

Attachment A-1

Program Specific Terms and Conditions

New York State Department of Agriculture and Markets

These special conditions apply to the administrative aspects of this particular Agreement. These special conditions cannot be changed.

RESPONSIBILITY REQUIREMENTS

- A. The **Department** is required to undertake an affirmative review of the responsibility of any vendor to which it proposes to make an Agreement award. Such review shall be designed to provide reasonable assurances that the proposed **Contractor** is responsible. In undertaking such review, the **Department** must comply with the following standards:
 - a. In all cases, the **Department** must consider any information that has come to its attention from the proposed **Contractor** or any other source that would raise issues concerning the proposed **Contractor's** responsibility.
 - b. In the case of any Agreement valued at \$100,000 or more, the **Department** must affirmatively require disclosure by the proposed **Contractor** of all information that the **Department** reasonably deems relevant to a determination of responsibility by completing a Vendor Responsibility Questionnaire.
- B. The **Contractor** shall at all times during the Agreement term remain responsible. The **Contractor** agrees, if requested by Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- C. The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the **Contractor**. In the event of such suspension, the **Contractor** will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the **Contractor** must comply with the terms of the suspension order. Agreement activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.
- D. Upon written notice to the **Contractor**, and a reasonable opportunity to be heard with appropriate Commissioner officials or staff, the Agreement may be terminated by Commissioner or his or her designee at the **Contractor's** expense

where the **Contractor** is determined by the Commissioner or his or her designee to be non- responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The **Department of Agriculture and Markets** (“**Department**”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The **Contractor** to the subject Agreement (the “**Contractor**” and the “Agreement”, respectively) agrees, in addition to any other nondiscrimination provision of the Agreement and at no additional cost to the **Department**, to fully comply and cooperate with the **Department** in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The **Contractor’s** demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Agreement, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies available to the **Department** pursuant to the Agreement and applicable law.

II. Contract Goals

- A. For purposes of this Agreement, the **Department** hereby establishes an overall goal of thirty percent (30%) for MWBE participation, fifteen percent (15%) for New York State-certified minority-owned business enterprise (“MBE”) participation and fifteen percent (15%) for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Agreement and achieving the MWBE Contract Goals established in Section II-A hereof, the **Contractor** should reference the directory of MWBEs at the following internet

address: <https://ny.newnycontracts.com>. Additionally, the **Contractor** is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Agreement.

- C. The **Contractor** understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of an Agreement with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be twenty-five percent (25%) of the total value of the Agreement.
- D. The **Contractor** must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Agreement. Such documentation shall include, but not necessarily be limited to:
 - 1. Evidence of outreach to MWBEs;
 - 2. Any responses by MWBEs to the **Contractor's** outreach;
 - 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 - 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the **Department** with MWBEs; and
 - 5. Information describing specific steps undertaken by the **Contractor** to reasonably structure the Agreement's scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity ("EEO")

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Agreement.
- B. In performing the Agreement, the **Contractor** shall:
 - 1. Ensure that each **Contractor** and subcontractor performing work on the Agreement shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 2. The **Contractor** shall submit an EEO policy statement to the **Department** within seventy-two (72) hours after the date of the notice by the **Department** to award the Agreement to the **Contractor**.
 - 3. If the **Contractor**, or any of its subcontractors, does not have an existing EEO policy statement, the **Department** may require the **Contractor** or

subcontractor to adopt a model statement (see Form MWBE EE01 – MWBE and Equal Employment Opportunity Policy Statement).

4. The **Contractor's** EEO policy statement shall include the following language:
 - a. The **Contractor** will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The **Contractor** shall state in all solicitations or advertisements for employees that, in the performance of the Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The **Contractor** shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the **Contractor's** obligations herein.
 - d. The **Contractor** will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "D" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Agreement.

C. Form MWBE/EEO3 - Workforce Employment Utilization Report

1. The **Contractor** shall submit a Workforce Employment Utilization Report, and shall require each of its subcontractors to submit a Workforce Employment Utilization Report, in such form as shall be required by the **Department** on a **quarterly** basis during the term of the Agreement.
2. Separate forms shall be completed by the **Contractor** and any subcontractors.

- D. The **Contractor** shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The **Contractor** and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The **Contractor** represents and warrants that the **Contractor** has submitted an MWBE Employment Utilization Plan, or shall submit an MWBE Employment Utilization Plan at such time as shall be required by the **Department**, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the **Contractor** may arrange to provide such evidence via a non-electronic method to the **Department**, either prior to, or at the time of, the execution of the Agreement.
- B. The **Contractor** agrees to adhere to such MWBE Employment Utilization Plan in the performance of the Agreement.
- C. The **Contractor** further agrees that failure to submit and/or adhere to such MWBE Employment Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, the **Department** shall be entitled to any remedy provided herein, including but not limited to, a finding that the **Contractor** is non-responsive.

V. Waivers

- A. If the **Contractor**, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the **Contractor** may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the **Department**. Such waiver request must be supported by evidence of the **Contractor’s** good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the **Department** shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If the **Department**, upon review of the MWBE Employment Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the **Contractor** is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, the **Department** may issue a notice of deficiency to the **Contractor**. The **Contractor** must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The **Contractor** is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the **Contractor** may arrange to provide such report via a non-electronic method to the **Department** by the 10th day following the end of each quarter during the term of the Agreement.

