

**STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER**

**BANKING SERVICES AGREEMENT WITH
KEYBANK NATIONAL ASSOCIATION**

**NEW YORK STATE COMPTROLLER'S
CONTRACT NUMBER C001110**

TABLE OF CONTENTS

I.	TERM
II.	ENTIRETY OF AGREEMENT; CONFLICT OF DOCUMENTS AND CLAUSES
III.	SERVICES
IV.	COMPENSATION, PAYMENT, AND INVOICES
V.	BANK REPRESENTATIONS, WARRANTIES, AND COVENANTS
VI.	PUBLIC OFFICERS LAW/ETHICS REQUIREMENTS
VII.	RELATIONSHIP BETWEEN THE PARTIES
VIII.	STAFF
IX.	SUBCONTRACTORS
X.	INSURANCE
XI.	CONFIDENTIALITY AND SECURITY
XII.	BACKGROUND INVESTIGATIONS
XIII.	INTELLECTUAL PROPERTY: LICENSED SOFTWARE AND LICENSED DOCUMENTATION, AND CUSTOM SOFTWARE
XIV.	OWNERSHIP OF REPORTS AND STATEMENTS
XV.	NOTICES
XVI.	INDEMNIFICATION AND LIABILITY
XVII.	TERMINATION
XVIII.	TRANSITION
XIX.	EQUAL EMPLOYMENT OPPORTUNITY
XX.	RESPONSIBILITY TERMS
XXI.	CHANGE REQUEST
XXII.	SERVICE-SPECIFIC SECURITY AND AUTHENTICATION/AUTHORIZATION PROCEDURES
XXIII.	DISPUTES AND DISSATISFACTION
XXIV.	MISCELLANEOUS PROVISIONS
XXV.	ENTIRE AGREEMENT/APPROVALS
APPENDIX A	STANDARD CLAUSES FOR NYS CONTRACTS
APPENDIX B	CONTRACTOR'S EEO STAFFING PLAN
APPENDIX C	OSC POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT
APPENDIX D	OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY
APPENDIX E	CONTRACTOR'S CERTIFICATIONS/ACKNOWLEDGEMENTS
APPENDIX F	DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS
APPENDIX G	STATE OF NEW YORK UNDERTAKING FOR BANK DEPOSITS
APPENDIX H	CHANGE CONTROL PROCEDURE
EXHIBIT A	RFP20-02
EXHIBIT B	BANK'S PROPOSAL
EXHIBIT C	BANKING SERVICES SCHEDULES

THIS AGREEMENT (“**Agreement**” or “**Contract C001110**”) is between the New York State Office of the State Comptroller, by the Department of Audit and Control, located at 110 State Street, Albany, New York, 12236 (“**OSC**,” “**Client**,” or “**the Client**”) and KeyBank National Association, a national banking association, organized and existing under the laws of the United States of America (the “**Bank**,” “**the Bank**,” or “**Contractor**”), located at 127 Public Square, Cleveland, Ohio 44114. As used herein and in the Banking Services Schedules (hereinafter defined), the term “**Client**” shall also include the New York State Department of Taxation and Finance, Division of Treasury (“**DTF**”), as a user and third-party beneficiary of the Services as defined and described in Article XXIV.I below.

WHEREAS, OSC approves the establishment of all New York State bank accounts for the funds of the State of New York (“**State**”) and, with DTF, jointly administers the general checking account (“**GCA**”) as per the provisions of Articles 2 and 7 of the New York State Finance Law (“**SFL**”);

WHEREAS, OSC and DTF also share responsibility for preparing and processing state agency payrolls from the GCA;

WHEREAS, the State collects revenues that are deposited into the GCA and also debits the GCA for a various payment types, including payroll, vendor payments for services or goods received, and Social Security Income/State Supplement Program benefit distributions;

WHEREAS, OSC separately administers the Comptroller’s Special Refund Account (“**CSRA**”) in accordance with SFL §111;

WHEREAS, OSC, on behalf of itself and DTF, issued Request for Proposals (“**RFP**”) 20-02 on March 17, 2020, for the acquisition of a certain core banking services relating to the GCA, including the preparation and processing of payrolls, and CSRA;

WHEREAS, the Bank timely submitted a responsive proposal to provide the core banking services as defined in Article III (Services), and OSC, in consultation with DTF and on behalf of the State, has determined that the Bank is responsible; and

WHEREAS, based upon the evaluation of the various proposals submitted in response to the RFP, OSC determined that the Bank possesses the expertise and experience necessary to provide the Services described in the RFP to OSC and DTF, that its proposal offered the best value, and that it would be in the best interests of the State to retain the Bank to perform the Services in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein set forth, the parties hereto agree as follows:

I. TERM

The term of this Agreement shall be for a period commencing as of the date approved by the OSC Bureau of Contracts and shall continue for a period of up to 10 years. Subject to the provisions of this Agreement, the term is comprised of (i) a seven (7) year period for the performance of the Services (the “**Performance Period**”), which incorporates a period of up to one year to complete an orderly transition of services to a successor bank (the “**Transition Period**”), and (ii) a subsequent period of up to three (3) years, starting from either the expiration or, if earlier, the termination of this Agreement, during which the Bank will complete (a) the processing, payment, and/or handling of checks issued or resolution of other transactions made relative to the GCA, the CSRA and the related accounts or sub-accounts that are subject to the terms of this Agreement (each an “**Account**” and collectively, the “**Accounts**”) during the Performance Period and in satisfaction of OSC’s continuing obligations, and/or (b) any legally mandated escheatment (the “**Closeout Period**”).

The duration of the Closeout Period will be subject to OSC's discretion. Compensation to the Bank during the Closeout Period will be at the same rates and on the same terms that are set forth in this Agreement.

II. ENTIRETY OF AGREEMENT; CONFLICT OF DOCUMENTS AND CLAUSES

This Agreement shall be deemed inclusive of the following documents. Only documents expressly mentioned below shall be deemed a part of this Agreement. Conflicts between these documents shall be resolved in the following, descending order of precedence:

- A. Appendix A – Standard Clauses for NYS Contracts, dated October 2019;
- B. The Agreement (this document), including Appendices B through H, and Exhibit A as described below:
 - 1. Appendix B – Form AC 3239-A (Contractor's EEO Staffing Plan of Anticipated Workforce) and Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report);
 - 2. Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
 - 3. Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
 - 4. Appendix E – Contractor's Certifications/Acknowledgements;
 - 5. Appendix F – Disclosure of Prior Non-Responsibility Determinations;
 - 6. Appendix G – State of New York Undertaking for Bank Deposits and Assignment of Securities;
 - 7. Appendix H – Change Control Procedure;
 - 8. Exhibit A – RFP20-02, including the Questions and Answers issued by OSC on July 16, 2020 and July 22, 2020, and Amendments No. 1 and No. 2 ("**RFP20-02**");
- C. Exhibit B – Bank's Proposal (Exhibits B1 – Technical Proposal, B2 – Cost Proposal, and B3 – Administrative Proposal), as modified by any clarifications thereto, and excluding Banking Services Schedules (as hereinafter defined in Section II(D), below), other standard depository or cash management Bank-related materials, and proposed Agreement modifications submitted by Bank with its proposal; and
- D. Exhibit C – Banking Services Schedules, KeyBank's Cash Management Services Master Agreement ("**Master Agreement**," which is attached as Exhibit C.1), KeyBank's Service Schedules attached as Exhibits C.2 through C.7 (each a "**Service Schedule**," and collectively, the "**Service Schedules**"), KeyBank's Deposit Account Agreement and Funds Availability Policy ("**Deposit Account Agreement**," which is attached as Exhibit C.8), KeyBank's Public Transaction Deposit Account Fees and Disclosures and Public Transaction Deposit Account Fees and Disclosures – Capital/Albany (each an "**Account Disclosure**" and collectively, "**Account Disclosures**," which are attached as Exhibit C.9), and other standard Bank-related documents submitted by the Bank in connection with its Proposal and agreed to by the parties to this Contract C001110, and, to the extent hereafter agreed to in accordance with Article XXIV.A amendments, restatements, supplements, or other modifications to such documents (collectively, "**Banking Services Schedules**" or "**Schedules**").

The Banking Services Schedules are:

Exhibit C.1	Cash Management Services Master Agreement (as defined above, the “Master Agreement”) <ul style="list-style-type: none"> • Addenda and Service Schedules Attached
Exhibit C.2	Automated Clearing House Electronic Data Interchange (“ACH EDI”) Service Schedule <ul style="list-style-type: none"> • Exhibit A – Service Levels for Electronic Funds Transfers
Exhibit C.3	Automated Clearing House Debit Protection EPA Service Schedule
Exhibit C.4	ACH Direct Service Schedule
Exhibit C.5	Key Capture Service Schedule
Exhibit C.6	Positive Pay Service Schedule <ul style="list-style-type: none"> • Exhibit A
Exhibit C.7	Wire Transfer Service Schedule
Exhibit C.8	KeyBank Deposit Account Agreement and Funds Availability Policy (as defined above, the “Deposit Account Agreement”)
Exhibit C.9	Account Disclosures <ul style="list-style-type: none"> • Public Transaction Deposit Account Fees and Disclosures • Public Transaction Deposit Account Fees and Disclosures – Capital/Albany

The parties understand and agree that any and all proposed modifications or exceptions taken by the Bank in its Proposal to OSC’s RFP20-02 are hereby withdrawn, provided, however, that where such modifications or exceptions have been explicitly incorporated into this Agreement, including the Banking Services Schedules, such shall apply to this Agreement and all subject to this Article II in the event of conflicts between or among the terms of any of the documents that make up this Agreement. The entirety of the redlined, draft contract submitted by Bank with its Proposal is withdrawn.

To the extent there is any conflict among the Master Agreement (Exhibit C.1), the Service Schedules (Exhibits C.2 through C.7), the Deposit Account Agreement (Exhibit C.8), or the account disclosures (Exhibit C.9), the terms of the Service Schedules shall control.

