

**STATE OF NEW YORK**  
**OFFICE OF THE STATE COMPTROLLER**  
**AGREEMENT WITH**  
**TOP DOWN SYSTEMS CORPORATION**  
**NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER C001105**

**THIS AGREEMENT** ("Agreement") is between the New York State Office of the State Comptroller ("OSC"), by the Department of Audit and Control, whose main office and principal place of business is 110 State Street, Albany, New York, 12236, and Top Down Systems Corporation, (the "Contractor") whose office is located at 9210 Corporate Boulevard, Suite 401, Rockville, Maryland, 20850.

**W I T N E S S E T H**

**WHEREAS**, OSC is responsible for the collection, custody, and return to the rightful owner(s) of abandoned property in accordance with the New York State Abandoned Property Law; and

**WHEREAS**, in 2015, OSC issued RFP#15-02 seeking proposals to update its correspondence system to facilitate communication between OSC and property claimants; and

**WHEREAS**, Contractor's proposal was selected among multiple proposers to provide and maintain a correspondence system to OSC under Contract C001000; and

**WHEREAS**, OSC implemented and customized Contractor's software solution, and purchased Contractor's maintenance and support services based on its response to RFP#15-05, and has an on-going need for the right to continue licensing Client Letter® software ("Client Letter") and associated maintenance and support services to maintain the functionality and level of operations in the Office of Unclaimed Funds ("OUF"); and

**WHEREAS**, to meet this responsibility, OSC issued an advertisement in the New York State Contract Reporter dated March 11, 2020 for a vendor to provide software licenses and maintenance and support services, billed annually, for Client Letter® software, which advertisement is annexed hereto as Exhibit A; and

**WHEREAS**, no vendors responded to the advertisement; and

**WHEREAS**, Contractor has confirmed the continued availability of Client Letter, Client Letter licenses, and maintenance and support services with equivalent or improved functionality as was provided by Contractor to OSC under Contract C001000; and

**WHEREAS**, Contractor has issued a letter dated May 27, 2020 stating Contractor is the owner and Single Source provider of Client Letter software and related maintenance services and that Client Letter is proprietary software developed by Contractor for which Contractor maintains full right and title to sell and maintain and that no other entity has reseller rights to the software or related maintenance services; and

**WHEREAS**, OSC has determined that the acquisition of the Services will be conducted on a sole source basis and Contractor has agreed to continue to provide software, maintenance, and support to OSC in accordance with the terms and conditions of this Agreement ("Services"); and

**WHEREAS**, OSC has determined that the Contractor is a responsible entity with the ability to perform the Services and that the compensation to be paid to the Contractor is reasonable.

**NOW, THEREFORE**, in consideration of the terms set forth and the mutual covenants and obligations of the parties, the parties do hereby agree as follows:

## **I. TERM**

This Agreement shall commence on March 15, 2021 and shall continue for a period of five years. Notwithstanding the foregoing, OSC reserves the right to terminate this Agreement as provided for in Section XVII. "Termination and Suspension."

## **II. MERGER OF DOCUMENTS/CONFLICT OF CLAUSES**

This Agreement shall be deemed inclusive of the following documents and appendices which are set forth herein:

1. Appendix A – Standard Clauses for New York State Contracts;
2. Agreement – (this document), including:
  - Appendix B – Forms AC 3239-A, Contractor's EEO Staffing Plan of Anticipated Workforce and AC 3239-B, Contractor's/Subcontractor's EEO Workforce Utilization Report;
  - Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
  - Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
  - Appendix E – Contractor's Acknowledgements; and
  - Appendix F – Disclosure of Prior Non-Responsibility Determinations.
3. Exhibits, including:
  - Exhibit A – the New York State Contract reporter advertisement dated March 11, 2020; and
  - Exhibit B – letter from Top Down Systems Corporation dated May 27, 2020.
4. Attachments, including:
  - Attachment A – Top Down Systems Corporation Software Pricing Proposal dated February 14, 2020 ("Software Pricing Proposal");
  - Attachment B – Contractor's Software License and Maintenance Terms.

Conflicts between these documents shall be resolved in the following descending order of precedence:

1. Appendix A – Standard Clauses for NYS Contracts; and
2. This Agreement, including Appendices B through and including F;
3. Exhibits A and B; and
4. Attachments A and B.

