APPENDIX C-2

Equal Opportunity and Supplier Diversity Requirements for NYS Office of Information Technology Services

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO), NEW YORK STATE EXECUTIVE ORDERS, AND BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES (MWBE), AND NEW YORK STATE SERVICE-DISABLED VETERAN-OWNED BUSINESSES (SDVOB)

SUPPLIER DIVERSITY: EEO and EO WORKFORCE, and MWBE and SDVOB REQUIREMENTS

Under various New York State laws (including NYS Executive Law Article 15-A; Veterans' Services Law Article 3; 5 NYCRR 140-145 and 9 NYCRR Part 252; NYS Executive Order 162, and NYS Executive Order 177), the New York State Office of Information Technology Services (ITS) is required to include Equal Employment Opportunity (EEO), and promote opportunities for maximum feasible participation in the performance of its contracts for NYS-certified minority-and women-owned business enterprises (MWBEs), NYS-certified Service-Disabled Veteran-Owned Businesses (SDVOBs), and the employment of minority group members and women.

- In 2006, New York State commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. Published on April 29, 2010, the study, "*The State of Minority and Women-Owned Business Enterprises: Evidence from New York*" and a follow-up report entitled "*2016 MWBE Disparity Study*" published on June 30, 2017 ("Disparity Studies") found evidence of statistically significant disparities between the participation levels of MWBEs in State procurement and contracting versus the number of MWBEs ready, willing, and able to participate in such procurements. Accordingly, the Disparity Studies made recommendations concerning implementation and operation of the statewide certified minority- and women-owned business enterprises program. These recommendations led to enactment and implementation of New York State Executive Law Article 15-A, which requires, among other things, that ITS establishes, in the performance of NYS contracts: goals for maximum feasible participation of NYS-certified MWBEs; and, equal employment opportunity (EEO) of minority groups members and women.

- Under Chapter 22 of the Laws of 2014, the NYS Service-Disabled Veteran-Owned Business Act was directed towards assisting service-disabled veterans in playing a greater role in the economy of NYS in order to promote and encourage the continuing economic development of service-disabled veteran-owned businesses. In accordance with § 2 of Part PP of Chapter 56 of the Laws of 2022, the SDVOB provisions in Executive Law Article 17B became Veterans' Service Law Article 3, and in accordance with § 113 of Part PP, the act became effective April 1, 2023.

- The January 9, 2017 NYS Executive Order No. 162 was created "to ensure that workers are being provided equal opportunities to work on State contracts and are being paid similarly for performing the same work."

- The June 1, 2018 NYS Executive Order No. 177 was created to expand prohibitions against contracting with entities and ensure the Bidder does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

As such, under NYS law Contractors must continue to utilize small, minority and women owned businesses, provide opportunities for service-disabled veterans, and provide for the employment of minority group members and women in the performance of their contracts with NYS, consistent with current New York State law.

Note: Portions of the following provisions may not apply when the MWBE and SDVOB participation goals in the following section are set at 0%.

I. **MWBE and EEO General Provisions:** ITS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing, or (2) in excess of $100,000 for real property renovations and construction.

Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ITS, to fully comply and cooperate with ITS' implementation of NYS Executive Law Article 15-A, which requirements include providing equal employment opportunities for minority group members and women, and contracting opportunities for certified minority and women-owned business enterprises.

Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by NYS Executive Law Article 15 (the "NYS Human Rights Law") or other applicable federal, state, or local laws.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to the terms of this section of the Contract, or enforcement proceedings as allowed by the Contract.

A. **MWBE Participation Goals:** For purposes of this Contract, ITS has established an overall goal of 30% for Minority and Women-Owned Business Enterprises participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).

   For purposes of providing meaningful participation by MWBEs on the Contract by achieving the MWBE participation goals established herein, Contractor should reference the directory of NYS Certified MWBEs found at: https://ny.newnycontracts.com/. Additionally, Contractor is encouraged to consult ITS using the contact information listed below, or the Division of Minority and Women's Business Development of the NYS Department of Economic Development ("DMWBD"), to discuss additional methods of maximizing participation by MWBEs on the Contract.

   Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8 Contractor must document its "good faith efforts" to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to ITS for liquidated or other appropriate damages, as set forth herein.

