

STATE OF NEW YORK OFFICE OF THE ATTORNEY GENERAL
CONTRACT NUMBER C-105803
Cleary Gottlieb Steen & Hamilton LLP

This AGREEMENT is made by and between STATE OF NEW YORK OFFICE OF THE ATTORNEY GENERAL, with a principal office located at 28 Liberty Street, New York, NY 10005 (“OAG”), and Cleary Gottlieb Steen & Hamilton, LLP a law firm having an office located at One Liberty Plaza, New York, NY 10006 (the “Firm”).

WHEREAS, on February 28, 2021 Governor Andrew Cuomo directed the Attorney General to select an independent investigator to conduct a thorough review of allegations of, and the circumstances surrounding, sexual harassment against the Governor (the “Matter”); and

WHEREAS, the OAG conducted an extensive search and received several proposals from law firms; and

WHEREAS, the OAG has determined that it is appropriate to retain outside counsel to investigate and review issues raised in the Matter and to enter into an Agreement for the provision of such services; and

WHEREAS, the Firm has extensive expertise in investigating, reviewing and assessing allegations of sexual harassment and misconduct.

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

1. The Firm is hereby retained by the OAG to provide the above-described legal and investigative services (legal services).
2. The Firm shall provide the legal services hereunder, as set forth more fully in Exhibit A, which is incorporated herein by reference, in accordance with this Agreement and in consultation with appropriate personnel of the OAG.
3. The OAG shall pay the Firm for all professional services provided under this Agreement in accordance with the Outside Counsel Billing Criteria and Policy attached hereto as Exhibit B and made a part hereof, at the hourly rates set forth in the Cost Proposal attached hereto as Exhibit C and made a part hereof. Unless otherwise agreed between the OAG and the Firm, the fees for such professional services, inclusive of disbursements, shall not exceed the amount of \$2,552,500.00.
4. This Agreement constitutes the entire agreement of the parties and all previous communications between the parties, whether written or oral, with reference to the subject matter of this Agreement are hereby superseded. In the event of any inconsistency or conflict among the documents comprising this Agreement, such inconsistency or conflict shall be resolved by giving precedence to the documents in the following order:
 - a. Appendix A, Standard Clauses for New York State Contracts

- b. This Agreement
 - c. Exhibit A, Scope of Work
 - d. Exhibit B, Outside Counsel Billing Criteria and Policy
 - e. Exhibit C, Cost Proposal
 - f. Exhibit D, Engagement Letter
5. Payments to the Firm shall be made upon submission of the Firm's invoices indicating the legal services rendered, the name of the matter involved, the Firm personnel providing services to the OAG, their billing rates, the number of hours expended by each in providing services hereunder, in accordance with the rates shown on Exhibit C, and disbursements in accordance with Exhibit B. Time expended by Firm personnel shall be billed in the increment of one-tenth (1/10) hour. Such invoices shall be submitted by the Firm to:

Payments Unit
Payments@ag.ny.gov
NYS Office of the Attorney General
The Capitol
Albany, New York 12224

6. All payments to the Firm shall be made in the normal course of business of the State of New York and shall be sent to:
- Joon H. Kim
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza New York NY 10006
7. Upon request, the Firm shall provide the OAG's Counsel or his or her designee with a copy of all applicable written materials prepared by the Firm in the performance of legal services hereunder.
8. The Firm shall devote such time as may be necessary to provide legal services described herein, subject to the Outside Counsel Billing Criteria and Policy, but shall not be prevented from providing its services to any other client not in conflict with this Agreement.
9. The relationship of the Firm to the OAG arising out of this Agreement shall be that of attorney and client.
10. Unless modified as provided herein, this Agreement shall begin on March 8, 2021 and will continue for six months or upon completion of the retained scope of work, whichever may occur first. This Agreement may be extended upon the mutual written consent of the parties, and (if necessary) with the approval of the New York State Office of the Attorney General and the Office of the New York State Comptroller. This Agreement may be terminated by the OAG: (1) at any time upon receipt of thirty (30) days prior written notice given by the OAG; (2) in the event that Joon H. Kim, the Principal identified in paragraph 15 below, separates from the Firm; (3) for the unavailability of funds; (4) for

cause due to the Firm's actions; or (5) in the event that the Firm's State Finance Law sections 139-j and 139-k certifications are found to be intentionally false or intentionally incomplete or if applicable, the Firm's certifications on the ST220CA form are found to be false or incomplete.