## **III. COMPENSATION**

OSC shall compensate the Contractor pursuant to this Agreement in accordance with the Pricing schedule set forth in Attachment A – Software Pricing Proposal. Annual fees (License and Maintenance, combined) shall be \$148,680, and total compensation under this Agreement during the Term shall not exceed \$743,400.00. OSC will pay license, maintenance, and support fees due, as applicable and in accordance with the terms of this Agreement, in advance

annually over the five year term.

There shall be no rate increases permitted for the software license fees or maintenance and support fees during the Term of the contract.

#### **IV. PAYMENT AND INVOICES**

- A.** The compensation shall be payable in the ordinary course of OSC business upon receipt of the Contractor's invoice. Invoices must be submitted on an annual basis. Approved invoices will be paid in accordance with Article 11-A of the State Finance Law.
- B.** All invoices must include the following information:
  - 1.** OSC's Agreement #C001105, Contractor's taxpayer identification number, and Contractor's New York State Vendor Identification Number;
  - 2.** A detailed description of Services provided;
  - 3.** The total amount billed for Services for the invoice period; and
  - 4.** Itemization and documentation of travel, overnight lodging and meal expenses, as applicable and only to the extent any such travel has been approved, in advance and in writing by OSC, sufficient to demonstrate conformance with applicable State reimbursement rates, as set forth the Comptroller's Travel Guidelines, available at <https://www.osc.state.ny.us/agencies/travel/travel.htm>; and
  - 5.** The beginning and ending dates of the billing period included in the invoice, and the expiration date of this Agreement.
- C.** All invoices shall be subject to OSC's acceptance of the Services for which billing is being made and are to be submitted via email (preferred) to [contractinvoices@osc.ny.gov](mailto: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 to [CIOProcurement@osc.ny.gov](mailto:CIOProcurement@osc.ny.gov) (preferred) or via hard copy mail to:

**ATTENTION: CIO Procurement  
Office of the State Comptroller  
110 State Street, Stop 8-7A  
Albany, NY 12236-0001**

#### **V. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REPORTING**

Contractor agrees to comply with applicable federal, State, and local requirements concerning equal employment opportunities for minorities and women, 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), Contractor agrees to submit to OSC its EEO Policy Statement, and Form AC 3239-A Proposer's EEO Staffing Plan of Anticipated Workforce. Further, Contractor shall submit on a semi-annual basis Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report) and shall require each of its Subcontractors, if any, to submit such Report on a quarterly basis during the term of the Agreement.

The Contractor/Subcontractor shall submit two originals and two copies of Form AC 3239-B to OSC at the following address:

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

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 Contractor's/Subcontractor's EEO Workforce Utilization Reports, the Contractor/Subcontractor 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 Contractor/Subcontractor into compliance with such requirements. If OSC is unsuccessful in its efforts, and upon review, the Deputy Comptroller for the Division of Finance and Administration at OSC determines that the Contractor/Subcontractor 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 Contractor's/Subcontractor'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 Contractor/Subcontractor 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).

## **VI. NOTICES**

Any notice or other communication given pursuant to this Agreement shall be in writing and addressed to such party at the address set forth in this Agreement, and shall be effective:

- (i) When delivered personally to the party for whom intended;
- (ii) Upon five days following the deposit of the notice or other communication into the United States Postal Service mail (certified mail, return receipt requested, or first class postage prepaid); or
- (iii) Upon actual receipt by the intended party if such notice or other communication is sent by overnight mail service.

The following are the names and contact information for OSC and the Contractor. The parties shall notify each other, as soon as possible of any change.

### **OSC:**

Title: Director of Financial Administration  
Address: Office of the State Comptroller  
110 State Street, Stop 13-2  
Albany, NY 12236-0001

### **Contractor:**

Name: Matthew R. Lederer  
Title: Senior Vice President  
Address: 9210 Corporate Blvd, Suite 401  
Rockville, MD 20850-6287  
Telephone: (800) 361-1211

## **VII. SERVICES**

OSC hereby retains the Contractor to perform the Services, and the Contractor hereby agrees to perform the Services, which shall include the provisioning of all software, licenses, maintenance, and support for the Client Letter software used by OSC in accordance with OSC's March 11, 2020 advertisement in the Contract Reporter, which is attached hereto as Exhibit A.

Services listed in Exhibit A that are outside the license grant and scope of standard Maintenance will require a mutually agreed upon Statement of Work, which will include fees as agreed upon by the parties.

## **VIII. COOPERATION**

The Contractor and OSC and their respective agents, employees and officers shall cooperate with each other to the fullest extent in connection with the Services to be provided under this Agreement. OSC shall supply and make available necessary information and personnel to assist the Contractor to perform the Services.