   MWBE Documentation: Specific MWBE documentation to be submitted to NYS at both the beginning of a contract with ITS, and updates made during the contract's term, are described with more specificity in the section below captioned, "*Required Supplier Diversity Forms and Processes for Submitting Them*."

B. **EEO - Equal Employment Opportunity Requirements:** Contractor shall comply with the provisions of the NYS Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. As such, Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, citizenship or immigration status, pregnancy or pregnancy-related conditions, gender identity, familial status, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

   Contractor agrees it is bound by certain provisions of NYS Executive Law Article 15-A and the MWBE Regulations promulgated by DMWBD. If any of the terms or provisions in this section conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

   In relation to this Contract, Contractor shall specifically comply with the following EEO provisions of Article 15-A:

1. Contractor and its Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. Contractor and Subcontractors shall submit an EEO policy statement to ITS upon request. The EEO policy statement shall include at minimum language, indicating that the Contractor or Subcontractor:

   a. (a) will not discriminate against any employee or applicant for employment because of: race, creed, color, national origin, sex, age, disability, or marital status; (b) will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination; and (c) shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

   b. shall state in all solicitations or advertisements for employees that, in the performance of the 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.

   c. 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.

3. Contractor will include the above three provisions in every Subcontract under this Contract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

4. If Contractor or Subcontractor does not have an existing EEO policy statement, they may use the EEO and MWBE Policy Statement form or any updated version thereof provided by ITS.

EEO Documentation*:* Specific EEO documentation to be submitted to NYS at both the beginning of a contract with ITS, and updates made during the contract's term, are described with more specificity in the section below captioned, "*Required Supplier Diversity Forms and Processes for Submitting Them*."

C. **NYS Executive Order 162 Requirements:** In compliance with NYS Executive Order 162 dated January 9, 2017 for state contracts with a value in excess of $25,000 where any of the services are performed by individuals who are located in New York State, Contractor agrees to:

1. provide to ITS, and supplement on a quarterly basis, equal employment opportunity information by reporting the job title and salary in gross wages of each employee of the Contractor who is performing work on the Contract, or, if the Contractor cannot identify the individuals working directly on the Contract, of each employee in the Contractor's entire workforce; and

2. extend this quarterly reporting requirement to the Contractor's Subcontractors who work on the Contract with ITS, for the Subcontractor's employees. Salaries must be provided in United States Dollars ($ USD). Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract, or such other actions or enforcement proceedings as allowed by the Contract.

NYS Executive Order 162 Documentation: Specific Executive Order 162 title and salary documentation to be submitted to NYS at both the beginning of a contract with ITS, and updates made during the contract's term, are described with more specificity in the section below captioned, "*Required Supplier Diversity Forms and Processes for Submitting Them*."

D. **NYS Executive Order 177 Requirements:** In compliance with NYS Executive Order 177 dated June 1, 2018 for state contracts, Contractor agrees to provide to IT'S certification of agreement to ensure the Bidder does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

***NYS Executive Order 177 Documentation*:** Specific Executive Order 177 documentation is to be submitted to NYS at the beginning of a contract with ITS. This is described in the section below captioned, "*Required Supplier Diversity Forms and Processes for Submitting Them*."

II. **SDVOBs: Participation Opportunities for NYS Service-Disabled Veteran-Owned Businesses in the Performance of this Contract:** Veterans' Services Law Article 3 provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. ITS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ITS contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractor is strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of this Contract. Such participation may be as Subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on this Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: https://ogs.ny.gov/veterans/. Contractor is encouraged to contact the NYS Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or at veteransdevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on its contracts.

For purposes of this Contract, ITS conducted a comprehensive search and determined whether the Contract might offer sufficient opportunities to set specific goals for participation by SDVOBs as Subcontractors, service providers, and suppliers to Contractor. To the extent this Contract sets specific SDVOB participation goals, then the following provisions apply to this Contract:

A. **SDVOB Participation Goals:** ITS has established an overall goal of 6% for SDVOB participation for this Contract, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, Contractor should reference the directory of New York State Certified SDVOBs found at: https://ogs.ny.gov/veterans. Questions regarding compliance with this Contract's SDVOB participation goals should be directed to the ITS supplier diversity contacts listed at the end of the "*SUPPLIER DIVERSITY: MWBE, EEO, WORKFORCE, and SDVOB REQUIREMENTS*" section of the Contract.