If there is any conflict or inconsistency between the terms of this Agreement (which, for the purpose of this paragraph only shall include this document (Articles I through XXV, Appendices B through and including H, and Exhibit A only hereto), and the Bank’s Deposit Account Agreement (Exhibit C.8), this Agreement shall control except for and to the limited extent that the terms of the Bank’s Deposit Account Agreement directly and expressly conflict with terms addressing the functional aspects of Bank’s operation of the Accounts provided by Bank under this Agreement, in which instance the Bank’s Deposit Account Agreement shall govern, but such Deposit Account Agreement shall not control for any other purpose. Notwithstanding any statement regarding the order of precedence of any documents referenced in this paragraph, Appendix A shall always take precedence and shall govern over Bank’s Deposit Account Agreement (Exhibit C.8).

Except as expressly set forth in Article XVI by reference to a specific Banking Services Schedule contained within Exhibit C, under no circumstances will any provisions imposing liability upon the Client or indemnification provisions imposing obligations upon the Client in any document that comprises this Agreement, including any such provisions set forth in Exhibits C.1 through C.9, take precedence over Appendix A and the provisions of Article XVI of this Agreement.

III. SERVICES

OSC retains the Bank, and the Bank agrees to perform for the benefit of OSC and DTF (where DTF is a user of the Services and third-party beneficiary of this Agreement), the core banking services and other services as outlined in RFP20-02 (including the Questions and Answers issued on July 16, 2020 and July 22, 2020) (Exhibit A), the Proposal submitted by the Bank (Exhibit B), and the Banking Services Schedules (Exhibits C.1 through C.9), all subject to Article II (Entirety of Agreement; Conflict of Documents and Clauses) above, and hereinafter referred to as “**Services.**”

IV. COMPENSATION, PAYMENT, AND INVOICES

The Bank will be compensated for the satisfactory performance of Services accepted by OSC in accordance with Exhibit B2. Total compensation for the Services provided will not exceed \$2,600,000.00.

No fees or other charges that are not expressly set forth in Exhibit B2 may be assessed against any Account or charged to OSC. Any other fees or charges, including but not limited to Federal Deposit Insurance Corporation (“**FDIC**”) insurance fees, in relation to any Account, shall be borne by the Bank.

The fees shall not be increased during the first three (3) years of the Agreement term. Thereafter, the fees may be increased for each subsequent annual period of said term upon the anniversary of the Agreement with no less than sixty (60) days’ written notice to the State. Such increase shall be limited to the lesser of the Consumer Price Index for All Urban Consumers (“**CPI-U**”), U.S. City Average, All Items, as reported by the U.S. Department of Labor, Bureau of Labor Statistics for the preceding 12-month period or 3% over the prior year’s fees, whichever is lower. Any increase granted shall be effective on the Agreement anniversary date and calculated using the index number published four months preceding the anniversary date of the Agreement. If at any time the above index is discontinued or becomes unavailable, the State reserves the right to implement a comparable index.

All requested increases shall be subject to negotiation between OSC and the Bank.

A. Method of Compensation

OSC reserves the right to determine the method to be used to compensate the Bank for Services. This determination will be made on an account-by-account basis.

The method may include Direct Fee, Compensating Balances, or a combination of both. The method of compensation shall be that which is expected to provide the lowest cost of Services to the State, as determined by OSC. OSC reserves the right to change the compensation method. OSC will not change the method of compensation at a frequency greater than once annually, except in extraordinary circumstances, as determined by OSC. OSC shall provide the Bank with advance notice of such a change. If an alternate payment method is deemed necessary by OSC, payment procedures shall be established by authorized representatives of the Bank and OSC in accordance with Exhibit B, depending on the method of compensation.

Depending upon the method of compensation chosen by OSC, the following procedures will be used to determine the payment for Services:

1. Payment by Direct Fee

If OSC elects to pay by Direct Fee, it may choose to offset the fee payment with Earnings Credits (as hereinafter defined) or request Earnings Credits reimbursement from the Bank. If, for any month, the Earnings Credits exceed the monthly bank charges, the Bank shall carry forward the excess to the following month and, where applicable, the following month in any new year and, at the election of OSC, such excess may be applied against the cost of Services for any other Compensating Balance relationship the Bank has with OSC. If Earnings Credits remain as of the end date (whether by termination or expiration) of this Agreement, such Earnings Credits may be applied, at OSC's sole election and without limitation, to any other banking services (including services covered under a separate agreement) provided by the Bank to OSC. Earnings Credits are to be calculated using the following formula:

Earnings Credits = (average available account balance) x (ECR) x Time

Where:

ECR = Earnings Credit Rate, the determination of which is described below

Time = number of days in period/365

The Earnings Credit Rate is the monthly average investment rate on the thirteen-week Treasury Bill, as determined at the weekly auction and published on the US Treasury website, or the Bank's standard rate, whichever is greater. The Earnings Credit Rate shall be determined by OSC and confirmed with the Bank monthly. OSC will not use any other method of calculation for the ECR.

Payment for Services by Direct Fee must be billed by the Bank to OSC and will be paid in accordance with the voucher and audit procedures set forth in Section IV.B, below. When payment is by Direct Fee, the Bank must provide a monthly bank account analysis electronically (currently an 822 file) to OSC along with the invoice to OSC as applicable. This analysis must include the monthly volume and total costs associated with the Accounts.

2. Payment by Compensating Balances

If OSC elects to pay by Compensating Balances, an account specific to this use may need to be established. The value of the Compensating Balances shall be calculated using the same formula as shown above under "Payment by Direct Fees" provided, however, that the Earnings Credit Rate shall be determined based on an OSC computation which factors a three-year average spread between OSC's Short Term Investment Pool rate and the monthly average investment rate on the three-month Treasury Bill as determined at the weekly auction and published on the US Treasury website or the Bank's standard rate, whichever is greater. The Earnings Credit Rate shall be determined by OSC and confirmed with the Bank monthly. If payment is made via Compensating Balances, the Bank must provide a monthly bank account analysis electronically (currently an 822 file) to OSC. This analysis must include the monthly volume and total costs associated with the Accounts. All excess Earnings Credits on a monthly basis must be carried forward to the following month, including, where applicable, the following month of a new year to offset future payments throughout the term of the Agreement. If Earnings Credits remain as of the end date (whether by termination or expiration) of this Agreement, such Earnings Credits may be applied, at OSC's sole election and without limitation, to any other banking services (including services covered under a separate agreement) provided by the Bank to OSC.

B. Invoices

OSC will work with the Bank to develop an invoice form that is acceptable to the State. Payment will be made in accordance with SFL Article 11-A and any applicable late payment interest amount shall be calculated by OSC pursuant to such Article. The invoices shall include the following information:

1. The number assigned to this Agreement by the Comptroller (#C001110);
2. Sufficient detail to permit the identification of all fees charged by the Bank pursuant to this Agreement. Such detailed description of Services provided must also include:
 - a) the total amount billed for Services for the invoice period;
 - b) the beginning and ending dates of the billing period included in the invoice, and the expiration date of this Agreement; and
 - c) Any additional information necessary for the proper processing by OSC of the invoice. OSC shall provide advance notice to the Bank of any additional information required to be included in the invoice.

OSC invoices must be submitted via email (preferred) to contractinvoices@osc.ny.gov or via hard copy mail to:

Office of the State Comptroller
Financial Administration
Contract Payment Unit
110 State Street, Stop 13-2
Albany, NY 12236-0001

With a copy via email (preferred) to cashmanagement@osc.ny.gov or via hard copy mail to:

Attn: Manager
Office of the State Comptroller
Cash Management
110 State Street, Stop 9-8
Albany, NY 12236-0001

If OSC disputes an invoice, OSC and the Bank shall proceed promptly and in good faith to resolve such dispute. OSC shall nevertheless pay, on or before the date that payment is due, such portion of the invoice that is not subject to a bona fide dispute.

The Bank must maintain adequate records to substantiate all claims for payment and must make those records available in the State for examination and copying.

OSC reserves the right to withhold payment for the Bank's failure to perform Services. The Bank shall not be entitled to final payment of its fees under this Agreement until it has satisfied all its obligations hereunder.

V. BANK REPRESENTATIONS, WARRANTIES, AND COVENANTS

The Bank hereby represents, warrants, and covenants that:

- A. The Bank shall notify OSC in the most expedient time possible and without unreasonable delay after it has determined that an instance of fraud or suspected criminal activity has occurred in connection with the Services.

- B. The Bank and its employees, owners, officers, directors, or agents (collectively, “**staff**”) responsible for discharging the Bank’s duties and obligations hereunder are and will be persons qualified and experienced in the performance of such functions.
- C. Bank agrees that it shall be fully responsible to OSC for the acts and omissions of its partners, affiliates, and staff, whether directly or indirectly engaged by them in connection with the performance of this Agreement, and their adherence to all Agreement terms and conditions.
- D. The Bank shall have on file with OSC Appendix G (Undertaking for Bank Deposits and Assignment of Securities) before any accounts are established. During the term of the Agreement, including any transition period, the Bank shall comply with the pledge of collateral requirements of §§105 and 106 of the SFL. OSC and DTF shall establish and periodically review and adjust, as necessary, amounts held as collateral pursuant to this Agreement. The Bank shall comply with adjustments in collateral required by OSC in accordance with OSC’s authority pursuant to Applicable Laws (as defined in Section XXIV.G, below). OSC reserves the right to periodically verify the amount of collateral held.
- E. Delegation. The Bank shall not delegate any authority to any other persons or entities, with respect to the performance of Services, except as expressly stated otherwise in this Agreement.

VI. **PUBLIC OFFICERS LAW/ETHICS REQUIREMENTS**

A. **Public Officers Law/Former State Employees**

The Bank will comply with all applicable requirements of Public Officers Law §73(8)(a)(i) (the two-year bar) and §73(8)(a)(ii) (the lifetime bar) and acknowledges that failure to comply with these provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

Bank shall identify and provide the State with notice of those employees of the Bank who are former employees of the State that will be assigned to perform Services under this Agreement, and make sure that such employees comply with all Applicable Laws and prohibitions.

