

CONTRACT NO. C000236

**THE NEW YORK STATE EXECUTIVE CHAMBER
AND
CYBERSEARCH CORP
FOR E-DISCOVERY SUPPORT SERVICES
FOR THE PERIOD
JANUARY 31, 2014 THROUGH JANUARY 30, 2015**

THIS IS AN AGREEMENT ("AGREEMENT") dated as of January 31, 2014 by and among the NEW YORK STATE EXECUTIVE CHAMBER (hereinafter referred to as "CHAMBER") on behalf of the COMMISSION (as defined below), and CYBERSEARCH CORP (hereinafter referred to as "CYBERSEARCH" or "CONTRACTOR"), with offices located at 118 East 28th Street, Suite 206, New York, NY 10016.

WITNESSETH

WHEREAS, on July 2, 2013, Governor Andrew M. Cuomo issued Executive Order 106 forming the Commission to Investigate Public Corruption ("COMMISSION") under the Moreland Act and Executive Law Section 63(8) to probe systemic public corruption and the appearance of such corruption in state government, political campaigns and elections in New York State ("STATE"); and

WHEREAS, in order for the COMMISSION to effectively and efficiently receive, process, and review the immense amount of data it will obtain in support of its mission, it must have on-site e-discovery support services; and

WHEREAS, the CHAMBER conducted a discretionary procurement pursuant to State Finance Law Section 163 and determined that the CONTRACTOR is the best option to provide said services; and

WHEREAS, the CONTRACTOR is willing to serve as a consultant to the COMMISSION, as outlined herein; and

NOW, THEREFORE, in consideration of the terms and conditions of this AGREEMENT, it is hereby mutually agreed by and between the CHAMBER and the CONTRACTOR (each individually a "Party" and collectively "Parties"), as follows:

I. SERVICES

Services to be rendered by CONTRACTOR under this AGREEMENT shall be comprised of the activities and tasks set forth in more detail in Paragraph A of this Section (the "Services").

A. The CONTRACTOR will provide a full-time, on-site professional who is capable of providing e-discovery support services including, but not limited to, the following:

1. Uploading and exporting data into Concordance
2. Utilizing processing software (LAW, iPro, etc.) to convert non-Concordance files
3. Performing word, date, custodian, and other targeted searches across the data
4. Batching documents to document reviewers
5. Communicating with outside parties with respect to the technical aspects of producing documents in a suitable manner
6. Developing a document management system and chain-of-custody protocols
7. Training COMMISSION staff on Concordance
8. Providing technical support and troubleshooting software as necessary

B. The CONTRACTOR agrees to perform and furnish the services required in connection herewith in accordance with all conditions, covenants and representations contained in this AGREEMENT.

II. TERM

The CONTRACTOR agrees to perform the aforesaid services for the period beginning January 31, 2014 and ending January 30, 2015.

III. COMPENSATION

- A. The CONTRACTOR shall be compensated for services provided by Ms. Meshawn DeCoteau at the rate of \$65.00 per hour. In the event Ms. Meshawn DeCoteau provides services exceeding a total of 40 hours within one working week (defined herein as beginning 12:00 AM on Monday and ending at 11:59 PM on the following Sunday), the CHAMBER shall compensate the CONTRACTOR at the rate of \$97.50 per hour for only those hours exceeding a total of 40 within one working week.
- B. The above rates shall apply to hourly compensation paid under this AGREEMENT. The hourly rates are inclusive of personnel, travel, computer charges, postage and all other expenses related to provision of the services.
- C. The value of this AGREEMENT shall not exceed \$150,000 for the contract term.
- D. CONTRACTOR will only be compensated for actual hours worked and for services that are performed in connection with the services described in Section I.

- E. Billings for services rendered shall be submitted to the CHAMBER after the first day of the month following the month in which the service has been provided to the STATE.
- F. The CONTRACTOR acknowledges that it will not receive payment on any invoices submitted under this AGREEMENT unless or until it complies with the State Comptroller's electronic payment procedures.
- G. Fees shall become payable by the STATE upon receipt of an approvable invoice in accordance with this section. Properly invoiced fees not paid within 30 days of receipt of the invoice will be paid with interest in accordance with the New York State Prompt Payment Law. Any and all such invoices shall contain a detailed itemization of requested compensation which shall at the minimum include:
 - 1. The number assigned to this AGREEMENT (C000236), the CONTRACTOR's Taxpayer Identification Number and New York State Vendor Identification Number;
 - 2. Name(s), and title(s) as identified in this section, of the CONTRACTOR staff providing services;
 - 3. Name(s) of CHAMBER employees, or their designee(s), requesting the services and directly involved;
 - 4. Specific identification of the services provided;
 - 5. Amounts for rates, hours and total compensation; and
 - 6. Dates upon which the services were requested and performed.