SDVOB Documentation: Specific SDVOB documentation to be submitted to NYS at both the beginning of a contract with ITS, and updates made during the contract's term, are described with more specificity in the section below captioned, "*Required Supplier Diversity Forms and Processes for Submitting Them*."

III. **Required Supplier Diversity Forms and Processes for Submitting Them:** To learn where to locate and access forms more specifically see the section below captioned, *"Obtaining the Required Supplier Diversity Forms."*

A. **Forms Required to be Submitted to ITS *at the Beginning of the Contract*:**

1. **MWBE Forms:**

a. ***MWBE Utilization Form (ITS Form MWBE-100)***: If this Contract contains MWBE goals, then Contractor represents and warrants that Contractor has submitted directly to ITS a complete MWBE Utilization Plan ITS Form MWBE-100 either prior to, or at the time of, the execution of this Contract. A "*complete*" Utilization Plan is one in which each item of requested information on the form such as MWBE contact information inclusive of name, phone number, email address, and mailing address is fully provided by Contractor for the MWBEs listed. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan submitted to NYS for approval .

b. ***MWBE Request for Waiver/Certification of Good Faith Efforts (ITS Form MWBE-104)*:** Alternatively, if the Contractor, after making good faith efforts, is unable to comply with the Contract's MWBE goals, the Contractor may submit to ITS a Request for Waiver ITS Form MWBE-104 documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, ITS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

c. ***Required Letter Notice to Identified MWBEs***: To the extent the Contract has MWBE goals, and the Contractor is submitting to ITS an MWBE-100 Utilization Plan, then upon final award of the Contract or completion of the procurement's restricted period, and prior to the commencement of the Contract, the Contractor must email a letter in the form stated below to each and every MWBE firm that Contractor has identified on its approved MWBE-100 Utilization Plan. The Contractor is required to simultaneously provide a copy of each such e-mailed letter to ITS at supplierdiversity@its.ny.gov. Also, to the extent Contractor's utilization plans change or additional certified MWBE Subcontractors are added, Contractor must send such an e-mail letter, again copying ITS, to each additional MWBE vendor added to the utilization plan for the contract:

Dear [Enter name of NYS certified MWBE Firm]:

Please be advised that you have been listed as an MWBE subcontractor on a utilization plan submitted by our company [enter name of awarded prime Contractor] who has been tentatively awarded the following contract with the NYS Office of Information Technology Services (ITS): [enter name and number of Contract awarded].

Being listed on our utilization plan does not guarantee your engagement on this contract. Such concerns are managed by the selected vendor along with ITS. Please be in contact with [enter name of awarded prime Contractor] to discuss potential next steps.

Should you have any MWBE questions or other questions regarding this contract, please reach out to the NYS Office of Information Technology Services (ITS) and its MWBE liaison using the following contact information:

NYS Office of Information Technology Services
Finance - Vendor Sourcing and Management Organization
Empire State Plaza, PO Box 2062
Albany, New York 12220-0062

Contract questions, in general: *contracts@its.ny.gov*
MWBE questions, specifically: *supplierdiversity@its.ny.gov*

Sincerely,
[enter signature]

2. **EEO Forms:**

***EEO Staffing Plan (ITS Form EEO-100)*:** To ensure compliance with this Section, the Contractor shall submit directly to ITS at or before the beginning of the Contract a completed staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the EEO Staffing Plan ITS Form EEO-100 and submit it to ITS as part of their bid or proposal or within a reasonable time of the execution of this Contract.

3. **NYS Executive Order 162 Forms:**

EO 162 Workforce Utilization Report: To ensure compliance with this Section, the Contractor shall submit directly to ITS at or before the beginning of the Contract a completed NYS Executive Order 162 Workforce Utilization Report to supplement the equal employment opportunity information Contractor has provided to ITS under the Contract by reporting the job title and salary in gross wages of each employee of the Contractor who is performing work on the Contract, or, if the Contractor cannot identify the individuals working directly on the Contract, of each employee in the Contractor's entire workforce.