B. **Ethics Requirements**

The Bank and key staff assigned by the Bank to perform the Services have read and understand the provisions of Public Officers Law §§73 and 74, including, without limitation, the provisions of §73(5), which provides that no statewide elected official, State officer or employee, individual whose name has been submitted by the Governor to the Senate for confirmation to become a State officer or employee, member of the Legislature or legislative employee shall, directly indirectly (i) solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her, or could reasonably be expected to influence him or her, in the performance of his or her official duties or was intended as a reward for any official action on his or her part; and (ii) no person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any State officer or employee, member of the Legislature or legislative employee under such circumstances (clauses (i) and (ii) collectively, the “**Gift Restrictions**”).

The Bank, including its officers, directors, employees, subsidiaries, affiliates, partners, subcontractors, and agents who are assigned to perform the Services, agrees that it will not, for the duration of this Agreement, offer or make any gift or hospitality to a State employee or otherwise attempt to exercise improper influence in violation of Public Officers Law and

Appendix D (OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures).

VII. RELATIONSHIP BETWEEN THE PARTIES

- A.** The relationship of the Bank to OSC under this Agreement will be that of an independent contractor. Accordingly, the Bank covenants and agrees that its staff will: (i) act in a manner consistent therewith; (ii) neither hold themselves out as, nor claim to be, officers or employees of OSC or the State; and (iii) not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the State.
- B.** The Bank agrees that nothing set forth in this Agreement shall impose any liability or duty upon OSC to persons, firms or corporations, employees, or others engaged by the Bank in any capacity or to any government for the acts, omissions, liabilities, obligations and taxes of any nature, including worker's compensation coverage, unemployment insurance benefits, social security coverage, retirement membership credit, disability benefits, and social security taxes.

VIII. STAFF

- A.** The Bank shall assign appropriate personnel to perform Services, with "key" personnel who will supervise the provisioning of Services. The Bank certifies that personnel provided to perform Services possess the necessary integrity and professional capacity to meet OSC's reasonable expectations. Subsequent to the commencement of Services, or whenever the Bank becomes aware that any personnel providing Services no longer possesses the necessary integrity or professional capacity, the Bank shall immediately discontinue the use of such personnel. OSC reserves the right to deny personnel access to OSC data or facilities for any lawful, work-related cause.
- B.** OSC has final approval of key personnel furnished to provide Services and may refuse to approve any such key person based on its review of the key person's responsibility to perform the required Services, or require Bank to remove a key person from performing Services if such key person is not performing in accordance with this Agreement, provided that any such request is made for reasonable work-related cause and not made on an unlawful basis.
- C.** Substitutions of key personnel shall not be made without OSC prior approval. Said approval shall not be unreasonably withheld. The Bank shall provide notice to OSC as soon as practicable, but in any case with no less than fourteen (14) days' notice before replacing such key personnel, and shall, within seven (7) days of such notice, provide resumes of potential replacement personnel. Such replacements' skill level and experience must closely match or exceed the qualifications of personnel being replaced. The Bank will ensure that there is no gap in the Services and that any replacement personnel receive appropriate transition information.
- D.** The Federal Immigration Reform and Control Act, as amended (8 USC §1324a et al.), obligates employers, such as the Bank, to verify that their employees are legally entitled to work in the United States. In order to confirm that the employees are legally entitled to work in the United States, OSC reserves the right to request documentation attesting to the legal entitlement to work in the United States of any Bank employee assigned to provide Services. The Bank warrants to OSC that the employees assigned to provide Services are eligible for employment in the United States. The Bank is responsible for ensuring that the employees retain the authorization to legally work in the United States throughout the term of the Agreement. OSC will not discriminate against individuals on the basis of national origin or citizenship. OSC does not provide sponsorship.

IX. SUBCONTRACTORS

- A.** In the event that the Bank uses subcontractors to perform Services, the State shall have the right to conduct a responsibility review in accordance with SFL §163. The Bank shall require any and all proposed subcontractors to complete such Appendices included in this Agreement as are deemed necessary by the State prior to any such proposed subcontractor's performance of Services. The Bank acknowledges that this requirement is ongoing for the term of this Agreement, and the Bank shall be required to disclose to the State its intention to enter into any subcontracts for the performance of any Services. In the event that the State deems the proposed subcontractor to be non-responsible, the State shall advise the Bank of its objections to using the proposed subcontractor. If after such notice, the Bank continues to pursue using said subcontractor, then both parties shall participate in the dispute process prescribed in Article XXIII (Disputes and Dissatisfaction) of this Agreement.
- B.** Failure by the Bank during the term of this Agreement, including any extensions thereof, to disclose the identity of any and all subcontractor(s) used by the Bank together with a detailed description of their responsibilities may, at the sole discretion of the State, result in a disqualification of the subcontractor or termination of this Agreement.
- C.** RESERVED.
- D.** OSC may request the removal of any other subcontractor staff person assigned to perform Services, for any lawful, work-related cause. Upon written notice from OSC (i) specifying the unsatisfactory performance by such subcontractor staff person, and (ii) demonstrating an adverse impact of such unsatisfactory performance on Services, the Bank shall promptly investigate such claim and report in writing to the State within ten (10) days of the receipt of OSC's written notice, specifying a course of action or remedy. If OSC disagrees with the Bank's proposed course of action or remedy, OSC may pursue the matter in the dispute process prescribed pursuant to Article XXIII (Disputes and Dissatisfaction) of this Agreement.

X. INSURANCE

Consistent with its proposal in Exhibit B:

- A.** The Bank shall maintain adequate insurance coverage as set forth in Exhibit B or as set forth herein.
- B.** The Bank shall, at a minimum, include OSC, DTF, and the State as additional insureds as to Commercial General Liability and Umbrella insurance and other insurance. [REDACTED]
- C.** The Bank shall provide OSC with certificates of insurance showing such insurance coverage prior to the commencement of Services. By requiring insurance, OSC does not represent that certain coverage and limits will necessarily be adequate to protect the Bank, and such coverage limits shall not be deemed a limitation on the Bank's liability to OSC or DTF under this Agreement.
- D.** The Bank shall be insured by the FDIC for the term of this Agreement including any renewal, extension, and transition period(s).

XI. CONFIDENTIALITY AND SECURITY

A. Confidentiality

1. Definition

The term “Confidential Information” shall mean any and all information that is disclosed by Bank or Client (“**Owner**”) to the other (“**Recipient**”) verbally, electronically, visually, or in written or other tangible form, which is either identified or should be reasonably understood to be confidential or proprietary. Confidential Information may include, but not be limited to:

- a)** trade secrets, computer programs, software (including third party software), documentation, formulas, data; inventions, techniques, marketing plans, strategies, forecasts, customer lists, financial information, non-public information concerning operations;
- b)** past, current, or future products or methods, research, development, purchasing, accounting, marketing, selling, leasing, bank account information (including transaction information);
- c)** employee or payee information, including contact information (e.g., home addresses, home telephone numbers, dates of birth, social security numbers, payroll information, health status), “personal information” as defined in New York General Business Law (“**GBL**”) §899-aa(1)(a) and State Technology Law (“**STT**”) §202(5) and any successor provisions thereof, or “sensitive customer information” as set forth in Financial Institution Letter FIL-27-2005, Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice (April 1, 2005), or “nonpublic personal information” as defined in 15 USC § 6809(4) and any successor provisions thereof;
- d)** “private information” as defined in GBL §§899-aa(1)(b) and 899-bb(1)(b) and STT §208(1)(a) or any successor provisions thereof (collectively, GBL §§899-aa and 899-bb and STT §201 et seq (Internet security and Privacy Act) and any successor provisions are “**NYS Privacy-Related Statutes**”);
- e)** computer codes or other electronic or non-electronic information, the disclosure of which could jeopardize Owner’s computer systems, financial information, and/or documentation.

Reference to certain defined terms within the NYS Privacy-Related Statutes as Confidential Information as set forth in this Agreement is solely for definitional purposes, and is separate and distinct from, and shall not be used to modify, alter, or amend in any manner, legal obligations that may apply, if at all, with respect to the statutory requirements of the NYS Privacy-Related Statutes.

2. Treatment

Owner’s Confidential Information shall be treated as confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than those in this Section XI.A.2 and who have a justified business “need to know.” This Agreement imposes no obligation upon the parties with respect to Confidential Information that either party can establish by legally sufficient evidence: (a) was in the possession of or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement or other confidentiality obligation; (c) is obtained

by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by governmental or judicial order or Applicable Law provided that, except where prohibited by law, notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.

The Recipient will not reveal or use Confidential Information viewed, accessed, or developed under this Agreement without the prior written consent of Owner and agrees that all Confidential Information shall remain the property of Owner. The Recipient further agrees that it will:

- a)** use Confidential Information solely for the purpose of carrying out its obligations to, or on behalf of, Owner as set forth in this Agreement, and for no other purpose.
- b)** preserve the confidentiality of the Confidential Information;
- c)** except to the extent required as a matter of Applicable Law or directive or order of a jurisdictional judicial, administrative, or governmental authority, agency, division, or regulatory body, prevent disclosure of the Confidential Information to any person other than to authorized agents of Recipient, which authorized agents include, without limitation, staff, attorneys, and subcontractors, with a need to know;
- d)** treat as Confidential Information all reports that contain Confidential Information, preliminary, final and otherwise, prepared for or relating to Services described herein; and
- e)** promptly after the termination or expiration of the Agreement, sanitize or use a secure destruction and disposal method for Confidential Information maintained in any form, except (i) where the Recipient is required to retain such Confidential Information pursuant to Applicable Law (see Section XXIV.G), or (ii) with respect to Recipient and where no superseding Applicable Law applies, the Recipient's record retention policies and procedures in effect from time to time, in which case such Confidential Information shall be erased or destroyed subject to and in accordance with Recipient's records retention policies and procedures in effect from time to time. Under no circumstance may Recipient use any retained Confidential Information or the data contained therein for any other purpose beyond that set forth in this Agreement, including for its own benefit or that of any other client.