11. Firm represents that it has undertaken a review of its current clients and former engagements, and has not identified any conflict of interest that would prohibit it or any of its attorneys or professional staff assigned to this matter from accepting this undertaking, with the exception of pending matters in which its client is adverse to the OAG, and as to which the OAG has provided a waiver. During the course of performing the services under this Engagement, it shall avoid any actual and the appearance of conflicts of interest.

The OAG understands that the Firm also provides similar services to other clients and may provide such services to other clients in the future, in a range of matters, potentially including matters adverse to OAG, or which are, or may be the subject of investigation, or other proceedings initiated by or against OAG. OAG agrees that Firm's provision of services to the OAG pursuant to the Engagement will not foreclose Firm from providing such services or advising other clients in matters that are adverse to OAG's interests, but are not related to the subject of the Engagement, and do not require the disclosure of OAG's confidential information obtained during the course of the provision of services. Firm shall notify the OAG in the event of any potential conflict of interest, and the measures implemented to avoid such conflict, where Firm can do so without disclosing confidential information of other parties. Firm shall not assign any personnel to do work pursuant to this Engagement who is providing services to a Firm client in matters adverse to OAG during the term of the Engagement. Firm acknowledges that in all OAG matters, the OAG will exercise its independent judgment and not be influenced in any way by the participation of a particular firm in the matter.

12. Additional Grounds for Termination for Non-Responsibility as a State Contractor.
 - 12.1 The Firm shall at all times during the term remain responsible. The Firm agrees, if requested by the OAG's Counsel 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.
 - 12.2 Upon written notice to the Firm, and a reasonable opportunity to be heard with appropriate OAG officials or staff, the contract may be terminated by the OAG's Counsel or his or her designee at the Firm's expense where the Firm is determined by the OAG's Counsel or his or her designee to be no responsible. In such event, the OAG's Counsel 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.
 - 12.3 The OAG's Counsel or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this contract, at any time, when he or she discovers information that calls into question the responsibility of the Firm.

In the event of such suspension, the Firm will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Firm must comply with the terms of the suspension order. Contract activity may resume at such time as the OAG's Counsel or his or her designee issues a written notice authorizing a resumption of performance under the contract.

13. Opinions prepared by retained attorneys or law firms construing the statutes or constitution of the State of New York do not constitute the opinion of the State unless the prior written approval of the Attorney General is obtained. Requests for such approval shall be submitted to the Solicitor General, Appeals and Opinions Bureau, Department of Law, State Capitol, Albany, New York.
 - 13.1 The Firm will represent the OAG in judicial litigation related to the services to be provided under this agreement only when such services are specifically requested by OAG's Counsel. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of services therefor.
14. In the performance of its obligations hereunder, the Firm shall (1) comply with all applicable laws, rules and regulations pertaining to the rendering of the services; (2) maintain all licenses required under applicable law; and (3) maintain adequate Professional Liability Insurance at its own cost. The Firm shall maintain Workers Compensation and Disability Benefits Coverage for the life of this Agreement for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits Law. The Firm shall furnish the OAG with copies of the appropriate license(s), and evidence of the insurance coverage provided in this paragraph as the OAG may reasonably require.
15. The Firm agrees that Joon H. Kim, a Principal at the Firm, shall have primary supervisory responsibility for the legal services performed hereunder. Such attorney shall be the contact person with the OAG's Counsel and other OAG personnel during the term of this Agreement.
16. The Firm acknowledges that this Agreement is subject to the New York State Freedom of Information Law ("FOIL") as set forth in Article 6 of the New York State Public Officers Law, and that this Agreement may be disclosed, except to the extent that it is exempted from disclosure. The Firm's proprietary information that satisfies the requirements of section 87(2)(d) of the Public Officers Law and attorney-client privileged information, shall not be disclosed under FOIL. Subject to FOIL, the Firm's proprietary information may include all non-public information relating to its legal services. The Firm has labeled those portions of its proposal and the Agreement that it deems proprietary. The Firm's proprietary information, which includes trade secret information owned by the Firm, shall remain unpublished, except where publication or disclosure is required pursuant to FOIL or other applicable law.
17. New York State Finance Law Section (163)(4)(g) imposes certain reporting requirements on contractors doing business with New York State. In furtherance of these reporting requirements, the Firm agrees to complete and submit an initial planned employment data