4. **NYS Executive Order 177 Form:**

Offeror's Certification of Adherence to Executive Order 177 regarding Anti-Discriminatory Policies and Practices: To ensure compliance with this Section, the Contractor shall submit directly to ITS at or before the beginning of the Contract a completed Offeror's Certification of Adherence to Executive Order 177 regarding Anti-Discriminatory Policies and Practices.

5. **SDVOB Forms:**

a. **SDVOB Utilization Plan (ITS Form SDVOB-100):** If this Contract contains SDVOB goals, then Contractor represents and warrants that Contractor has submitted directly to ITS a complete SDVOB Utilization Plan ITS Form SDVOB-100 either prior to, or at the time of, the execution of this Contract. A "*complete*" Utilization Plan is one in which each item of requested information on the form such as SDVOB contact information inclusive of name, phone number, email address, and mailing address is fully provided by Contractor for the SDVOBs listed. Contractor agrees to use such SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB goal set forth. Any modifications or changes to the SDVOB Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan submitted to NYS for approval.

b. **SDVOB Request for Waiver (ITS Form SDVOB-200):** Alternatively, if the Contractor, after making good faith efforts, is unable to comply with the Contract's SDVOB goal, the Contractor may submit to ITS a Request for Waiver ITS Form SDVOB-200 documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, ITS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

B. **Forms Required to be Submitted to NYS *During the Term of the Contract*:**

1. ***Periodic MWBE Compliance Update Reports*:** For submitting MWBE forms, New York State has created an online system, the "New York State Contract System"("NYSCS"). The primary Internet link may be found here: https://ny.newnycontracts.com/. Rather than submitting MWBE update forms directly to ITS, once a contract has been awarded and during the term of the Contract, Contractor is responsible for updating and providing notice to ITS using the online NYSCS, on a cadence as required by that online system, periodic MWBE Compliance Reports using the NYSCS's equivalent of ITS Form MWBE-102, in order to document the progress made during the term of the Contract towards achievement of the MWBE goals of the Contract.

   For more information, Contractor may go to: https://ny.newnycontracts.com.

2. ***Quarterly EO 162 and EEO Workforce Utilization Report*:** DMWBD has combined into a *single* form the two forms previously required for reporting Contractor compliance with NYS Executive Order 162, and Workforce Employment Utilization. Once a contract has been awarded, during the term of Contract, Contractor is responsible for submitting this combined form, the EO 162 and EEO Workforce Utilization Report, in order to show:

   a. any changes to the EEO Staffing Plan (ITS Form EEO-100) that the Contractor previously submitted to ITS at the beginning of the Contract, now reporting the *actual* workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories.

      Separate forms shall be completed by Contractor and any Subcontractor performing work on the Contract. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or Subcontractor's total workforce. When the workforce to be utilized on the Contract *cannot* be separated out from Contractor's and/or Subcontractor's total workforce, Contractor shall still submit this form but indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

   b. any changes to the NYS Executive Order 162 report that Contractor had submitted at the beginning of the Contract, now reporting the *actual* job title and salary in gross wages of each employee of the Contractor who is performing work on the Contract, or, if the Contractor cannot identify the individuals working directly on the Contract, of each employee in the Contractor's entire workforce.

3. ***Periodic SDVOB Compliance Update Reports*:** Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its initial SDVOB Utilization Plan, during the performance of the Contract. In accordance with 9 NYCRR § 252.2(q), Contractor is required to submit SDVOB Contractor Compliance Update Reports during the term of the Contract on a periodic basis as determined by the Contract, reflecting and documenting progress made by Contractor towards achieving the Contract SDVOB participation goals. ITS currently requires this reporting be submitted on a quarterly basis, using ITS' periodic SDVOB Compliance Update Report.

IV. **Compliance with this Contract's Supplier Diversity Provisions:**

A. **Supplier Diversity Compliance:**

1. **Notice of Deficiency.** If ITS, upon review of the initial MWBE Utilization Plan and updated Periodic MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the participation goals and no waiver has been issued in regards to such non-compliance, ITS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE participation goals.