In the event of the receipt by the Recipient of a valid order directing the disclosure of an Owner's Confidential Information from a judicial, administrative, or governmental authority, agency, division, or regulatory body having jurisdiction over it, the Recipient will, unless prohibited by Applicable Law or the directive or order of any such jurisdictional judicial, administrative, or governmental authority, agency, division, or regulatory body, promptly notify Owner thereof and reasonably cooperate with Owner for purposes of responding thereto, including, if applicable, any Owner effort to limit disclosure.

The Recipient acknowledges that any unauthorized use or disclosure of Confidential Information may cause irreparable damage to Owner, and/or affected individuals, if any. If an unauthorized use or disclosure occurs, the Recipient shall, at its expense, take such steps consistent with industry best practices that are necessary to (a) if practicable, recover Confidential Information that has been improperly disclosed, and (b) limit the subsequent unauthorized use or dissemination of such Confidential Information, including availing itself of

actions for seizure and injunctive relief. If the Recipient fails to take these steps in a timely and adequate manner, Owner may take them at the expense of the Recipient.

B. Security Obligations

The Bank may not connect any non-State computer or telecommunications equipment to the State network; personal and corporate laptop computers, and personal and corporate USB devices, smartphones, and tablets are included in this prohibition.

Bank has implemented physical and cybersecurity policies, processes, standards, and controls that satisfy and are compliant with applicable federal regulatory requirements and industry best practices, and Bank will maintain such throughout the term of this Agreement. Bank is responsible for and will exercise regular due diligence in the maintenance of and compliance with technology process and security standards that set out a comprehensive, effective, and secure approach to protecting the Client's assets and information

[REDACTED]

Bank represents that it is a national banking association organized and existing under the laws of the United States and that neither Bank nor the Services provided under and as set forth in this Agreement are subject to

[REDACTED]

[REDACTED]

C. Compliance with Applicable Privacy and Data Security Laws, Regulations, and Guidance, including the SHIELD Act

As applicable to the Services under this Agreement, the Bank will comply with (1) federal, State, and local laws, rules, regulations, and governmental requirements, relating to the privacy, confidentiality, and security of Confidential Information that are applicable to Bank in connection with the provisioning of the Services; (2) regulations, rules, policies, and supervisory guidance of the U.S. Federal Reserve and U.S. Office of the Comptroller of the Currency; and (3) applicable industry standards concerning privacy, data protection, confidentiality, or information security.

Bank represents that it is a compliant regulated entity as set forth in GBL §§ 899-bb(1)(a)(i) and/or (iv). If at any time Bank is no longer a compliant regulated entity as defined therein, Bank will notify OSC's Privacy Officer by email to PrivacyOfficer@osc.ny.gov.

The Bank shall comply with obligations imposed by applicable New York State law with respect to any breach of "personal information" or "private information" (as defined in NYS Privacy-Related Statutes and any amendments thereto) that are applicable to Bank in connection with the provisioning of the Services. Any notice required to be made by the Bank in accordance with such statutes shall be made by contacting OSC's Information Security Office by telephone at 518-473-1374 and by email to: iso@osc.ny.gov (or such other contact that OSC may provide).

D. Security Incident

Contractor agrees to the following:

1. Definitions
2. The term "Security Incident" means any: theft of; loss of; loss of use of; unauthorized or unlawful disclosure, use, alteration, withdrawal, or destruction of; or unauthorized or unlawful access to: Confidential Information provided by Client to the Bank or in the Bank's possession, custody, or control, whether paper or electronic, and includes but is not limited to any "breach of the security of the system" as defined in NYS Privacy-Related Statutes and "notification incident" as defined in 12 CFR 304.22(b)(7), or subsequent, related State or federal statutes or regulations applicable to Bank that affects Confidential Information provided by Client to Bank. Security Incidents shall also include, in the absence of direct evidence of a breach of the security of the system, any occurrence where it can be reasonably believed that private information, personal information, sensitive data or information, Confidential Information, and/or protected data or information was exposed, accessed, viewed, downloaded, or disclosed without authorization.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

XII. BACKGROUND INVESTIGATIONS

Background investigations must be conducted by the Bank on its staff who will have access to OSC, DTF, or State IT Systems, confidential information/data, or routine access to any OSC/DTF facility (any such staff are "Covered Staff") as set forth in the RFP.

Accordingly, the Bank certifies that it has or will conduct a background investigation on Covered Staff prior to the Covered Staff commencing Services. The Bank agrees to undertake a background investigation of any new/replacement Covered Staff during the term of the Agreement.

Background checks shall be conducted in accordance with the Bank's pre-employment screening policies, which are attached hereto as part of Exhibit B (see page 9 of KeyBank's Technical Response), provided, however, that at a minimum, such shall include a review/evaluation of the following:

- identity verification, including Social Security Number search;
- employment eligibility, including verification of U.S. citizenship or legal immigration status where appropriate;
- criminal history/court records (Federal, State and local for the past five years);
- work experience/history for the past five years;
- pertinent skills, qualifications, and education/professional credentials; and
- references (if applicable and to the extent required by Applicable Law).

Only Covered Staff who have passed the Bank's background investigation shall be assigned to provide Services. The Bank must maintain records related to the background investigations performed during the term of the Agreement in accordance with the record-keeping requirements of Appendix A, Clause 10 (Records). Upon OSC's reasonable request, the Contractor will make commercially reasonable efforts to obtain the consent of its Covered Staff providing Services under this Agreement to allow OSC's Inspector General, upon request: (i) to review the background investigation records, including all supporting documentation, and (ii) to conduct its own background investigation.

OSC's Inspector General (i) must approve exceptions and waiver requests from any of the requirements of this Article prior to the performance of Services by Covered Staff, and (ii) may audit the results of these background checks, unless prohibited by law.

XIII. INTELLECTUAL PROPERTY: LICENSED SOFTWARE AND LICENSED DOCUMENTATION, AND CUSTOM SOFTWARE

A. Licensed Software and Licensed Documentation

1. The Bank warrants and represents it has full ownership or has obtained all necessary rights to use or sublicense to OSC all proprietary or third-party software and related documentation required by the Bank to perform the Services. The Bank shall obtain licenses to such third-party software, if any, on OSC's behalf.
2. The Bank shall employ and provide the State with the information needed to install and use, copy, display, internally distribute, and modify, at the Bank's own expense, any licensed software and licensed documentation provided by the Bank for performance of the Services.
3. The Bank shall, at no additional cost to the State, be responsible for maintaining any licensed software used in providing the Services hereunder, throughout the term of this Agreement.
4. The Bank shall, for the term of this Agreement, own sufficient intellectual property rights in any licensed software, licensed documentation, proprietary software, and proprietary documentation, so that the Bank may grant the licenses to such software and documentation contemplated by this Section and, if applicable, grant the licenses and assign the rights contemplated by this Section.
5. The Bank agrees to provide the State with prompt access to all licensed software and proprietary software used to perform the Services, and related licensed documentation and proprietary documentation, to the extent of the Bank's intellectual property rights in such software and documentation, upon reasonable notice by the State, throughout the term of this Agreement, only if and to the extent permitted under the applicable software license or agreement.
6. The Bank warrants and represents full ownership, clear title free of all liens, and/or that the Bank has obtained all necessary rights to use any such licensed and proprietary software products for the purposes set forth in this Agreement, and, correspondingly, the right to grant OSC use-rights, if applicable, thereof, for the term of this Agreement. The State may require the Bank to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The State's request or failure to request such documentation shall not relieve the Bank of liability under this warranty.
7. The terms and conditions applicable to infringement indemnity, if any, are set forth in Article XVI (Indemnification and Liability).

B. Custom Software; Equipment and Documentation

Upon final payment for Services, the State shall own and possess all rights, title and interest in and to custom software created by the Bank specifically for the Client under the Agreement, including, without limitation, all ownership and intellectual property rights.

Equipment, hardware, software (including source code), specifications, devices, tapes or other media, programs, procedures and documentation owned or licensed by the Bank, and used in connection with the performance of the Services as set forth in this Agreement: (a) shall at all times be and remain owned (or leased, as applicable) by the Bank, (b) shall not be deemed transferred, assigned or conveyed to the State, (c) shall not constitute work-for-hire under copyright law and all intellectual property and other laws, and (d) shall not be modified or altered in any way or used for any other purpose by the State except in connection with the Services. Further, if any proprietary product is mutually developed during the term of this Agreement, the control of the use of such information or proprietary product will be governed by a joint agreement, to be mutually agreed upon, in writing, by the parties. No commercial development of any mutually developed proprietary product will occur without first entering into a mutually acceptable agreement between the parties.

XIV. OWNERSHIP OF REPORTS AND STATEMENTS

All reports and statements, in whole or in part, developed, generated, or paid for with funding provided by OSC for the Services become the property of OSC. OSC may use any such work product for any purpose.

XV. NOTICES

Except as otherwise expressly set forth herein, any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally or sent by certified, registered, or express mail, postage prepaid, but in all cases shall be deemed given when actually received at the following addresses:

TO OSC:

Attention: Director
Address: Office of the State Comptroller
Bureau of Finance
110 State Street, Stop 13-2
Albany, NY 12236

WITH A COPY TO:

Attention: Director
Address: Bureau of State Accounting Operations
New York Office of the State Comptroller
110 State Street, Stop 9-8
Albany, NY 12236

TO THE COUNSEL TO THE COMPTROLLER:

Attention: Counsel to the Comptroller
Address: Office of the State Comptroller
Division of Legal Services
110 State Street, Stop 14-1
Albany, NY 12236

TO THE BANK:

Attention:
Title:
Address:

[REDACTED]

With a copy (which shall not constitute notice) to:

[REDACTED]

The parties shall notify each other, as soon as possible of any change. Either party may designate a different mailing address or a different or additional person to whom all such notices to that party are to be addressed by providing written notice to the other party per the terms of this Article.