## **IX. STAFF**

Contractor's "Staff" includes employees, consultants, owners, officers, directors, subcontractors, subsidiaries, affiliates, partners and agents of the Contractor.

The Federal Immigration Reform and Control Act, as amended (8 USC § 1324a et al.), obligates employers, such as the Contractor and its subcontractors, if any, 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 Contractor or subcontractor employee assigned work under the Agreement. OSC does not provide sponsorship. The Contractor warrants to OSC that the employees assigned to OSC are eligible for employment in the United States. The Contractor is responsible for ensuring that the employees retain the authorization to legally work in the United States throughout the term of the Agreement. OSC does not discriminate against individuals on the basis of national origin or citizenship.

## **X. SUBCONTRACTORS**

In the event that the Contractor utilizes subcontractors to perform any of the Services, the Contractor shall require all proposed subcontractors to complete such Appendices included in this Agreement as are deemed necessary by OSC prior to any such proposed subcontractor's performance of Services. The Contractor acknowledges that this requirement is ongoing for the term of this Agreement, and the Contractor shall be required to disclose to OSC its intention to enter into any subcontracts for the performance of any Services.

OSC shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractors of the Contractor prior to their performance of Services. Failure to disclose the identity of any and all subcontractors used by the Contractor together with a detailed description of their responsibilities may, at the sole discretion of OSC, result in a disqualification of the subcontractor or termination of this Agreement.

The Contractor shall be fully responsible to OSC for the acts and omissions of its subcontractors and of persons either directly or indirectly engaged by them in connection with the performance of this Agreement.

OSC reserves the right to remove any of the subcontractor's staff if, in OSC's discretion, such subcontractor's staff is not performing in accordance with this Agreement. OSC reserves the right to approve or disapprove any proposed changes in subcontractor's key staff. OSC in each instance will be provided with a summary of the experience of the proposed subcontractor's staff member and an opportunity to interview that person, prior to giving its approval or disapproval.

## **XI. RELATIONSHIP OF PARTIES; RIGHTS TO WORK PRODUCT**

The relationship of the Contractor and its Staff to OSC shall be that of an independent contractor, and not that of an agent or employee of OSC. The Contractor, as an independent contractor, shall not have the authority to contract for or bind OSC for any purpose whatsoever. The Contractor covenants and agrees that its Staff will not hold themselves out as agents, officers, or employees of OSC, and that they will not make any claim, demand or application for any right or privilege applicable to any officer or employee of OSC, including but not limited to, Workers' Compensation coverage, Social Security coverage or Retirement System benefits.

All work performed by Contractor or its Staff for OSC under the Agreement, including all deliverables, supporting materials, modifications, customizations, custom programs, tools, data, modules, components, and any properties embodied therein and furnished to OSC under this Agreement by or through Contractor or its Staff is a work for hire. Such work is specially ordered and commissioned for use as contributions to a collective work, or is other such work as specified by the U.S. Copyright Act [17 U.S.C. § 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York. Furthermore, OSC and the Contractor agree title and ownership shall pass to the State of New York upon acceptance of the work. The Contractor and its Staff who have been or may be used in regard to the Agreement forfeit all claims of title or ownership to work produced under the Agreement. Any and all reports and other materials (preliminary, final, and otherwise), analyses and data (whether statistical or otherwise), transmitted to OSC by the Contractor shall become the sole and exclusive property of OSC for such use as OSC shall deem appropriate, other than Contractor's work papers, which Contractor may retain.

If, with OSC's permission, the Contractor publishes a work related to any aspect of performance under this Agreement, or the results and accomplishments attained in such performance, OSC will have a perpetual, royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in the course of Contractor's business.

Subject to the license grant set forth in Attachment B, intellectual property rights relating to Contractor software product, Client Letter, are retained by Contractor. The parties agree that changes to the source code of Client Letter software during performance of the activities specified herein will remain property of Contractor.

## **XII. REPRESENTATIONS AND WARRANTY**

The Contractor hereby warrants that the Services will be performed in a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances. Contractor shall re-perform, at its own expense, any work not in compliance with this warranty brought to its attention within 90 days of the initial performance/re-performance of such work.

## **XIII. CONFLICTS OF INTEREST**

The Contractor represents that it currently has no conflicts of interest with respect to Services and any other client engagements, contracts, or employment, and that the Contractor shall immediately advise OSC whenever it becomes aware of any situation that involves or appears to involve such a conflict of interest or potential conflict.

