MUTUAL NONDISCLOSURE AGREEMENT BETWEEN
NEW YORK STATE INSURANCE FUND and _____
for EXCHANGE OF CONFIDENTIAL INFORMATION

THIS NONDISCLOSURE AGREEMENT (the "Agreement"), is made by and between _____, having a principal place of business at _____ ("CONTRACTOR") and the NEW YORK STATE INSURANCE FUND, an agency of the State of New York, with offices at 199 Church St, New York, New York 10007 ("AGENCY").

1. DEFINITIONS

"*AGENCY Data"* means all non-public data and information whether in written, verbal or electronic form, submitted or given access to CONTRACTOR by AGENCY, including without limitation information relating to AGENCY or AGENCY's customers', policy holders, claimants, underwriting rules or information, process and methods, customer data, Confidential Personal Information (CPI), financial data, suppliers, employees and employee information, technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter and other proprietary information.

"*Privacy Laws*" means all Federal and State laws and regulations regarding the privacy of information pertaining to individuals.

2. AGENCY CONFIDENTIAL INFORMATION

CONTRACTOR acknowledges and agrees that it may receive AGENCY Confidential Information (as defined below) during the Real Property Purchase under RFP 2020-01-RE (collectively, the "***Purpose***").

(a) For purposes of this Agreement, the term *"Confidential Information,*" or "*Agency Confidential Information"* shall include all non-public information of AGENCY which CONTRACTOR has had access to (including prior to effective date), will have access to, or will create or prepare, whether in verbal, written, visual, graphic or machine-readable form, that includes, incorporates, makes reference to or utilizes in any way, without limitation, the AGENCY Data and all other proprietary information related to AGENCY's business. AGENCY Confidential Information shall also include all information of a third party to which AGENCY has access and to which CONTRACTOR has had (including prior to effective date), or will have access. AGENCY Confidential Information shall not include aggregated statistical data derived from AGENCY Data, provided such (i) aggregated statistical data cannot be identified with either AGENCY or any AGENCY employee, customer, claimant or policy holder and (ii) AGENCY Data does not make up over thirty-three (33%) of such aggregated statistical data. Disclosure of the AGENCY Confidential Information shall not be deemed to grant any license or other right to use such AGENCY Confidential Information, except as set out in this Agreement or as set out in a separate written agreement executed by both parties.

(b) Notwithstanding anything to the contrary in this Agreement, including without limitation the exceptions in Section 3 hereof, AGENCY Confidential Information includes "*Confidential Personal Information ('CPI')*". CPI shall include, but not be limited to: (i) the meaning ascribed to "*Nonpublic Personal Information ('NPI')*" in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("*GLBA*"), as it relates to AGENCY's

consumers, (ii) "*Protected Health Information* ('*PHI*')" as such term is defined in the Health Insurance Portability and Accountability Act of 1996, or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("*HIPAA*") and (iii) any personally identifiable information protected under any other applicable state or federal statute, rule or regulation. The provisions of Section 3 shall not be applicable to CPI, which in all cases will be considered Confidential Information

(c) CONTRACTOR shall, and shall cause its and its affiliates' and subsidiaries' employees, agents, advisors, subcontractors, and all Receiving Party Personnel (collectively, "*Contractors*") to keep CPI confidential and use and disclose CPI only as necessary to carry out the Purpose, GLBA, HIPAA and any other applicable law, rule or regulation of any jurisdiction relating to disclosure or use of personal information. CONTRACTOR shall, and shall cause its Contractors to, implement and maintain an appropriate security program for CPI to (1) ensure the security and confidentiality of CPI, (2) protect against any threats or hazards to the security or integrity of CPI, and (3) prevent unauthorized access to or use of CPI. CONTRACTOR shall cause each of their Contractors having access to AGENCY Confidential Information or CPI to execute a written non-disclosure agreement covering their access, such agreement to contain restrictions in substantial conformity to the provisions of this Agreement. CONTRACTOR shall also cause each of its employees to execute appropriate non-disclosure agreements prohibiting the disclosure of CPI and AGENCY Confidential Information to other affiliates of CONTRACTOR. CONTRACTOR shall cause all such non-disclosure agreements with employees and Contractors to be maintained during the term of this Agreement. CONTRACTOR shall take appropriate measures to assure that AGENCY's Confidential Information is NOT transmitted outside of the United States (provided such prohibition against transmission shall not apply to satellite transmission or other similar digital communication methods used by CONTRACTOR or its Contractors in the ordinary course of business and in conformance with this Agreement).