XVI. INDEMNIFICATION AND LIABILITY

- A. This Section XVI.A is subject to Section XVI.F. (Liability Limitations) below, but without waiver and with express reservation by both Bank and Client of any rights and/or remedies that they may have, respectively, under Applicable Law (as defined in Section XXIV.G, below), including the Rules (as defined in Section XXIV.G, below) in connection with this Agreement, the Services, or any Client Account, and without relieving Bank and Client of their respective obligations thereunder. Bank will be liable to OSC, DTF, and the State, and their officers, employees, and agents for

[REDACTED]

- B. Without waiver and with express reservation by both Bank and Client of any rights and/or remedies that they may have, respectively, under Applicable Law, and without relieving Bank and Client of their respective obligations thereunder, Bank will indemnify, defend, and hold harmless OSC, DTF, and the State, and their officers, employees, and agents from and against third-party claims (i) for any Losses suffered, incurred, or sustained to the extent such Losses arise from or relate to the negligence, gross negligence, willful misconduct, fraud, or bad faith of the Bank, its staff, subcontractors, or Providers in connection with this Agreement, the Services, or any Client Account; and (ii) for any Losses suffered, incurred, or sustained to the

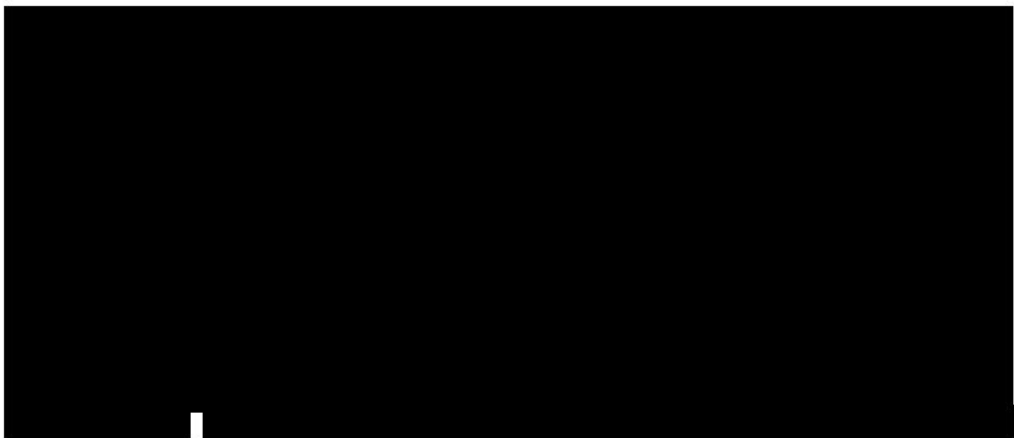


- C. The Bank's indemnification obligation contained herein: (i) is in addition to, and not in lieu of, any other right, power, or remedy that OSC, DTF, the State, or the officers, employees, and agents thereof may have against the Bank; and (ii) will not be construed to limit in any way the duties, responsibilities, and obligations of the Bank set forth in this Agreement.
- D. If any claim is made, or any action brought, against the Comptroller, OSC, DTF, and/or the State arising from or relating to the activities of the Bank, the Services, or any Client Account, the Bank shall diligently render to the Comptroller, OSC, DTF, and the State (without additional compensation) any and all assistance that may be reasonably requested by OSC, DTF, or the State with respect thereto.
- E. For third-party claims, OSC and/or DTF will give the Bank:
 - 1. prompt written notice of any action, claim, suit, proceeding, or threat of such action relating to this Agreement;
 - 2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at the Bank's sole expense; and
 - 3. reasonable assistance in the defense of any such action at the expense of the Bank.

Notwithstanding the foregoing, the rights of the Bank shall not preclude the Comptroller, OSC, DTF, or the State from joining any action, claim, suit, or proceeding at their sole expense if it is determined that there is an issue involving a significant public interest.

F. **Liability Limitations**

- 1.



[REDACTED]

2. None of the Comptroller, nor any officers, employees, or agents of OSC, DTF, or the State will have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into pursuant to the terms hereof.
3. In no event shall the Bank be liable to or obligated to indemnify OSC, DTF, or the State for Losses imposed on, incurred by or asserted against OSC, DTF, or the State to the extent such Losses are caused by the Bank's action or inaction in reliance upon any Instruction (as defined in the Master Agreement (Ex. C.1)), except to the extent that a court of competent jurisdiction has fully and finally adjudicated that any such Losses arise from or relate to the negligence, gross negligence, willful misconduct, fraud, or bad faith of, or violation of Applicable Law by, the Bank or any of its staff, subcontractors, or Providers in relation to Bank's compliance with any such Instruction.

G. Client Indemnification and Liability

[REDACTED]

[REDACTED]

[REDACTED]

1. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, the Client shall hold the Bank harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the Client or of its officers or employees when acting within the course and scope of their employment.

2. [REDACTED]

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H.

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I.

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J.

[Redacted]

- 1. [Redacted]
- 2. [Redacted]
- 3. [Redacted]
- 4. [Redacted]
- 5. [Redacted]
- 6. [Redacted]

[Redacted]

[REDACTED]

K. Right of Set-off

In the event that any claim is made, or any action is brought, against the Comptroller, OSC, DTF, or the State (or by the Comptroller, OSC, DTF, or the State against the Bank or any of its staff) arising out of any acts or omissions of the Bank or any of its staff for which Comptroller, OSC, DTF, or the State would be entitled to indemnification, then, [REDACTED]

[REDACTED]

The rights and remedies of OSC, DTF, and/or the State provided for in this clause are not exclusive and are in addition to, rather than in lieu of, any other rights and remedies provided by law or this Agreement.

L. Notification

Subject to Applicable Law (as defined in Section XXIV.G), the Bank shall promptly notify OSC in writing of any legal action or proceeding directly in connection with or relating to this Agreement and the Services that have been, are being, and/or will be provided to Client as set forth in this Contract C001110 or that the Bank is obligated to provide hereunder after receipt of notification of such action or proceeding being initiated against it.

M. Consequential, Indirect or Special Damages

Notwithstanding the above, no party will be liable for any consequential, indirect, special, exemplary or punitive damages of any kind that may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by OSC, DTF, the Bank, or by others, provided, however, that this limitation shall not apply to third-party claims for which there is an indemnification obligation.

N. Force Majeure

None of the Bank, the Comptroller, OSC, DTF, or the State shall be liable for any delay or failure in performance beyond its control resulting from: acts of God or nature; wars (which shall not include network security breaches or other cyber-related incidents); strikes; fire or floods; epidemic or pandemic as publicly and officially declared by a federal or State government official or agency within the United States and applicable to the State of New York; electrical outages that are not caused by the obligated party; governmental or regulatory restrictions by a federal, State, or local government with authority over either of the parties and/or the Services; or other similar causes beyond the control of any party or third-party beneficiary. In such event, the aggrieved party(ies) shall notify other party(ies), by certified or registered United States mail return receipt requested, personal delivery, expedited delivery service, or email to person(s) authorized to receive such notifications as agreed to by the parties of the delay or potential delay and the cause(s) thereof as soon as reasonably practicable.

The foregoing shall constitute an aggrieved party's sole remedy or excuse with respect to such delay, provided however, that if a force majeure event forces a delay in payment or a failure to pay by Client, Client agrees, subject to then-Applicable Law, that it will satisfy payment obligations owing to Bank in accordance with Article IV (Compensation, Payment, and Invoices) above that are not subject to a bona fide dispute, as soon as reasonably possible upon the restoration of Client's operational capabilities to render such payments. In the event performance is suspended or delayed in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given to any other party(ies), any performance so suspended or delayed shall be performed by an aggrieved party(ies) at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of OSC that the delay shall significantly impair the value of the Agreement to OSC. In the event of such determination, OSC may immediately terminate the Agreement with written notice.

O. Infringement Indemnity

Bank will have no obligation as an indemnitor under this Agreement to the extent that any claim of infringement arises directly or indirectly from: (a) use by the Client of any materials in connection or in combination with products, software, or services that are not (i) supplied by Bank and the use of which was not reasonably contemplated by the use of the Services as set forth in this Agreement, or (ii) approved, in advance, by the Bank for such use; (b) modification of any software, documentation, or materials made by Client or a third party without Bank's prior written consent, or (c) compliance by Bank with the Client's designs, specifications, instructions, or technical information or those of any third party engaged by Client, provided that Bank has provided Client with licensor information regarding the licensed scope of use for any such software. In the event of any claim that any software, documentation, or other instructional material or item infringes the intellectual property of a third party, or if in Bank's opinion, it is likely to become the subject of such a claim, Bank will, at its option, and in its reasonable, good faith discretion: (1) replace the affected software, documentation, or other instructional material or item with a non-infringing version that is at least functionally equivalent and provides a comparable level of service and/or information to the Client as the version or item being replaced, with no diminution in the level of Services being provided to Client, or (2) modify the affected software, documentation, or other instructional material or item to make it non-infringing, provided that such modification does not reduce the level of functionality, service, and information to the Client, or (3) procure for Client the right to continue use of the affected software, documentation, or other material or item. If none of the foregoing alternatives is available, Client will, upon reasonable notice from Bank, discontinue use of the subject software, documentation, and/or affected material or item and, at OSC's discretion and without any cost or penalty to Client, suspend or terminate any Services that would require use of the subject software, documentation, or other affected material or item and transition such services to a third party. If OSC elects to suspend or terminate any portion of the Services provided under this Agreement as permitted in this Section, Bank shall provide reasonable and necessary assistance to facilitate the transition of such Services to another Bank and/or third-party provider selected by OSC.