## **XIV. CONFIDENTIALITY, SECURITY, AND BACKGROUND INVESTIGATIONS**

### **A. Definition**

The term "Confidential Information" shall mean any and all information which is disclosed by either party ("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, trade secrets, computer programs, software,

documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).

## **B. Treatment**

Owner's Confidential Information shall be treated as strictly 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 and who have a justified business "need to know." This Agreement imposes no obligation upon the parties with respect to Confidential Information which 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; (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 notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.

The Contractor must, in the event of an exploited vulnerability or breach of the Software that results in an unauthorized access to or use or disclosure of Confidential Information (which may include personal identification information ("PII")), notify OSC in accordance with Sections 208 and 899-aa of the NY State General Business Law, and shall also comply with General Business Law Section 899-bb, as applicable (collectively, "NYS Privacy-Related Statutes").

Notwithstanding the provisions and corresponding obligations of NYS Privacy-Related Statutes, OSC prefers that the Contractor provide notice within 24 hours to OSC in the event of an exploited vulnerability or breach that has impacted or is reasonably foreseeable to impact any Confidential Information.

OSC requires that OSC Confidential Information, including but not limited to personal information, will be appropriately secured, and such shall be transmitted, accessed, disclosed, and used solely on a need-to-know basis, to the extent that Contractor does or may need to possess, transfer, use, or store such information in relation to Contractor's Services. Contractor shall send OSC Confidential Information, including personal information, electronically, if at all, by secure email using Advance Encryption Standard (AES) with a minimum encryption key of 128 bits.

## **C. Confidentiality of OSC Information**

In connection with the Services, the Contractor and its Staff may view or have access to Confidential Information owned by OSC. Confidential Information shall include, but not be limited to:

- Personal information about individuals, e.g., home addresses, home telephone numbers, social security numbers, payroll information, account numbers, health status;
- OSC security procedures, topology, practices and policies;
- Computer codes or other electronic or non-electronic information, the disclosure of which could jeopardize the security of OSC's computer systems; and
- Any other material designated as being "Confidential."

The Contractor agrees to preserve the confidentiality of any and all Confidential Information viewed, accessed or developed under the Agreement, and agrees:

- To view, access and use only the Confidential Information relevant and necessary to provide the Services;
- To use its best efforts to preserve the confidentiality of the Confidential Information;
- To use its best efforts to prevent disclosure of the Confidential Information to any person other than to OSC employees;
- To abide by all OSC and State confidentiality policies and procedures;
- That all reports and other materials, preliminary, final and otherwise, prepared for or relating to Services (other than Contractor's work papers) shall be treated at all times as Confidential Information by the Contractor;
- All Confidential Information shall remain the property of OSC; and
- That all Confidential Information shall be returned or destroyed (using highest industry-standard secure disposal methods) within 30 days after the expiration or termination of the Agreement and that upon such destruction the Contractor will certify as to the method of destruction.

#### **D. Security**

The Contractor and its Staff shall be required to comply with all applicable facility and information security policies, standards, and procedures, including any training required, both present and future, by OSC in performing the Services.

The Contractor may not connect any non-OSC computer, electronic storage device or telecommunications equipment to OSC's network. Personal and corporate laptop computers, personal and corporate USB devices, smartphones, and tablets are included in this prohibition.

Where performance of Services involves use by the Contractor of State-owned or licensed, or OSC-owned or licensed, papers, files, computer disks or other electronic storage devices, data, or records at OSC or State facilities or offices, the Contractor shall not remove such records therefrom without the prior written approval from an authorized representative of OSC.

#### **E. Background Investigations**

OSC policy requires that background investigations be conducted on Contractor Staff who will have access to OSC's IT systems, access to OSC confidential information/data, or routine access to any OSC facility. For purposes of this policy, "routine access" is defined as access to an OSC facility for five consecutive business days or 10 business days over the annual term of the engagement. Accordingly, with the signing of this Agreement, the Contractor certifies that it has or will conduct a background investigation on Staff to whom the policy applies within the 12 months prior to the Staff commencing Services under this Agreement. The Contractor agrees that these background investigation requirements will apply to any new/replacement Staff during the term of the Agreement.

At a minimum, background investigations 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.

The Contractor must obtain the consent of its Staff to allow OSC, upon request: (i) to review the background investigation records, including all supporting documentation, and (ii) to conduct its own background investigation.