VII. Liquidated Damages - MWBE Participation

- A. Where the **Department** determines that the **Contractor** is not in compliance with the requirements of this Appendix and the **Contractor** refuses to comply with such

requirements, or if the **Contractor** is found to have willfully and intentionally failed to comply with the MWBE participation goals, the **Contractor** shall be obligated to pay to the **Department** liquidated damages.

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the **Contractor** achieved the contractual MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Agreement.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the **Department**, the **Contractor** shall pay such liquidated damages to the **Department** within sixty (60) days after they are assessed. Provided, however, that if the **Contractor** has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the **Contractor** following the complaint process.

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. The **Department** recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of **Department** contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are expected to consider SDVOBs in the fulfillment of the requirements of the Agreement. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

I. Contract Goals

- A. The **Department** hereby establishes an overall goal of six percent (6%) for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, **Contractor** should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Department's Supplier Diversity Liaison at supplierdiversity@agriculture.ny.gov. Additionally, following Contract execution, **Contractor** is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or

VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Agreement.

B. **Contractor** must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Agreement (see clause IV below).

II. SDVOB Utilization Plan

A. In accordance with 9 NYCRR § 252.2(i), **Contractor** agrees to submit a completed SDVOB Utilization Plan on Form SDVOB 100 at such time as shall be required by the **Department**.

B. The Utilization Plan shall list the SDVOBs that **Contractor** intends to use to perform the Agreement, a description of the work that **Contractor** intends the SDVOB to perform to meet the goals on the Agreement, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, **Contractor** acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of the Agreement for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs during the term of the Agreement must be reported on a revised SDVOB Utilization Plan and submitted to the **Department**.

C. The **Department** will review the submitted SDVOB Utilization Plan and advise **Contractor** of the **Department’s** acceptance or issue a notice of deficiency within 20 days of receipt.

D. If a notice of deficiency is issued, **Contractor** agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to the **Department** a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the **Department** to be inadequate, the **Department** shall notify **Contractor** and direct **Contractor** to submit, within five (5) business days of notification by the **Department**, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for a determination of non-responsibility by the **Department**.

E. The **Department** may deem **Contractor** non-responsive under the following circumstances:

1. If **Contractor** fails to submit an SDVOB Utilization Plan;
2. If **Contractor** fails to submit a written remedy to a notice of deficiency;
3. If **Contractor** fails to submit a request for waiver; or
4. If the **Department** determines that **Contractor** has failed to document good faith efforts.

F. **Contractor** certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Agreement pursuant to the prescribed SDVOB contract goals set forth above.

G. **Contractor** further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, the **Department** shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

III. Request for Waiver

A. Prior to submission of a request for a partial or total waiver, **Contractor** shall speak to the **Department's** Supplier Diversity Liaison for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. **Contractor** may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the **Department** at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with **Contractor's** waiver request is complete, the **Department** shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. **Contractor** shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Agreement. Requests for a partial or total waiver of established goal requirements may be made at any time during the term of the Agreement to the **Department** but must be made no later than prior to the submission of a request for final payment on the Agreement.

D. If the **Department**, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101), determines that **Contractor** is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the **Department** may issue a notice of deficiency to **Contractor**. **Contractor** must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the **Department**.

IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Agreement. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to **Contractor's** solicitation was not selected.

(3) Dates of any pre-bid, pre-award or other meetings attended by **Contractor**, if any, scheduled by the **Department** with certified SDVOBs whom the **Department** determined were capable of fulfilling the SDVOB goals set in the Agreement.

(4) Information describing the specific steps undertaken to reasonably structure the Agreement scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(5) Other information deemed relevant to the waiver request.

V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), **Contractor** is required to report Monthly SDVOB Contractor Compliance to the **Department** during the term of the Agreement for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 and should be completed by **Contractor** and submitted to the Department Supplier Diversity Liaison, by the 10th day of each month during the term of the Agreement, for the preceding month's activity to: supplierdiversity@agriculture.ny.gov.

VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Agreement, shall be found to have breached the contract and **Contractor** shall pay damages as set forth therein.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/veterans/>

ACKNOWLEDGEMENT

Unless otherwise advised by the **Department**, the **Contractor** will acknowledge the support of the **Department** whenever publicizing the work under this grant. The **Contractor** will also inform the Department of any events related to the work a minimum of two (2) weeks before the scheduled date.

EQUIPMENT

Pursuant to section IV(D)(1)(b) of the Master Contract, the Department hereby agrees that the **Contractor** may retain possession of Property paid for with funds under this Agreement, provided it is used for similar purposes.

CLAIMS FOR PAYMENT

The **Contractor** shall submit all Claims for Payment to the following address: New York State Department of Agriculture and Markets c/o NYS OGS BSC Accounts Payable, Building 5, Floor 5, 1220 Washington Avenue, Albany, New York 12226, or via e-mail at accountspayable@ogs.ny.gov. Claims for Payment will not be considered received by

the **Department** and any interest which may be due the **Contractor** will not begin to accrue until they have been received at the address referenced herein.

The **Contractor** must submit all supporting documentation for Claims for Payment to the Companion Animal Capital Projects Fund Program Manager at the following address: New York State Department of Agriculture and Markets, Division of Animal Industry, 10B Airline Drive, Albany, New York 12235, or via e-mail at Ana.Colon@agriculture.ny.gov.

NOTICE

Notices to the **Department** shall be addressed to:

New York State Department of Agriculture and Markets
Division of Animal Industry
10B Airline Drive
Albany, New York 12235

Notices to the **Contractor** shall be addressed to the primary mailing address that appears on the face page of this Agreement.