report (Form A), and complete and submit annually, the annual employment report (Form B).

18. Any notice to either party hereunder must be in writing, signed by the party giving it, and shall be served either personally or by registered mail return receipt requested addressed as follows:

TO THE OAG

Larry Schimmel, Esq.,
General Counsel
NYS Office of the Attorney General
28 Liberty Street
New York, NY 10005
Email: [REDACTED]

TO THE FIRM:

Joon H. Kim
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York NY 10006
jkim@cgsh.com

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

19. The laws of New York will govern this Agreement, without regard for New York's choice of law statute. The parties agree to bring any action to construe, interpret or enforce this Agreement in a Court of competent jurisdiction in the State of New York. The Firm agrees to submit itself to such court's jurisdiction. The parties shall use their best efforts to resolve any disputes arising under this Agreement, including disputes as to the Firm's fees, which shall be amicably resolved by the parties. If the parties are unable to amicably resolve any dispute within thirty (30) days, then either party may seek legal or equitable redress.
20. The parties agree that this Agreement may be amended from time to time for various reasons, including but not limited to changes in the law that subsequently impact the Firm's availability to provide certain services or at agreed upon fees. The Firm will abide by the OAG's amendment process. Any amendment to this Agreement shall be subject to the approval of the Office of the Attorney General and where applicable, the Office of the New York State Comptroller.

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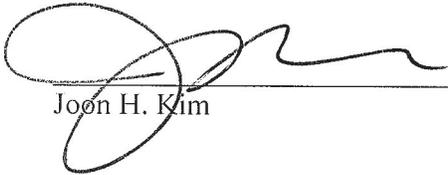
IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates written below.

CONTRACT NUMBER C-105803

FIRM'S CERTIFICATION:

In addition to acceptance of this agreement, I certify that all information provided to the OAG is complete, true and accurate.

Cleary Gottlieb Steen & Hamilton LLP



Joon H. Kim

6/10/2021

Date

AGENCY CERTIFICATION:

I certify that original copies of this signature page will be attached to all other exact copies of this agreement.

STATE OF NEW YORK OFFICE OF THE ATTORNEY GENERAL



6/17/21

Date

Peter T. O'Neill
Chief Financial Officer
NYS Office of the Attorney General

APPROVED AS TO FORM OFFICE
OF THE ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL

By: _____

Dated: _____

APPROVAL OF OFFICE OF THE
STATE COMPTROLLER

By: _____

Dated: _____

| |
|---|
| APPROVED DEPT. OF AUDIT & CONTROL |
| Jul 14 2021 Brian Fuller |
| FOR THE STATE COMPTROLLER |

ACKNOWLEDGMENT BY NOTARY PUBLIC

STATE OF New York }
: SS.:
COUNTY OF New York }

On the 10th day of June in the year 2021, before me personally appeared: Joon H. Kim, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at One Liberty Plaza, Town of New York, County of New York, State of New York; and further that:

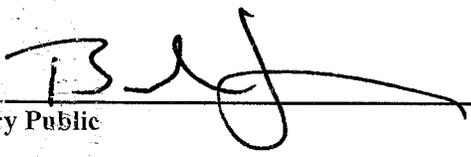
[Check One]

If an individual: he executed the foregoing instrument in his/her name and on his/her own behalf.