Only Staff who have passed the background investigation, and provided such consent shall be assigned to provide Services to OSC under this Agreement. During the term of the Agreement, and in accordance with Appendix A (Section 10, Records), the Contractor must maintain records related to the background investigations performed.

## **XV. INDEMNIFICATION AND LIABILITY**

- A.** Neither the Contractor, OSC, nor the State shall be liable for any delay or failure in performance beyond its control resulting from acts of war, hostility or sabotage; act of God; electrical, internet or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such event continues for more than 90 days, either party may terminate all or any agreed upon portion of the Agreement immediately upon written notice. This paragraph does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures, or OSC's obligation to pay for Services provided by the Contractor which have been approved by OSC.
- B.** The Contractor shall be fully liable for any act or omission of the Contractor and its Staff and shall fully indemnify, defend, and hold harmless OSC and the State, their officials, agents, and employees, without limitation, from suits, actions, damages, and costs of every name and description (including reasonable attorneys' fees and expenses) arising from any act or omission of the Contractor or its Staff, including bodily or personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software and databases); damage to intellectual property; and infringement or violation of a third party's patent, copyright, license, or other proprietary or intellectual property right; provided however that the Contractor shall not be obligated to indemnify OSC for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of OSC. For third party claims, OSC shall give the Contractor:
1. prompt written notice of any action, claim, suit, proceeding, or threat of such action;
  2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at Contractor's sole expense; and
  3. reasonable assistance in the defense of any such action, claim, suit, or proceeding at the expense of Contractor.

Notwithstanding the foregoing, the State reserves the right to join such action, claim, suit or proceeding at its sole expense, if it determines there is an issue involving a significant public interest.

- C.** For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this Agreement as being without limitation, and regardless of the basis on which the claim is made, the Contractor shall be liable for any act or omission of the Contractor and its Staff, in an amount not to exceed, in aggregate, the greater of the dollar amount of this Agreement, or two times the charges paid to the Contractor. The Contractor shall not be responsible for loss of records or data unless the Contractor is required to back-up the records or data.
- D.** Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special 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, the Contractor, or by others.

- E. OSC may, in addition to other legal remedies available to it, retain from amounts otherwise due Contractor such monies as may be necessary to satisfy any claim for damages OSC may have against Contractor.

#### **XVI. RESPONSIBILITY TERMS**

- A. The Contractor represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Contractor's Vendor Responsibility Questionnaire ("Responsibility Questionnaire") provided to the Contractor by OSC prior to execution of this Agreement. The Contractor 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 Contractor 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 Contractor 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), above, 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 Contractor 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 Contractor'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 Contractor's failure to disclose material information; or (iii) State's discovery of any other material information which pertains to the Contractor's responsibility.
- E. If OSC preliminarily determines the Contractor to be non-responsible, State shall provide written notice to the Contractor detailing the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard before the determination is finalized.
- F. Upon a Determination of Non-Responsibility of the Contractor, OSC reserves the right to terminate this Agreement for cause pursuant to Section XVII. "Termination and Suspension."

#### **XVII. TERMINATION AND SUSPENSION**

- A. OSC may terminate or suspend this Agreement, or terminate or suspend the Services with respect to a specific matter or matters or for any or no reason, with or without cause upon 15 days prior written notice.
- B. OSC reserves the right to terminate or suspend this Agreement, or to terminate or suspend the Contractor's Services with respect to a specific matter or matters immediately upon written notice to the Contractor, if OSC, in its sole discretion, deems the Contractor's performance unsatisfactory at any time during the term of this Agreement.
- C. In the event of termination, the Contractor shall be entitled to compensation for Services performed through the date of termination which are acceptable to OSC, in OSC's sole discretion; however, OSC shall have no obligation to pay maintenance or support fees for any period beyond the then-current year (e.g., in the event of termination in year three, OSC shall have no obligation to pay maintenance or support fees for any year beyond year three). In the event of suspension, the Contractor shall be entitled to compensation for non-suspended Services (i.e., license fees).

#### **XVIII. TRANSITION**

Upon expiration or termination of this Agreement, the Contractor shall provide OSC with all necessary records in

the Contractor's possession relating to the Services provided under this Agreement. At OSC's request, the Contractor shall, at then current hourly rates, also make appropriate Staff available to OSC during normal business hours to answer questions regarding such records and the Services which have been provided by the Contractor under this Agreement. The Contractor shall cooperate to the fullest extent with any successor contractor in order to accomplish a smooth and orderly transition, so that the Services are uninterrupted and are not adversely impacted.