(d) Without limitation of CONTRACTOR's obligation to comply with the requirements of all applicable Privacy Laws, CONTRACTOR shall immediately notify AGENCY: (A) of any disclosure or use of any CPI by CONTRACTOR or its Contractors in breach of this Agreement and (B) of any disclosure of any CPI to CONTRACTOR or its Contractors where the purpose of such disclosure is not known to CONTRACTOR. AGENCY reserves the right to review CONTRACTOR's and their Contractors' (as applicable) policies and procedures used to maintain the security and confidentiality of CPI. At AGENCY's direction and in AGENCY's sole discretion at any time, CONTRACTOR shall immediately return to AGENCY or destroy and certify such destruction of any or all CPI (including such CPI as may have been rightfully distributed to CONTRACTOR's Contractors or any other third parties). Upon termination of this Agreement, CONTRACTOR shall immediately return to AGENCY any and all CPI which it has received under this Agreement and shall destroy all records of such CPI (including such CPI as may have been rightfully distributed to CONTRACTOR's Contractors and any other third parties). If the GLBA or any other applicable state or federal law or regulation, now or hereafter in effect, imposes a higher standard of confidentiality or security with respect to CPI, such standard shall prevail over the provisions of this Agreement. This provision shall independently survive any expiration, termination, if any, of this Agreement and any agreement with AGENCY concerning CPI.

3. EXCEPTIONS

Confidential Information shall not include information that: (a) is in the public domain at the time of its use or disclosure through no fault of the CONTRACTOR, or its Contractors; (b) was lawfully in the possession of or demonstrably known by the Contractor prior to its receipt from the Agency; (c) is independently developed by Contractor without use of or

reference to the Agency's Confidential Information; or (d) becomes known by the Contractor from a third party and, to Contractor's knowledge, is not subject to an obligation of confidentiality to the Agency.

4. NON-DISCLOSURE; NON-USE OF CONFIDENTIAL INFORMATION

(a) The Contractor will maintain the confidentiality of the Agency's Confidential Information using procedures no less rigorous than those used to protect and preserve the confidentiality of its own similar proprietary information. In no event shall the Contractor use less than a reasonable degree of care to protect and preserve the Agency's Confidential Information, including its obligation to not, without the Agency's prior written permission: (i) transfer or disclose any of the Agency's Confidential Information to any third party; (ii) use any of the Agency's Confidential Information for any purpose other than for the Purpose; or (iii) take any other action with respect to the Agency's Confidential Information inconsistent with the confidential and proprietary nature of such information. Notwithstanding clause (i) of this Section 4(a), the Contractor may disclose the Agency's Confidential Information to the officers, directors, employees, consultants, attorneys, accountants, agents or other representatives of the Contractor ("Contractor Personnel") who have a need to know such Confidential Information solely in connection with the Purpose. The Contractor shall: (1) cause the Contractor Personnel to comply with this Agreement; and (2) assume full responsibility for any breach of this Agreement caused by any of the Contractor Personnel.

(b) If the Contractor is requested or required to disclose any of the Agency's Confidential Information pursuant to a subpoena, court order, statute, law, rule, regulation or other similar requirement (a "*Legal Requirement*"), the Contractor shall, to the extent permitted by law, provide prompt notice of such Legal Requirement to the Agency so the Agency may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If the Agency is not successful in obtaining a protective order or other appropriate remedy and the Contractor is, in the opinion of its counsel, compelled to disclose such Confidential Information under pain of liability for contempt of court or other censure or liability, or if the Agency waives compliance with the provisions of this Agreement in writing, the Contractor may disclose, without liability hereunder, such Confidential Information in accordance with, but solely to the extent necessary, in the opinion of its counsel, to comply with, the Legal Requirement. Information that would otherwise be considered AGENCY Confidential Information within the meaning of this Agreement, shall nevertheless be considered AGENCY Confidential Information and shall not be deemed otherwise because such information may be available to third parties from AGENCY pursuant to New York State Freedom of Information Law (FOIL). In the event that an independent third-party has or shall actually obtain from AGENCY, during or prior to the pendency of this Agreement, information pursuant to FOIL that would otherwise be considered AGENCY Confidential Information, and has publicly disclosed such information, then such information shall no longer be considered Confidential Information but shall instead be considered public information from the time of such disclosure.

(c) Each party agrees and shall assure that each and every Contractor understands and agrees that Confidential Information is valuable to the Agency, is deemed to be a trade secret or other proprietary right of the Agency, notwithstanding any public disclosure thereof by any source, and will be protected by civil and criminal law, and, where appropriate, by the law of copyright.

(d) The parties' confidentiality obligations under this Agreement shall be perpetual except as expressly superseded by a definitive written agreement executed by the parties.

(e) AGENCY and CONTRACTOR acknowledge that CONTRACTOR is in the business of providing services to, and receiving information from other entities (collectively "CONTRACTOR customers"). CONTRACTOR shall not disclose any AGENCY Confidential Information to any CONTRACTOR Customers.

