Turner
Title: President, Buffalo State College

Doc #01-2927985.3

EXHIBIT A

NEW YORK STATE STANDARD CONTRACT CLAUSES

SEE ATTACHED

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, that 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 subcontractor 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: opn@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.newyncontracts.com/FrontEnd/ViewerSatchPublic.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(d-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.ogs.ny.gov/about/reg/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.