**XIX. MISCELLANEOUS PROVISIONS**

**A. WAIVER**

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach.

**B. 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.

**C. ETHICS COMPLIANCE**

The Contractor and its Staff shall comply with the requirements of Public Officers Law §§ 73 and 74, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

**D. PUBLIC COMMUNICATION**

Neither the Contractor nor any of its Staff shall make any statement to the press or issue through any media of communication any statement bearing on the Services performed or data collected under this Agreement, without the prior written approval of OSC.

**E. SURVIVAL**

The provisions of Sections XII. "Representations and Warranty," XIV. "Confidentiality, Security and Background Investigations," XV. "Indemnification and Liability," XVIII. "Transition" and Appendix A shall survive the expiration or termination of this Agreement.

**XX. ENTIRE AGREEMENT/APPROVALS**

This Agreement and the appendices, exhibits, and attachments hereto constitute the entire Agreement between the parties 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. The Agreement shall not be changed, modified, or altered in any manner except by an amendment executed by the parties. 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 OSC's Bureau of Contracts pursuant to State Finance Law § 112, and filed in the Office of the State Comptroller.

**XXI. LICENSE KEY**

OSC will receive an updated license key upon Contractor's receipt of a fully executed copy of this Agreement, which copy shall be provided by email to [matt.lederer@topdownsystems.com](mailto:matt.lederer@topdownsystems.com); [mike.lui@topdownsystems.com](mailto:mike.lui@topdownsystems.com); [genny.go@topdownsystems.com](mailto:genny.go@topdownsystems.com).

IN WITNESS WHEREOF, the parties have executed this Agreement.

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

CONTRACT NUMBER: C001105

TOP DOWN SYSTEMS CORPORATION

OFFICE OF THE STATE COMPTROLLER

*Dennis Birke*  
SIGNATURE

*Martha Ross*  
SIGNATURE

DENNIS BIRKE  
PRINTED NAME

MARTHA ROSS  
PRINTED NAME

PRESIDENT  
TITLE

DIRECTOR OF FINANCIAL ADMINISTRATION  
TITLE

FEBRUARY 9, 2021  
DATE

2/10/21  
DATE

CONTRACTOR'S ACKNOWLEDGEMENT

STATE OF MARYLAND NC }  
COUNTY OF MONTGOMERY Chatham }

SS.:

On the 9TH day of FEBRUARY in the year 20 21, before me personally appeared DENNIS M. BIRKE, known to me to be the person who executed the foregoing instrument, who, acknowledged to me that he/she maintains an office at 9210 CORPORATE BOULEVARD, SUITE 401 ROCKVILLE, MD 20850, and further that he/she is the PRESIDENT of TOP DOWN SYSTEMS CORPORATION, the corporation described in foregoing instrument; that, by authority of the Board of Directors of the corporation he/she is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she executed the foregoing instrument in the name of and on behalf of the corporation as the act and deed of the corporation.

*Catherine L. Davis*  
Notary Public  
Registration No. 20042080222  
Notary #

CATHERINE L DAVIS  
Notary Public, North Carolina  
Alamance County  
My Commission Expires  
September 11, 2024

APPROVED AS TO FORM:  
NYS ATTORNEY GENERAL

APPROVED:  
THOMAS P. DiNAPOLI, COMPTROLLER

BY: \_\_\_\_\_  
DATE \_\_\_\_\_

	APPROVED DEPT. OF AUDIT & CONTROL	
BY:	Feb 23 2021 David Burmaster	
DATE		FOR THE STATE COMPTROLLER

## Christine Anderson

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**From:** Remo, Lorraine <Lorraine.Remo@ag.ny.gov>  
**Sent:** Wednesday, February 10, 2021 4:49 PM  
**To:** RFP; Contract Approval  
**Cc:** Christine Anderson; Ellen Porcari  
**Subject:** RE: OSC Contract # C001105 Top Down Systems RESUBMISSION

Approved as to form: 2/10/2021 by Lorraine I. Remo  
Resubmittal Received:2/10/2021

*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 [REDACTED] or email [REDACTED].*

OAG: CAS please file and enter. p

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## 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/

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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 services<sup>1</sup> 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 vendor<sup>2</sup> 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 question<sup>3</sup> 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 – 13<sup>th</sup> Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: [RFP@osc.state.ny.us](mailto: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 influence<sup>4</sup> relating to the vendor's

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

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 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 process<sup>5</sup>. 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.

<sup>5</sup> 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.

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.
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