(f) In connection with CONTRACTOR's and its Contractors' obligations under this Agreement, CONTRACTOR agrees and shall require each Contractor to use the standard of care that is consistent with the highest industry standards in continuously controlling the use and disclosure of AGENCY Confidential Information in a manner that fully protects AGENCY's rights therein.

5. RIGHT TO AUDIT

(a) CONTRACTOR shall maintain commercially reasonable Disaster Recovery and Business Continuity Plans. If CONTRACTOR utilizes a Statement on Audit Standards No. 70 (SAS 70), or a Statement on Standards for Attestation Engagements (SSAE) No. 16, as developed by the American Institute of Certified Public Accountants (AICPA), within the past twenty-four months prior to the Agreement, CONTRACTOR shall provide NYSIF with a copy of CONTRACTOR's Service Auditor's Report(s) for either Type I or Type II (Reports), or Service Organization Control (SOC) Report types 1, 2, or 3, on an annual basis. Such Report(s) shall be used for information purposes only. NYSIF reserves the right to request a copy of the Report(s) during the Agreement duration (including option periods). Production of CONTRACTOR SAS 70 Report(s), or SOC Reports shall not take the place of NYSIF's right under the Agreement to independently audit CONTRACTOR.

(b) CONTRACTOR shall maintain accurate records and accounts of services performed and money expended under this Agreement and shall furnish or make available such supplemental accounts, records or other information as are required in the event of a security breach and/or to substantiate any expenditure or report to AGENCY, or as may be necessary for auditing purposes or to verify that expenditures were made and/or proper non-disclosure procedures were implemented as instructed by this Agreement. Such records, accounts and all supportive documentation shall be kept for at least six (6) years subsequent to the termination date of this Agreement.

6. INFORMATION SECURITY BREACH

In the event of a Breach of Security as defined in NY CLS Gen Bus §899-aa and NY CLS State Technology Law §208, or otherwise, involving AGENCY supplied Personal Information or Private Information from systems owned, operated, sub-contracted or otherwise routed through Contractors systems or networks, CONTRACTOR shall notify AGENCY immediately, without unreasonable delay. "Breach of Security" shall mean the unauthorized acquisition or acquisition without valid authorization of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a business. "Personal Information" shall mean any information concerning a person which, because of name, number, mark or other identifier, can be used to identify such person. "Private Information" shall mean personal information in combination with any one or more of the following data elements, when either the personal information or the data information or the data element is not encrypted or encrypted with an encryption key that has also been acquired: (i) social security number; (ii) driver's license number or non-driver identification cards number; or (iii) account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual's financial account. CONTRACTOR additionally undertakes to, solely at its own cost and expense, provide any requisite notices that either CONTRACTOR or AGENCY would have to provide pursuant to NY CLS Gen Bus §899-aa and NY CLS State Technology Law §208, or any other applicable statute, both on behalf of

CONTRACTOR and on behalf of AGENCY. CONTRACTOR's notification shall include but not be limited to a description of the categories of information that were, or are reasonably believed, to have been acquired by a person without valid authorization, including specification of which of the elements of personal information and private information were, or are reasonably believed to have been, so acquired, or as otherwise provided for by applicable law.

7. RETURN OF CONFIDENTIAL INFORMATION

Notwithstanding Section 2(d) above, following a request of the Agency or upon the termination of this Agreement, the Contractor shall promptly, but in no event more than five (5) business days following such request or the termination of this Agreement, return to the Agency all or any portion of the Agency's Confidential Information or, at the Agency's election, destroy all or any part of the Agency's Confidential Information, and upon request by the Agency, provide certification thereof; provided that in lieu of returning Confidential Information that has been included in the Contractor's notes, analyses, and studies, the Contractor may destroy such Confidential Information and provide certification thereof.

8. THE AGENCY POLICIES

CONTRACTOR shall use its best efforts to comply with all of AGENCY's rules, regulations, policies and procedures that might affect CONTRACTOR's delivery of services or products in effect (the "*Policies & Procedures*"), including but not limited to AGENCY's security procedures, procurement policies and privacy policies, provided that such Policies & Procedures are generally applicable to all similarly situated vendors to AGENCY. CONTRACTOR will advise all of CONTRACTOR'S Contractors involved in the performance of services or the delivery of products of their obligation to comply with the Policies & Procedures.

9. CONTRACTOR TRADE SECRETS

The AGENCY acknowledges that the business methods and investigative techniques and pricing structure of CONTRACTOR, other than payment amounts by NYSIF, are confidential proprietary business assets of the CONTRACTOR and AGENCY agrees to use reasonable means to protect the same to the extent practicable and permitted by law. In the event such information is demanded by subpoena, request pursuant to the New York Freedom of Information law or other legal process, the AGENCY will give CONTRACTOR notice within three (3) business days for the purpose of affording it the opportunity to interpose objections to its disclosure. AGENCY acknowledges that CONTRACTOR considers the above described information to be trade secrets within the meaning of NY Public Officers Law §87(2)(d). AGENCY will also give notice to CONTRACTOR in the event of unintentional disclosure within three (3) business days upon discovery. In the event of termination of the relationship between CONTRACTOR and AGENCY for any reason, AGENCY agrees not to disclose any of the aforementioned information to any successor contractor performing the same or similar services.