All invoices should be submitted electronically to: contracts@budget.ny.gov.

- H. The CONTRACTOR shall not be reimbursed for the preparation of invoices or billing statements or for the correction of any error in previously submitted invoices or billing statements.

IV. RESERVATIONS

The CHAMBER reserves the right to employ other consultants and contractors in connection with its responsibilities and functions. In that event, the CONTRACTOR will, as directed by the CHAMBER, cooperate and work in harmony with such consultants and contractors.

V. RELATIONSHIP OF PARTIES

The relationship of the CONTRACTOR to the CHAMBER shall be that of an independent contractor. In accordance with such status as an independent contractor, the CONTRACTOR covenants and agrees to act consistent with such status: to neither hold itself out as, nor claim to be, an officer or employee of the CHAMBER or the STATE by reason hereof; and not to, by reason hereof, make any claim, demand,

or application to or for any right or privilege applicable to an officer or employee of the CHAMBER or the STATE, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership credit.

VI. STAFF

- A. The CONTRACTOR shall assign Ms. Meshawn DeCoteau to provide services under this AGREEMENT.
- B. The CONTRACTOR specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders and subcontractors have and shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties performed hereunder.
- C. This AGREEMENT is intended to secure the professional services of the CONTRACTOR because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the CONTRACTOR.
- D. The CONTRACTOR should notify the CHAMBER of any proposed changes in staff immediately. The CHAMBER has an absolute right and discretion to approve or disapprove any proposed changes in staff. The CHAMBER, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld. The replacement consultant must have skills, experience and expertise which is comparable to that of the persons they will replace, and will be provided at the same or lower hourly rate.
- E. The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the CHAMBER. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.
- F. All employees of the CONTRACTOR, or of its subcontractors, who shall perform Services under this AGREEMENT, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services under this AGREEMENT on behalf of CONTRACTOR shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.

- G. The CONTRACTOR shall be fully responsible for performance of work by its staff and by its subcontractor's staff and the CHAMBER reserves the right to request removal of any CONTRACTOR staff or subcontractor staff if, in the CHAMBER's discretion, such staff is not performing in accordance with this AGREEMENT.

VII. CHAMBER REPRESENTATIVES

- A. The CHAMBER, with the commencement of this AGREEMENT, designates as its representative, Regina Calcaterra or Theresa Brennan, or their designee(s).
- B. Such representatives shall request, oversee, supervise and accept performance of services provided by the CONTRACTOR and shall receive any required submissions. Whenever an AGREEMENT action is to be taken or approval for services given by the CHAMBER, such action or approval may be given only by the representatives designated pursuant to this Section.
- C. All Notices under this AGREEMENT shall be directed to the representatives identified in this Section, or their designees.
- D. The CHAMBER may on written notice designate other individuals as its representatives.

VIII. CONFLICTS OF INTEREST

The CONTRACTOR hereby covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the CHAMBER immediately of any such actual or potential conflicts of interest.

The CHAMBER and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing or establish new relationships. The CHAMBER will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the CHAMBER, a real or potential conflict of interest cannot be cured.

IX. WARRANTIES

The CONTRACTOR warrants that it will perform Services in good faith and in a professional manner and that the Services will conform in all material respects to the description of such Services set forth herein. The warranties expressly set forth in this AGREEMENT are in lieu of all other warranties, expressed or implied including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The CONTRACTOR shall perform Services in a workmanlike manner in accordance with industry standards.

X. PERFORMANCE MONITORING

The CONTRACTOR's performance will be assessed by the STATE according to the achievement of CONTRACTOR's contractual obligations in a timely and professional manner, as set forth herein. The CHAMBER will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

XI. INDEMNIFICATION AND LIABILITY

- A. The CONTRACTOR shall be fully liable without monetary limitation for any act or omission of the CONTRACTOR, its employees, subcontractors and agents, and shall fully indemnify and hold harmless the STATE from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or tangible personal property or intellectual property caused by fault or negligence of CONTRACTOR, its employees, subcontractors or agents arising from the CONTRACTOR's performance of this AGREEMENT, provided, however, that the CONTRACTOR shall not be obligated to indemnify the STATE for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act by the STATE or the acts of third parties, other than those provided by the CONTRACTOR to perform under the Agreement. In connection with the foregoing, the STATE (i) shall give CONTRACTOR, prompt written notice of any action, claim or threat of suit, and (ii) may give the CONTRACTOR, at the STATE's sole discretion, the opportunity to take over, settle or defend such action, claim or suit at CONTRACTOR's sole expense, and in such event, the State will assist the defense of any such action at the expense of CONTRACTOR.
- B. Except as otherwise set forth as being without monetary limitation in the indemnification paragraph above, the limit of liability shall be as follows: CONTRACTOR's liability for any damages arising out of, or related to the AGREEMENT, whether in contract, tort or otherwise, shall in no case exceed: (i) an amount equal to two (2) times the amount paid to the CONTRACTOR for work performed under this AGREEMENT, or (ii) one million dollars (\$1,000,000), whichever is greater.
- C. Notwithstanding the above, the CONTRACTOR and the CHAMBER shall not be liable for any consequential, indirect or special damages of any kind which may result from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the CHAMBER, the CONTRACTOR, or by others. CONTRACTOR shall not be liable for any missed or lost revenue associated with, or related to, the services provided pursuant to this contract.