If a corporation: he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

If an unincorporated association: he is the _____ of _____, the firm described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the firm for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said firm as the act and deed of said firm.

If a partnership: he is a member of Cleary Gottlieb Steen & Hamilton LLP, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.



Notary Public

Brendan Cyr
Notary Public-State of New York
No. 02CY6235114
Qualified in New York County
My Commission Expires January 31, 2023

APPENDIX A
NEW YORK STATE CONTRACT CLAUSES

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

TABLE OF CONTENTS

| | Page |
|--|------|
| 1. Executory Clause | 3 |
| 2. Non-Assignment Clause | 3 |
| 3. Comptroller's Approval | 3 |
| 4. Workers' Compensation Benefits | 3 |
| 5. Non-Discrimination Requirements | 3 |
| 6. Wage and Hours Provisions | 3-4 |
| 7. Non-Collusive Bidding Certification | 4 |
| 8. International Boycott Prohibition | 4 |
| 9. Set-Off Rights | 4 |
| 10. Records | 4 |
| 11. Identifying Information and Privacy Notification | 4 |
| 12. Equal Employment Opportunities For Minorities and Women | 4-5 |
| 13. Conflicting Terms | 5 |
| 14. Governing Law | 5 |
| 15. Late Payment | 5 |
| 16. No Arbitration | 5 |
| 17. Service of Process | 5 |
| 18. Prohibition on Purchase of Tropical Hardwoods | 5-6 |
| 19. MacBride Fair Employment Principles | 6 |
| 20. Omnibus Procurement Act of 1992 | 6 |
| 21. Reciprocity and Sanctions Provisions | 6 |
| 22. Compliance with Breach Notification and Data Security Laws | 6 |
| 23. Compliance with Consultant Disclosure Law | 6 |
| 24. Procurement Lobbying | 7 |
| 25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors | 7 |
| 26. Iran Divestment Act | 7 |
| 27. Admissibility of Contract | 7 |

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status,

sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the

contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, 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; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the

Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

EXHIBIT A
STATE OF NEW YORK OFFICE OF THE ATTORNEY GENERAL
CONTRACT NUMBER C-105803

SCOPE OF WORK

Pursuant to the Attorney General's March 8, 2021 appointment of members of the FIRM under Executive Law Section 63(8), the scope of services includes investigating and reporting on allegations of, and circumstances surrounding, sexual harassment by Governor Andrew Cuomo. Pursuant to and consistent with Section 63(8) and the relevant referral letter, appointed members of the FIRM will report exclusively and in detail to the OAG on a weekly basis and will, at the conclusion of the investigation, produce a public report with their findings and conclusions.

EXHIBIT B
OUTSIDE COUNSEL BILLING CRITERIA AND POLICY

I. Policy

These criteria have been established to enhance the working relationship between the OAG's attorneys and the Firm. The Firm shall review these criteria and direct any questions to the OAG's Counsel for clarification.

II. Guidelines for Billing and Fees

The OAG shall pay for the Firm's services at rates that are agreed to by both parties. All hourly rates will be binding for the term of the Agreement. All billings must be calculated in units of one-tenth of an hour. Travel time shall not be billed. The Firm agrees that all hourly rates shall include all fixed overhead costs including but not limited to expenses for word processing, secretarial or clerical work or reference librarians. Any billings for actual expenses incurred by the Firm (i.e. disbursements) must be substantiated and documented.

III. Work Assignment

The Firm shall keep the OAG's Counsel informed of the nature, scope and time frame for all assignments undertaken by the Firm prior to the commencement of the assignment. The Firm shall not research or prepare legal analyses or other written work products with a projected value of One Thousand Dollars (\$1,000.00) or greater without the prior written consent of the Counsel. For projects under One Thousand Dollars (1,000.00), verbal consent of the Counsel will suffice, but in no instance shall projects be commenced without the knowledge of Counsel.