XVII. TERMINATION

- A.** OSC may terminate this Agreement with or without cause upon thirty (30) days' prior written notice. In the event of such termination, the Bank shall be entitled to compensation for Service(s) performed through the date of termination which are acceptable to OSC, in OSC's reasonable discretion.
- B.** OSC reserves the right to terminate this Agreement, or to terminate the Bank's Service(s) with respect to a specific matter or matters, immediately upon written notice to the Bank, if OSC deems the Bank's performance unsatisfactory at any time during the term of this Agreement in its reasonable discretion.

- C. OSC reserves the right to terminate this Agreement in the event that the certification filed by the Bank (that all information disclosed to OSC is complete, true and accurate with regard to prior non-responsibility determinations within the past four (4) years based on (i) impermissible contacts or other violations of SFL §139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity) is found by OSC to be intentionally false or intentionally incomplete. Upon such a finding, OSC may exercise its right to terminate this Agreement; in that event this Agreement shall be deemed terminated and of no further force and effect within thirty (30) days from the date OSC provides written notification to the Bank.
- D. Bank may immediately suspend some or all of the Services upon the delivery or transmission of a written notice to OSC in the event (a) that Bank reasonably and in good faith believes that fraudulent or illegal activity has occurred, or is or may be occurring, in connection with the Services provided by Bank under the Agreement, and until such time as Bank has investigated whether or not such fraud or illegal activity did occur or is occurring, or (b) for a failure by Client to comply with Applicable Law governing the Services provided under the Agreement, provided, however, that Bank shall provide Client with the opportunity to cure any such failure to comply within thirty (30) days or such other time period as the parties may agree, in advance and in writing, for such cure, unless a shorter time period is required as a matter of Applicable Law.
- E. To ensure uninterrupted services, the Bank's continued financial stability shall be a material condition of the Agreement. OSC reserves the right to immediately terminate such Agreement if the Bank's financial stability is reasonably determined by OSC to be deficient.
1. The Bank must maintain a financial rating of at least "C+" as published in the most current issue of the Kroll Bond Rating Agency.
 2. The Bank must maintain a Community Reinvestment Act ("**CRA**") rating of "Satisfactory" or better in the latest release of evaluations published by the U.S. Department of the Treasury, Office of the Comptroller of the Currency, which can be found at <http://occ.gov/tools-forms/tools/compliance-bsa/cra-perf-eval-search.html>.
- F. Upon termination or expiration of this Agreement, the Bank and the State shall cooperate to the fullest extent to develop and execute a transition plan with any successor contractor that contains reasonable procedures for transition and time schedules for scaling down operations of the Bank in order to allow Services to continue without interruption.
- G. Termination will not affect any of the liabilities either party owes to the other arising under this Agreement prior to such termination.

XVIII. TRANSITION

In the event of expiration or termination of this Agreement for any reason, the Bank shall continue to perform the Services required hereunder under these same terms and conditions for a period not to exceed one (1) year (per Section I above) in order to complete any transactions pending on the effective termination date and to facilitate an orderly transition to a successor bank ("**Transition Period**"), including but not limited to (i) maintaining accounts to receive any income accruing on accounts after transition to a successor bank, and processing the State's checks for a period of one year, at the same rates charged during the regular

term of this Agreement, in accordance with SFL §102, and on the same terms that are set forth in this Agreement; (ii) cooperating with auditors of OSC to ensure an accurate final accounting of all activity occurring with respect to the Services; (iii) providing access to all necessary records, transferring all necessary data, information, and other files related to the Services to OSC; (iv) making appropriate members of its staff reasonably available to answer reasonable questions that OSC and its staff, agents, and designees may have with respect to the records and information being accessed and transferred, as applicable; and (v) otherwise providing reasonable assistance with such transition, and cooperating with OSC and any successor bank in order to accomplish a smooth and orderly transition, so that the Services are uninterrupted and are not adversely impacted. If a successor bank shall be appointed by the Comptroller, the Bank shall deliver to such successor bank at the office of the successor bank or as otherwise directed by the Comptroller, duly endorsed and in the form for transfer, all Property then held by it hereunder and shall transfer to an account of the successor bank all of OSC's Property.

The Transition Period is distinct from the Closeout Period, and Bank understands and agrees that it will continue to provide the required Services during such Closeout Period as set forth in Section I of this Agreement to the extent directed by Client.

XIX. EQUAL EMPLOYMENT OPPORTUNITY

The Bank agrees to comply with applicable federal, State, and local requirements concerning EEO, including but not limited to Executive Law §312 and its implementing regulations.

In addition to the requirements stated in Appendix A Clause 12 (Equal Employment Opportunities for Minorities and Women), and to ensure complete compliance with such requirements (and with Executive Law §312 and the regulations adopted pursuant thereto) the Bank agrees to submit to OSC its EEO Policy Statement, and Form AC 3239-A (Contractor's EEO Staffing Plan of Anticipated Workforce) and further, to submit on a semi-annual basis Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report) during the term of the Agreement. The Bank shall submit two originals and two copies of Form AC 3239-B to OSC at the following address:

New York State Office of the State Comptroller
Bureau of Financial Administration
110 State Street, Stop 13-2
Albany, NY 12236
Attn: Director of Financial Administration

These Reports are reviewed as part of OSC's general compliance monitoring. If discrepancies exist between the EEO Staffing Plan of Anticipated Workforce and the Bank's EEO Workforce Utilization Reports, the Bank may be subject to an in-depth EEO compliance review. If deficiencies are identified, OSC shall make every effort to resolve the deficiencies identified and to bring the Bank into compliance with such requirements. If OSC is unsuccessful in its efforts, and upon review, the Deputy Comptroller for Human Resources at OSC determines that the Bank is non-compliant, such Deputy Comptroller shall submit a written complaint to the New York State Department of Economic Development's Division of Minority and Women's Business Development ("**DMWBD**") regarding the Bank's noncompliance and shall recommend to DMWBD that it review and attempt to resolve the noncompliance matter. Such Deputy Comptroller shall serve a copy of the complaint upon the Bank by personal service or certified mail, return receipt requested.

DMWBD shall attempt to resolve a noncompliance dispute. If a resolution of the noncompliance dispute is satisfactory to the parties, the parties shall so indicate by signing a document indicating that the matter has been resolved and stating the terms of the resolution. If a resolution is not possible, DMWBD shall take all appropriate actions under statute (Executive Law §316) and regulation (5 NYCRR §143.6).

XX. RESPONSIBILITY TERMS

- A.** The Bank represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Vendor Responsibility Questionnaire (“**Responsibility Questionnaire**”) provided to the Bank by OSC prior to execution of this Agreement. The Bank further represents that as of the date of execution of this Agreement, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Responsibility Questionnaire.
- B.** The Bank shall provide to OSC updates to the Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information related to such Responsibility Questionnaire becomes available. The Bank shall, on an annual basis from the anniversary date of execution of this Agreement, re-certify such Responsibility Questionnaire, noting any changes, whether material or non-material, or submit a certification of “no change” to OSC.
- C.** Notwithstanding Subsection (B) hereinabove, OSC reserves the right, in its sole discretion, at any time during the term of this Agreement, (i) to require updates or clarifications to the Responsibility Questionnaire, (ii) to inquire about information included in or omitted from the Responsibility Questionnaire, and (iii) to require the Bank to provide such information to OSC within a reasonable timeframe to be established at OSC’s sole discretion.
- D.** OSC reserves the right to make a final determination of the Bank’s non-responsibility (“**Determination of Non-Responsibility**”) at any time during the term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications or amendments thereof; or (ii) the Bank’s failure to disclose material information; or (iii) State’s discovery of any other material information which pertains to the Bank’s responsibility.
- E.** If OSC preliminarily determines the Bank to be non-responsible, State shall provide written notice to the Bank detailing the reason(s) for the preliminary determination, and shall provide the Bank with an opportunity to be heard before the determination is finalized.
- F.** Upon a Determination of Non-Responsibility of the Bank, OSC reserves the right to terminate this Agreement for cause pursuant to Article XVII. (Termination).

XXI. CHANGE REQUEST

Due to the rapid pace of change and innovation in banking and financial services, it can reasonably be anticipated that during the term of the Agreement, the Services described may require enhancement or modification. The Bank may suggest enhancements or modifications that will improve the Services, including enhancements and modifications that improve productivity and/or mitigate suspicious or fraudulent activity.

At any time during the term of the Agreement, the State may request that the Bank provide certain enhancements or modifications. The State, however, is under no obligation to request such enhancements or modifications, and reserves its rights to: (1) develop and/or implement enhancements or modifications internally; and/or (2) obtain a third party to perform such work. The Bank agrees to work with the State and any other party to assist in the development and/or implementation of enhancements or modifications and shall timely develop and implement an enhancement or modification as directed by the State.

Change Requests may be used for enhancements or modifications that had neither (i) been included in the Deliverables identified in the RFP, nor (ii) been included in the Proposal, but which pertains to the scope of RFP 20-02. Change Requests will be limited to ten (10%) percent of the not-to-exceed amount of the Agreement. Any proposed change request that exceeds \$50,000 will require a written amendment to this Agreement executed by the parties to this Agreement. Work on any proposed change request must not

commence until any such change request is approved by the State. In addition, any Change Request over \$50,000 requires prior approval by the Bureau of Contracts (“BOC”). A copy of the applicable Change Request form and corresponding procedures are attached hereto and incorporated herein as Appendix H.

Fees for the development and implementation of enhancements or modifications shall be negotiated by the State and the Bank as soon as feasible, and must occur and be accepted by OSC prior to approval of the Change Request and commencement of work by the Bank. Prior to the approval of a Change Request, the State will conduct a review of the required number of hours for the task, the titles of staff performing such tasks, and the rates for such tasks. The Bank will use its best efforts to promptly develop a requested enhancement or modification. The Bank shall not implement a State-directed enhancement or modification into “live” production until the enhancement or modification has been accepted by the State.