10. TERM

This Agreement shall continue in effect until terminated by written notice to the other party. The confidentiality obligations of the parties shall survive termination of this Agreement in accordance with Section 4(d).

11. NOTICE

Any notice, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed delivered to a party (i) when delivered by hand or courier, or (ii) six (6) days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the address of such party set

forth below (or at such other address as the party may from time to specify by notice delivered in the foregoing manner):

AGENCY: New York State Insurance Fund
199 Church Street
New York, New York 10007

CONTRACTOR:

12. NO ASSIGNMENT

This Agreement and the parties' respective rights, duties and obligations under this Agreement are not transferable or assignable by either party. Any attempt to transfer or assign this Agreement or any of its rights, duties or obligations under this Agreement is void. For purposes of this section 12, a transfer of more than fifty percent (50%) ownership interest in CONTRACTOR or a consolidation or merger of CONTRACTOR into another entity, including an affiliate of CONTRACTOR, shall be considered an assignment of this Agreement and shall be prohibited unless (i) consented to in writing by AGENCY and (ii) the transferee or resultant surviving entity explicitly agrees to the terms of this Agreement.

13. MODIFICATIONS

This Agreement can only be modified by a written agreement duly signed by hand by the persons authorized to sign agreements on behalf of CONTRACTOR and AGENCY, and variance from the term or conditions of this Agreement will be of no effect. Without limiting the foregoing, terms and conditions which are displayed or conveyed electronically or are associated with, or are responded to by the operation of a mouse or other pointing device, typing on a keyboard, "virtual" actions, an automated computer program, the removal of shrink-wrap, the opening of a package, the loading or use of software or other goods or services, or any other action other than a handwritten signature as set forth above, will not be effective and will not amend or modify this Agreement.

14. SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or be impaired thereby.

15. GOVERNING LAW; VENUE

All questions concerning the validity, interpretation and performance of this Agreement shall be governed by and decided in accordance with the Laws of the State of New York, without regard to any conflicts of laws and principles thereof.

16. COMPLETE AGREEMENT

This Agreement is the complete and exclusive statement of the agreement between the parties as to the subject matter hereof and supersedes all communications between the parties related to the subject matter of this Agreement. Each party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement.

17. NO WAIVER

A waiver of a breach or default under this Agreement shall not be a waiver of any other or subsequent breach or default. The failure or delay in enforcing compliance with any term or

condition of this Agreement shall not constitute a waiver of such term or condition unless such term or condition is expressly waived in writing.

18. INJUNCTIVE RELIEF

Each party acknowledges that a breach of its obligations under this Agreement may, as determined by a court of competent jurisdiction, result in irreparable and continuing damage to the other party for which monetary damages will not be sufficient. Each party further agrees that in the event of a breach or threatened breach by the Contractor of any of the provisions of this Agreement, the Agency shall be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive or other equitable relief, and such further relief as may be proper from a court of competent jurisdiction.

19. CONSTRUCTION

The Parties are sophisticated and have been represented by counsel during the negotiation of this Agreement. As a result, the Parties believe the presumption of any laws or rules relating to the interpretation of contracts against the drafter thereof should not apply, and hereby waive any such presumption.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Both Parties agree that signature pages may be detached from separate counterparts and attached to a separate counterpart so that all signature pages are physically attached to the same document. Transmission by facsimile of an executed counterpart to this Agreement will be deemed due and sufficient delivery of such counterpart, and a photocopy of an executed counterpart sent by facsimile transmission may be treated by the parties as a duplicate original.

21. STANDARD CLAUSES FOR AGENCY CONTRACTS

The parties agree that the Standard Clauses attached as Exhibit A to this Agreement shall be incorporated by reference into this Agreement and that in the event of a conflict between any term or condition in the text of this Agreement and Exhibit A, that the terms of Exhibit A shall govern and control.

22. BINDING AGREEMENT

This Agreement shall be binding upon the parties hereto and inure to the benefit of the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be effective as of the Effective Date below.

NEW YORK STATE INSURANCE FUND		_____	
By	_____	By	_____
Name	_____	Name	_____
Title	_____	Title	_____
Date	_____	Date	_____

ACKNOWLEDGEMENT BY CORPORATION

STATE OF _____)
) ss.:
COUNTY OF_____)

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself depose and say that he is a member of the firm of _____, and that he executed the foregoing instrument in the firm name of _____, and that he had authority to sign same, and he did duly acknowledge to me that he executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

_____
Notary Public