IV. Calculations of Costs in Estimating Work and Case Assignments

A. *Staff allocation*

The Firm agrees to assign personnel who are qualified and experienced litigators. Likewise, the OAG shall not be billed at a partner's hourly rate when one of the Firm's associates could have reasonably worked on and/or properly handled an issue. In all cases, work should be assigned to the least costly qualified person in the Firm available to handle the task. The Firm agrees that each of its associates, paralegals, interns or legal assistants assigned to the OAG's work shall make a clear contribution, although nothing in this section or elsewhere should be construed to require creation of written work product where the Firm, in its professional judgment, would not otherwise do so. The OAG and the Firm agree that whenever possible, associates and legal assistants shall be utilized to replace partners' time and reduce total billings. However, both parties also recognize that the utilization of a lawyer with expertise in a particular area of law will eliminate the necessity of extensive research. The OAG and the Firm agree that no additional staff will be added to a work assignment prior to consultation with the OAG's Counsel. The Firm should seek to limit, to the extent possible, the number of internal conferences and meetings between members of the Firm that are billed to the OAG.

B. *Overtime Billing*

The Firm shall not bill for overtime since it is expected that any work assigned will be conducted during normal business hours.

C. *Changes in Staff*

In the event the Firm is forced to make a staff change of anyone assigned to a OAG case or matter, the Firm will not bill the OAG for any time expended by the new staff of the Firm becoming acquainted with such area of law or matter.

D. *Fax Charges and E-mail*

The Firm is directed to use e-mail as the preferred mode of communication. Any attachments to e-mail documents should be formatted in Microsoft Word, Excel or Power Point. The Firm is directed not to duplicate costs by mailing a document that has been emailed unless specifically requested by the OAG's Counsel.

The OAG agrees to pay actual telephone line charges for faxes sent. The OAG will not pay both phone line charges and a flat fee in connection with out-going faxes. The OAG will not pay for maintenance, paper or operator costs, because such items should be included in the Firm's cost of doing business.

E. *Telephone Charges*

The Firm agrees not to bill the OAG for any local telephone calls and further agrees it will bill the OAG for any long-distance calls at the rate the Firm has been billed.

F. *Electronic Research*

The Firm agrees that computer legal research tools such as Lexis-Nexis or Westlaw, shall be used judiciously to minimize costs to the OAG. The Firm acknowledges and agrees that it was selected because of its expertise in the subject area. Paralegal or attorney time spent performing computerized legal research shall be at the same rates as the Firm's hourly charges for professional services.

G. *Next Day Mail Charges*

The OAG agrees to pay for any documented next day mail service, courier or other delivery fees that are incurred by the Firm, but only provided such transmission of documents is necessary.

H. *Document Duplication Fees*

The Firm agrees that it will prudently direct the duplication of documents. The OAG authorizes the Firm to employ less expensive, commercial copy vendors when practicable. The OAG agrees to reimburse special expenditures for such copying at the cost it was invoiced. The Firm is instructed to send only one set of documents to the OAG's Counsel, as that office

will be responsible for making any additional copies.

I. *Travel*

The OAG will authorize any required travel by the Firm. The OAG will reimburse for actual, necessary and reasonable travel expenses that have been incurred. Reasonable travel expenses shall be defined as coach class airfare, reasonable taxi charges and other ground transportation expenses, and hotel accommodations, in accordance with rates set forth for travel reimbursement by the Office of the New York State Comptroller, available at <http://www.osc.state.ny.us/agencies/travel/reimbrate.htm>. The OAG does not agree to accept charges incurred by the Firm for meals, movies, personal telephone charges, entertainment or garment cleaning. Mileage will not be paid in excess of the amount allotted by the Internal Revenue Service for income tax purposes. In those situations where the Firm is also attending meetings or working on a non-OAG related matter, it shall prorate all travel charges and apportion equitably the costs of such travel and other incidental charges among clients.

J. *Professional Services*

The Firm must obtain permission from the OAG prior to retaining any professional services that may be necessary to perform its duties under the terms of this Agreement.

K. *Non Billable Charges*

In addition to billing restrictions above, the Firm agrees not to bill the OAG any overhead costs of doing business, including apportioned rent or utility costs, charges for conference rooms, filing space, the use of library facilities and meals.