A. Bank Change

[REDACTED]

[REDACTED]

B. State Change

In the event that the State proposes a material change in technology, the State shall, prior to implementation of any such change, give written notice to the Bank of the system or service affected, a description of the change, why it is needed, a suggested implementation approach (and testing if necessary), and the Bank shall have a reasonable time to analyze the cost, if any, to the Bank. The Bank and the State will work cooperatively to effectuate the changes. Fees for such developments and implementations or creation of utilities, if any, shall be negotiated by the State and the Bank as soon as feasible following such notice.

The Bank must assign staff to work directly with the State, provide specifications and assist in testing both current and new functionality as requested by the State. The parties agree to work cooperatively as described hereinabove. The Bank shall not implement a State-directed enhancement or modification into “live” production until the enhancement or modification has been accepted by the State.

XXII. SERVICE-SPECIFIC SECURITY AND AUTHENTICATION/AUTHORIZATION PROCEDURES

In addition to Security Procedures as referenced in the Master Agreement, certain Service-specific Security Procedures, including, among others, authentication and/or authorization procedures, are referenced in certain of the other Banking Services Schedules.

XXIII. DISPUTES AND DISSATISFACTION

In the event the State or the Bank is dissatisfied with the other’s performance under this Agreement, the dissatisfied party must so notify the other in writing. The other party must then make every good faith effort to solve the problem or settle the dispute amicably, including meeting with the party’s representatives to attempt

diligently to reach a satisfactory result. If the State or the Bank are unable to resolve the dispute or reach a satisfactory result within five (5) business days of the written notice, the area of disagreement will be presented to the Deputy Comptroller for Finance and Administration, or his/her designee(s), who will serve as the final arbiters and issue a final decision within ten (10) business days of the original written notice date. Nothing herein shall limit either party's ability to pursue all available legal remedies.

XXIV. MISCELLANEOUS PROVISIONS

A. Amendments, Modifications

The Agreement will not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties.

Notwithstanding the foregoing, Bank may change, add or delete the terms of any of the Bank's Banking Services Schedules upon thirty (30) days prior notice to OSC in writing or by electronic means, if such change, addition or deletion (a) is applicable to all of Bank's clients using services substantially comparable in functionality to the Services provided by Bank to Client, or (b) arises from the enactment, issuance, or operation of any governmental law, ruling, regulation, order, or decree, or (c) arises from other exigent circumstances that in Bank's good faith and commercially reasonable discretion arise from or relate to a security risk or technical or operational concern as relates to the Services, provided, however, that with respect to clause (a) above only any such changes by Bank do not materially diminish the level of Services provided to Client or materially change the scope of or manner in which Client transacts its day-to-day banking operations. Under no circumstances shall any Bank modification or amendment to a Banking Services Schedule, even if accepted, in writing, by Client, alter or revise the terms of Article II (Entirety of Agreement; Conflict of Documents and Clauses), Article XI (Confidentiality and Security), or Article XVI (Indemnification and Liability) of this Agreement without a separate, written amendment to this Agreement that is executed by both parties.

The rights of Bank set forth in this Section XXIV.A to modify or amend any Banking Services Schedule shall be in addition to, and not in lieu of, the rights of Bank under Section 22 of the Deposit Account Agreement (Exhibit C.8) to (a) change or add to the terms and conditions of the Deposit Account Agreement (Exhibit C.8), and (b) effectuate material changes to the Bank's processes or practices in connection with the Services and Client's Accounts.

B. Waiver

No consent to, or waiver, discharge, or release of, any term or provision or breach of this Agreement shall be valid or effective unless such consent, waiver, discharge, or release is in writing, expressly refers to this Agreement, and is signed by the party to be bound thereby, and no such consent, waiver, discharge, or release shall constitute a consent, waiver, discharge, or release of any other term or provision hereof or any subsequent breach hereof, whether or not similar in nature, or a subsequent consent, waiver, discharge, or release of the same term, provision, or breach hereof or further exercise of any such right, power, or remedy.

C. Severability

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, and the parties shall make a reasonable, good faith effort to substitute an enforceable provision that, to the maximum extent possible in accordance with Applicable Law (see Section XXIV.G), preserves the original intentions and economic positions of the parties.

D. Survival

The provisions of Articles IV (Compensation, Payment, and Invoices), XI (Confidentiality and Security), XII (Background Investigations), XVI (Indemnification and Liability), XVIII (Transition), and Appendix A shall survive the expiration or termination of this Agreement. All warranties of the parties made herein or under any of the Bank's Banking Services Schedules, and the obligations of the parties that arose prior to termination, shall survive the termination of this Agreement and the processing of any item, entry or payment order that may be applicable thereto, and shall inure to the benefit of each party, and to the extent permitted by this Agreement and Applicable Law, its successors and permitted assigns.

E. Public Communication

Neither the Bank nor any of its staff will at any time, either during the term of or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the Services or data collected under this Agreement, without prior written approval of OSC, unless otherwise required by law in which instance, notice must be provided to OSC in advance of any such communication provided by the Bank unless such notice is prohibited as a matter of law. Neither the Bank nor any of its staff shall use the name or seal of the Comptroller, OSC, the State, its officials or employees in any advertising, publicity or promotion; as an express or implied endorsement of any products or services; or in any other manner except as necessary to perform the Services.

F. Counterparts; Headings and Section References

This Agreement may be executed in counterparts, each of which when executed shall constitute an original, and all of which, when taken together shall constitute one instrument. All headings and section references in this Agreement and the Banking Services Schedules are included herein and therein for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions of this Agreement or the Banking Services Schedules.

G. Compliance with Applicable Laws

Each of Bank and Client shall comply in all respects with applicable federal, State, and local laws and regulations, including the Uniform Commercial Code as adopted and in effect in the State of New York ("**UCC**"), and the National Automated Clearing House Association ("**Nacha**") Rules or the rules of other automated clearing house(s) that Bank then-uses to complete the Services, as applicable (such rules, collectively, the "**Rules**" or the "**Nacha Rules**"), in the case of Bank, as applicable to Bank in connection with its provisioning of the Services, including its duties, obligations, and business practices for the Services provided under this Agreement, and in the case of Client, as applicable to Client in connection with its use of the Services, including its duties, obligations, and business practices for the Services provided under this Agreement ("**Applicable Law**" or "**Applicable Laws**"). The Bank shall not take any action in violation of any Applicable Law that could result in liability being imposed on the State, including Client. The Client shall not take any action in violation of any Applicable Law that could result in liability being imposed on the Bank. The parties agree to treat the Rules as Applicable Law solely for the purpose of this Contract, and without waiver, admission, or establishment of precedent that such Rules constitute actual law.

H. Incorporation of Amendments to Applicable Laws

Any references to sections of federal, State, or local statutes or regulations or the Nacha Rules or the Rules shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

I. No Third-Party Benefits

Nothing herein shall be construed as creating any third-party rights, benefits, privileges, or standing to maintain any action or proceeding in any court or other forum, except to the extent Services are provided to DTF. [REDACTED]

J. USA PATRIOT Act and Financial Disclosure

The USA PATRIOT Act requires the Bank to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, OSC acknowledges that §326 of the USA PATRIOT Act and the Bank's identity verification procedures require the Bank to obtain information which may be used to confirm OSC's identity including without limitation OSC's name, address and organizational documents ("**identifying information**").

K. Anti-Money Laundering: Foreign Corrupt Practices Act

The Bank represents that it has a compliance program in place to address the requirements of all United States laws pertaining to international financial transactions, including the USA PATRIOT Act. The Bank represents and warrants that (a) in agreeing to provide, and in providing, the Services, the Bank is not in violation of the provisions of the United States Executive Order 13224 of September 24, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "**Anti-Terrorism Order**") as amended, or the provisions of the USA PATRIOT Act, title III, or the International Money Laundering Abatement and Anti-Terrorism Financing Act of 2001 (as it may be amended from time to time) and any regulations promulgated thereunder, and (b) the Bank is not a party with which the Treasurer is prohibited to deal under the laws of the United States. The Bank shall use its best efforts to ensure that it will not be included on the Specially Designated Nationals and Blocked Persons List of the United States Treasury Department's Office of Foreign Assets Control.

The Bank covenants that it will not make any direct or indirect payments to any foreign government official, government employee, political party or official in order to obtain, retain or direct business or obtain any advantage – unless such payment is permitted under the written laws of the jurisdiction where the Bank resides and of such foreign official's country – in violation of the United States Foreign Corrupt Practices Act. The Bank covenants that, in the performance of its duties hereunder, it shall not knowingly make any payments to any person or entity that would cause the Office of the Treasurer or the State to be in violation of

the United States Foreign Corrupt Practices Act, as amended from time to time, or similar acts or laws of the country in question. The Bank represents and warrants that it is not doing business with or investing in any company whose business interests are associated with terrorism or are contrary to the policies of the United States.

L. Continuity of the Agreement

The terms and conditions of this Agreement shall remain in full force and effect for the term of this Agreement and the Bank agrees to provide all Services for such term, regardless of any reorganizations, consolidations or mergers to which the Bank is, or may become, a party. In any such event, the Contractor shall continue to be bound by, and shall perform under, all terms and conditions set forth herein.

M. Disclaimer of Warranties

EXCEPT AS SET FORTH IN CONTRACT C001110, BANK HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY.

N. Authorization

1. Each party warrants and represents on the date hereof and on any date any Service is performed, that (a) there are no provisions of any law or any agreement of any kind, nature or description binding upon OSC or Bank, as applicable, which prohibits either of them from entering into or performing under this Agreement, (b) the execution and performance of this Agreement has been duly authorized, and (c) this Agreement is a binding obligation of OSC and the Bank.
2. OSC warrants and represents that (a) OSC has taken all action required to authorize OSC designee(s) to execute and deliver this Agreement and to bind Client hereto, and (b) only an Authorized Representative (as defined in the Master Agreement) may give the Bank Instructions regarding the withdrawal, disbursement, or other transfer of funds in connection with the Services.
3. OSC covenants and agrees that the Bank is relying on the authority of the Authorized Representatives to act on behalf of Client.