2. **Disqualification as Non-Responsive.** ITS may disqualify a Bidder or Contractor as being non-responsive if they fail to meet the requirements of the Contract under the following circumstances:

   a. **MWBE**: If such Bidder or Contractor fails to submit to ITS a required initial MWBE Utilization Plan or, through the NYSCS, required updated Periodic MWBE Contractor Compliance Reports;
   b. **EEO**: If such Bidder or Contractor fails to submit to ITS a required initial EEO policy statement, **EEO** Workforce Staffing Plan, or EO 177 Certification;
   c. **EO-162**: If such Bidder or Contractor fails to submit to ITS a required initial Executive Order 162 Workforce Utilization Report or, required updated Quarterly EO 162 and EEO Workforce Utilization Reports;
   d. **SDVOB**: If such Bidder or Contractor fails to submit to ITS a required initial SDVOB Utilization Plan or, required updated Periodic SDVOB Contractor Compliance Update Reports;
   e. If such Bidder or Contractor fails to submit a written remedy to any ITS notice of deficiency;
   f. If, when such is required, such Bidder or Contractor fails to submit to ITS a request for waiver; or
   g. If ITS determines that such Bidder or Contractor has failed to document good faith efforts.

B. **Breach of Contract, and Damages:**

1. **MWBE Breach of Contract**: Contractor further agrees that a failure to submit and/or use such initial MWBE Utilization Plan, or Plan as updated by Contractor through the NYSCS, shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ITS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

2. **MWBE Liquidated Damages:** In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and ITS may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between:

   a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

   b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

   In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by ITS, Contractor shall pay such liquidated damages to ITS within sixty (60) days after they are assessed by ITS unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the NYS Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of ITS.

3. **SDVOB Breach of Contract:** Contractor agrees that its failure to use SDVOBs as agreed in the initial Utilization Plan that Contractor submitted to ITS, or Plan as updated by Contractor through the NYSCS, or any of the following deficiencies by Contractor, shall constitute a material breach of the terms of the Contract and may be grounds for cancellation of the Contract by ITS:

   a. Contractor's failure to submit, or to timely submit, to ITS an SDVOB Utilization Plan;

b. Contractor's failure to submit, or to timely submit, through the NYSCS a periodic SDVOB Contractor Compliance Update Report;

c. Contractor's failure to submit, or to timely submit, to ITS a written remedy to an ITS notice of SDVOB utilization deficiency;

d. Contractor's failure to submit, or to timely submit, to ITS, a Request for Waiver of SDVOB participation goals; or

e. Contractor's failure to document, or to timely document, to ITS Contractor's good faith efforts toward utilizing SDVOBs on the Contract.

4. **SDVOB Damages**: Upon the occurrence of such a material SDVOB breach by Contractor, ITS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility, and, if Contractor is found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, then in accordance with 9 NYCRR § 252.2(s), Contractor shall pay damages to ITS calculated by ITS based on ITS' actual cost incurred relative to ITS' expenses for personnel, supplies, and overhead related to establish, monitoring, and reviewing certified SDVOB enterprise programmatic goals.

V. **Obtaining the Required Supplier Diversity Forms:**

A. **ITS MWBE, EEO, EO-162, and EO-177 Forms:** The website where Contractor can obtain required MWBE, EEO, and EO-162 forms is:
https://its.ny.gov/procurement#eeo-and-mwbe-supplier-diversity-program

1. For the periodic MWBE utilization reporting required during the Contract term, such reporting may be accessed through the NYSCS (https://ny.newnycontracts.com/) .

B. **ITS SDVOB Forms:** The website where Contractor can obtain required initial SDVOB forms is:
https://its.ny.gov/procurement#sdvob-supplier-diversity-program

1. For the periodic SDVOB reports required during the Contract term, such forms may be accessed through https://its.ny.gov/procurement#sdvob-supplier-diversity-program .

Contractor is responsible for obtaining all required forms referenced herein, and, to the extent that Contractor is unable to locate such forms for reasons including that ITS might have updated its website locations, for reaching out to an ITS contact using the contact information below to obtain copies of the forms:

NYS Office of Information Technology Services
Finance - Vendor Sourcing and Management Organization
Empire State Plaza, PO Box 2062
Albany, New York 12220-0062
Email Address: supplierdiversity@its.ny.gov