The Firm further agrees not to bill the OAG for any of the following:

- (1) any form of labeling;
- (2) organization, filing and warehousing of the OAG's documents internally within the Firm;
- (3) consolidation of documents, i.e., binders; and
- (4) word processing or other mechanical means of document preparation.

V. Monthly Statements

Each matter handled by the Firm will be itemized and explained individually with the fees and disbursements for each type of activity contained in the bill. Each such monthly bill shall include:

- (i) a caption containing the matter name;
- (ii) the name, job title and billing rate of each professional who worked on the matter during the past calendar month, as well as each individual's total hours and total fees;
- (iii) Identification of the professional in the Firm who performed the service, including

but not limited to the date and the amount of time expended, calculated to the nearest tenth of an hour. The OAG will not accept bills that only provide per person daily totals of time. All references in bills to meetings, telephone calls, internal discussions etc. shall specifically identify the subject matter of the meeting, etc;

- (iv) Incidental Charges are to be listed separately from fees and each such charge shall be separately listed, e.g. long-distance telephone charges and document copying charges and described with reasonable specificity. Any time expended by the Firm in preparing the billing, reviewing or discussing billing related issues with the OAG may not be billed to the OAG.

VI. Audit Procedures

The OAG, the Office of the Attorney General, and the Office of the New York State Comptroller retain the right to audit legal bills related to this matter for a period of six years from the date of the last billing. The OAG reserves the right to examine all underlying billing documentation, including but not limited to original receipts and time records.

EXHIBIT C
COST PROPOSAL

HOURLY RATES
(includes all discounts)

| <u>TITLES</u> | <u>RATE</u> |
|--------------------------|-------------|
| Principal/Senior Partner | \$750 |
| Mid-Level Partner | \$575 |
| Junior Partner/Counsel | \$500 |
| Senior Associate | \$450 |
| Junior Associate | \$325 |

EXHIBIT D
ENGAGEMENT LETTER



LETITIA JAMES
ATTORNEY GENERAL

EXECUTIVE DIVISION

BY EMAIL

March 23, 2021

Joon H. Kim
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York NY 10006
jkim@cgsh.com

Dear Mr. Kim:

We are pleased that Cleary Gottlieb Steen & Hamilton LLP (“FIRM”) has agreed to provide investigation and legal services by assisting the Office of the Attorney General (“OAG”) in its review of allegations of, and circumstances surrounding, sexual harassment against Governor Andrew Cuomo (the “Matter”). Your specific expertise and technical knowledge was the basis of your selection for this engagement (“Engagement”).

The purpose of this Engagement letter is to set forth our mutual understanding of the scope and conditions of FIRM’s provision of services. This letter will be incorporated into an agreement and executed by both parties (“Agreement”).

1. Staffing

Pursuant to the Attorney General’s March 8, 2021 appointment of members of the FIRM under Executive Law Section 63(8), and consistent with the Agreement, FIRM is authorized to utilize any of its resources as it deems appropriate to carry out the Matter consistent with the Section 63(8) appointment letters and the scope of services as set forth below. For purposes of this engagement Joon H. Kim is the Principal attorney.

2. Scope of Services

Pursuant to the Attorney General’s March 8, 2021 appointment of members of the FIRM under Executive Law Section 63(8), the scope of services includes investigating and reporting on allegations of, and circumstances surrounding, sexual harassment by Governor Andrew Cuomo. Pursuant to and consistent with Section 63(8) and the relevant referral letter, appointed members of the FIRM will report exclusively and in detail to the OAG on a weekly basis and will, at the conclusion of the investigation, produce a public report with their findings and conclusions.

3. Term

The term of the Engagement shall begin on March 8, 2021 and will continue for six (6) months or upon completion of the retained scope of work, whichever may occur first. The Engagement may be extended upon the mutual written consent of the parties, and (if necessary) with the approval of the New York State Office of the Attorney General and the Office of the New York State Comptroller.