XXV. ENTIRE AGREEMENT/APPROVALS

This Agreement and the appendices, exhibits and attachments hereto constitute the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement and any amendment hereof shall not be deemed executed, valid, or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by the OSC Bureau of Contracts pursuant to SFL §112, and filed in the Office of the State Comptroller.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

In addition to the acceptance of this Agreement, OSC and Bank signatures on this page also certify that originals of this signature page will be attached to all other originals of this Agreement.

CONTRACT NUMBER: C001110
KeyBank NATIONAL ASSOCIATION

SIGNATURE

PRINTED NAME

TITLE

June 16, 2022
DATE

OFFICE OF THE STATE COMPTROLLER

SIGNATURE

JEREMY R. DISARE
PRINTED NAME

DIRECTOR OF FINANCE
TITLE

6/21/2022
DATE

CONTRACTOR ACKNOWLEDGEMENT

STATE OF NEW YORK

COUNTY OF ALBANY

SS.:

On the 16th day of June in the year 2022, before me personally appeared [redacted] known to me to be the person who executed the foregoing instrument, who acknowledged to me that he maintains an office at 66 South Pearl Street, Albany, New York, and further that he is a [redacted] of KeyBank National Association, the national banking association described in the foregoing instrument; that, by authority of the Board of Directors of the national banking association he is authorized to execute the foregoing instrument on behalf of the national banking association for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of the national banking association as the act and deed of the national banking association.

Maryellen E. Wood
Notary Public Signature and Registration No.

MARYELLEN E. WOOD
Notary Public, State of New York
No. 01WO4827384
Qualified in Albany County
Commission Expires 04/30/2026

APPROVED AS TO FORM: NYS ATTORNEY GENERAL

APPROVED: THOMAS P. DINAROLI, COMPTROLLER

BY:

DATE

BY:

DATE

APPROVED
DEPT. OF AUDIT & CONTROL
AUG 05 2022
Thomas P. DiNapoli
FOR THE STATE COMPTROLLER

From: [Maggi, Benjamin](#)
To: [RFP; Contract Approval](#)
Cc: [Ellen Porcari](#); [Elizabeth Carl](#); [Elizabeth D. McManus](#)
Subject: Approved - RE: OSC Contract # C001110 & Amendment C001110-1 KeyBank N.A.
Date: Friday, June 24, 2022 12:20:20 PM

Approved as to Form: 6/24/2022 by Benjamin Maggi
Received: 6/24/2022

OAG: CAS please file and enter. "P" Amount: 2,600,000

Reminder: Agencies must forward the contract approved by the OAG Contract Approval Section along with the email in which the OAG Contract Approval Section approved the contract, to OSC via the Comptroller's EDSS system. If you are not enrolled in the EDSS system and have not made alternative arrangements with OSC on how to submit your transaction, please contact OSC at
or email

Benjamin L. Maggi
Section Chief
Contract Approval Section
New York State Office of the Attorney General
Contract Approval Section

APPENDIX D

OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY

Whereas, it is the policy of the Office of the State Comptroller (OSC) and the New York State Common Retirement Fund (CRF) to procure goods and services in a fair, equitable and open manner and to protect the procurement process from improper influences; and

Whereas, procurement lobbying activities must be monitored and documented to assure the integrity of the procurement process;

Now, therefore, I, Thomas P. DiNapoli, Comptroller of the State of New York, in consideration of the foregoing, do hereby order as follows;

1. **Applicability.** This executive order applies to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology. Decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, and selections of investment advisors or managers whose services are integral to the administration of CRF investments, remain subject to the Comptroller's fiduciary responsibility to administer the CRF prudently to increase and preserve CRF assets on behalf of its beneficiaries. In addition, selection of counsel to represent the CRF in transactional, investment or litigation matters remain subject to the Comptroller's fiduciary responsibilities. Although such CRF investment decisions and selections are not subject to this executive order, they shall be made in a fair and equitable manner, in accordance with the Comptroller's fiduciary responsibilities.
2. **General Counsel.** The General Counsel shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF. The General Counsel shall form such committees or draw upon OSC staff as needed to fulfill this responsibility.
3. **Procedural Controls.** The General Counsel shall develop, in consultation with the executive staff of OSC, procedural controls in the form of written Procurement Integrity Procedures. Such procedures shall:
 - a. require that decisions made on the award of procurement contracts shall be made in accordance with Article 11 of the State Finance Law, free from any improper influence;
 - b. require that any OSC employee who has direct knowledge of any improper influence or attempted improper influence shall immediately make a record of the improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the General Counsel or appropriate Division of Legal Services staff designated by the General Counsel;
 - c. prohibit contact relating to a bid or proposal, during the procurement process, between all OSC personnel involved in the determination of the procurement contract award and any employee, agent, or consultant of a bidder or proposer competing for the contract, except for contacts authorized by the procedures established pursuant to this executive order;
 - d. establish procedures for appropriate contacts between OSC personnel involved in the determination of a procurement contract award and the employees, agents or consultants of a bidder or proposer for the purpose of clarifying a bid or proposal. Such authorized contacts shall only be for the purpose of providing information to OSC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by a bidder or proposer, and shall occur only at such times and in such manner as have been authorized by the procedures established pursuant to this executive order;
 - e. provide for appropriate contacts between OSC personnel and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of bids or proposals and selection of a contractor have been completed;

- f. establish a process for the review by the General Counsel of any allegations of improper influence or attempted improper influence, and for the imposition of sanctions if such improper activity has been found to exist.
4. Incorporation of Procedural Controls in Contract Documents. The Procurement Integrity Procedures required by this executive order shall be incorporated into all OSC and CRF procurement solicitations and contracts.
5. Periodic Review. The General Counsel shall periodically review the Procurement Integrity Procedures with OSC personnel in order to ascertain potential areas of exposure to improper influence and to adopt desirable revisions for more effective avoidance of improper influences.
6. Sanctions. Any OSC employee who violates the Procurement Integrity Procedures may be subject to disciplinary action. Any vendor who violates the Procurement Integrity Procedures may be found to be a non-responsible vendor, and on the basis of such finding, may be ineligible to receive a contract award.

/s/

Thomas P. DiNapoli
Comptroller, State of New York

Last Revised Date: March 14, 2007
Original Date: February 14, 2002

OSC PROCUREMENT INTEGRITY PROCEDURES

In order to ensure that procurements of goods or services¹ by the Office of the State Comptroller (OSC) or the Common Retirement Fund (CRF) are conducted in a fair, equitable and open manner, the procedures set forth below shall apply to the procurement process.

The General Counsel to the Comptroller shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF.

A copy of these Procurement Integrity Procedures will be given to every OSC employee, consultant, or other person assigned to any task related to an OSC or CRF procurement. A copy of these procedures will be incorporated into every Request for Information (RFI), Request for Proposals (RFP) or Invitation for Bids (IFB) issued by OSC or CRF.

Any OSC employee who violates these procedures may be subject to disciplinary action, such as a reprimand, suspension, demotion, or dismissal. Any vendor who violates these procedures may, after notice and an opportunity to be heard, be determined to be a non-responsible vendor, and on the basis of such a determination may be ineligible to receive a contract award.

Every reasonable effort will be made to assure compliance with these procedures, but a minor deviation from these procedures that does not impair the fairness and integrity of the procurement process will not require the invalidation of a contract award.

1. OSC employees must provide every interested vendor² with an equal opportunity to compete. No information may be given to one vendor without being made available to all other interested vendors. Vendors should be asked to submit every substantive question³ concerning the procurement in writing not later than the date specified by OSC for such questions; and a copy of each question, together with OSC's written answer, should be supplied to all interested vendors and included in the procurement record.
2. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will serve as the coordinator for all procurement-related contacts between OSC personnel and vendor personnel. All telephone calls, correspondence, and meeting requests must be routed to: Assistant Comptroller for Administration, Office of the State Comptroller, 110 State Street – 13th Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: RFP@osc.state.ny.us. OSC's Assistant Comptroller for Administration, or a designee, will maintain a record of all such contacts.
3. A vendor may not exert or attempt to exert any improper influence⁴ relating to the vendor's bid or proposal. Any OSC employee who has direct knowledge of any improper influence or attempt to exert an improper influence concerning a procurement contract shall immediately make a record of the

¹ These procedures apply to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology, except that they do not apply to (i) decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, (ii) selections of investment advisors or managers whose services are integral to the administration of CRF investments, and (iii) selection of counsel to represent the CRF in transactional, investment or litigation matters. Such CRF investment decisions and selections remain subject to the Comptroller's fiduciary responsibilities, and are to be made in a fair and equitable manner in accordance with those responsibilities.

² For the purposes of these procedures, the term "interested vendor" means a person or firm that has received or requested a Request for Information (RFI), an RFP, or an IFB issued by OSC or CRF.

³ For the purposes of these procedures, the term "substantive question" means an inquiry concerning a material requirement of the procurement process, such as a technical specification or a financial prerequisite. The term does not apply to ministerial matters, such as the time and place or manner of submitting a bid or proposal.

⁴ For the purposes of these procedures, the term "improper influence" means any attempt to achieve preferential, unequal, or favored consideration of a bid or proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law sections 73 and 74.

improper influence or attempted improper influence and notify the General Counsel to the Comptroller. The General Counsel to the Comptroller shall thereupon cause an investigation to be made and shall recommend such action, if any, as may be necessary.

4. Unless otherwise directed by the General Counsel to the Comptroller, OSC's Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor's bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process⁵. If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.
11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.

⁵ For the purposes of these procedures, the term "attempt to influence the procurement process" means any attempt to influence any determination by OSC or CRF by a person other than an OSC employee with respect to (i) the solicitation, evaluation or award of a procurement contract; or (ii) the preparation of specifications or request for submissions of bids or proposals for a procurement contract.

12. During the evaluation and selection phases of the procurement process, no OSC employee may disclose any part of a bid or proposal to any other person, except that (i) a member of an evaluation or selection committee may discuss a proposal with another member of the same committee, and (ii) a member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.
13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011