4. Payment

The OAG agrees to pay FIRM at the billable hourly rates set forth below, and to reimburse FIRM for its reasonable expenses, consistent with New York State Finance Law and the Agreement. Any amendment to such terms must be made in writing and subject to State approval. Payment will be made consistent with State Finance Law and Executive Law Section 63(8).

Principal/Senior Partner - \$750

Mid-Level Partner - \$575

Junior Partner/Counsel - \$500

Senior Associate - \$450

Junior Associate - \$325

5. Communication and Reporting

FIRM and its employees shall communicate and provide services solely at the direction of First Deputy Attorney General Jennifer Levy, or their designee, on behalf of the Attorney General of the State of New York. All communications, information or materials provided to FIRM or identified as part of the Matter shall be treated as confidential, and not disclosed to any other party. FIRM or its representatives shall not discuss this Engagement or any related matters or opinions or assessments with the public or the media.

6. Conflicts

FIRM represents that it has undertaken a review of its current clients and former engagements, and has not identified any conflict of interest that would prohibit it or any of its attorneys or professional staff assigned to this matter from accepting this undertaking, with the exception of pending matters in which its client is adverse to the OAG, and as to which the OAG has provided a waiver. During the course of performing the services under this Engagement, it shall avoid any actual and the appearance of conflicts of interest.

The OAG understands that the FIRM also provides similar services to other clients and may provide such services to other clients in the future, in a range of matters, potentially including matters adverse to OAG, or which are, or may be the subject of investigation, or other proceedings initiated by or against OAG. OAG agrees that FIRM's provision of services to the OAG pursuant to the Engagement will not foreclose FIRM from providing such services or advising other clients in matters that are adverse to OAG's interests, but are not related to the subject of the Engagement, and do not require the disclosure of OAG's confidential information obtained during the course of the provision of services. FIRM shall notify the OAG in the event of any potential conflict of interest, and the measures implemented to avoid such

conflict, where FIRM can do so without disclosing confidential information of other parties. FIRM shall not assign any personnel to do work pursuant to this Engagement who is providing services to a FIRM client in matters adverse to OAG during the term of the Engagement. FIRM acknowledges that in all OAG matters, the OAG will exercise its independent judgment and not be influenced in any way by the participation of a particular firm in the matter.

7. Termination and Withdrawal

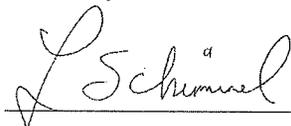
This Engagement may be terminated by the OAG: (1) at any time upon receipt of thirty (30) days prior written notice given by the OAG; (2) in the event that the Principal, separates from the Firm; (3) for the unavailability of funds; (4) for cause due to the Firm; or (5) in the event that the Firm's State Finance Law sections 139-j and 139-k certifications are found to be intentionally false or intentionally incomplete or if applicable, the Firm's certifications on the ST220CA form are found to be false or incomplete.

8. Retention of Records

At the earlier of two years from the conclusion of this Engagement or the departure of the Principal attorney, Jennifer Kennedy Park, and Abena Mainoo, FIRM shall return to the OAG, or destroy with the approval of the OAG, all copies of records, documents or other materials, in whatever form, received or created in connection with this Engagement. After this point in time, no materials received or produced from this Engagement related to the Matter will be retained by the FIRM. FIRM agrees to maintain confidentiality of any and all records it does retain for the time contemplated by this engagement, if any. This section shall not include documents released to the public by the OAG. The OAG represents to the FIRM that it will maintain all records and materials from this engagement consistent with the New York Rules of Professional Conduct and New York State Record Retention requirements.

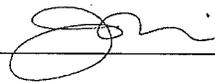
In the event FIRM or any affiliated party, is subjected to legal proceedings to compel disclosure of any confidential information, they will promptly notify the OAG to enable it to interpose any objections. Once again, the Office of the Attorney General is pleased to retain your services.

Sincerely,



Office of the Attorney General
Larry Schimmel, Esq., General Counsel

ACCEPTED AND AGREED TO BY:



Cleary Gottlieb Steen & Hamilton LLP
Joon H. Kim, A Member of the Firm