- D. The CONTRACTOR shall be fully responsible for performance of work by and conduct of its staff and subcontractor's staff and that the CHAMBER reserves the right to request removal of any CONTRACTOR staff or subcontractor staff if, in the CHAMBER's discretion, such staff is not performing in accordance with the AGREEMENT.
- E. The CONTRACTOR warrants that its services shall be performed in accordance with applicable professional standards and that the CONTRACTOR shall correct, at no charge to the CHAMBER or the STATE, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

XII. REPORTS AND FINDINGS

- A. Any and all reports and findings rendered to the COMMISSION by the CONTRACTOR shall be the exclusive property of the CHAMBER and subject to the CHAMBER's and COMMISSION's exclusive use and control. The CONTRACTOR hereby waives any and all rights to such reports and findings and the control thereof.
- B. The CONTRACTOR shall take all appropriate action to protect the confidentiality of all information supplied to it or developed by it during the course of its performance under the terms of the AGREEMENT.

XIII. OWNERSHIP

CONTRACTOR will retain all right, title and interest in and to all materials developed by it prior to the Effective Date of this AGREEMENT and/or developed outside of CONTRACTOR's obligations hereunder.

XIV. RECORDS ACCESS

CHAMBER staff, others authorized by the CHAMBER such as representatives of the Federal government, or other STATE agencies authorized by STATE law, shall have access to and the right to examine the books, documents, work papers, documentation of charges, or other records of the CONTRACTOR, including any and all subcontractors, involved in transactions relating to this AGREEMENT during the contract period and for a period of six years after final payment for said services.

XV. WORK PAPER RETENTION AND AVAILABILITY

- A. The work papers to be prepared by the CONTRACTOR during the AGREEMENT will be retained by the CONTRACTOR although copies thereof and access to them will be made available, upon request, to the CHAMBER, the COMMISSION, representatives of the Federal government and STATE agencies

when authorized by the CHAMBER, and other STATE agencies authorized by existing law, for a period of six (6) years following the date of the final payment under the contract. All such requests, and their disposition, shall be authorized by the CHAMBER.

- B. The CONTRACTOR agrees to make personnel available to explain fully all data, materials, and work papers developed during the engagement for a period of six (6) years following the date of the final payment under the contract.

XVI. DISPUTES AND DISSATISFACTION/CONFLICT RESOLUTION

- A. In the event the COMMISSION is dissatisfied with the CONTRACTOR's performance of the Services provided under the Agreement, including but not limited to a breach of the Agreement on the part of the CONTRACTOR, the CHAMBER shall notify the CONTRACTOR of the dispute in writing. In the event the CONTRACTOR has any disputes with the COMMISSION, the CONTRACTOR shall notify the CHAMBER in writing. Such notification in both cases shall hereinafter be referred to as "Notice of Conflict", or in the case of contract breach, "Notice of Default".
- B. If either the CHAMBER or the CONTRACTOR notifies the other of such dispute or dissatisfaction, the Party receiving the notification shall then make good faith efforts to amicably resolve the problem or settle the dispute, including meeting with the notifying Party's representatives to diligently attempt to reach a mutually satisfactory result.
- C. In the event of a dispute, both Parties will continue to fulfill their performance obligations under the Agreement.
- D. Nothing shall limit either Party's ability to pursue all legal remedies. If the Parties are unable to amicably resolve the dispute after the steps described above, then either Party may seek legal or equitable relief in a court of competent jurisdiction located in New York State.

XVII. TERMINATION

- A. The CHAMBER reserves the right to terminate the services of the CONTRACTOR, in whole or in part, upon thirty (30) days written notice for any reason, or immediately for cause. Upon notice of termination, the CONTRACTOR shall stop work immediately and complete only those specific assignments, if any, subsequently approved by the CHAMBER. In the event of termination other than for cause, the CONTRACTOR shall be entitled to compensation for services performed through the date of termination that are accepted by the STATE, and for any subsequent services that are accepted by the STATE, rendered in connection with any successor consultants and

contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the CHAMBER. The CONTRACTOR agrees to cooperate to the fullest respect with any successor consultants and contractors.

- B. After receipt of the Notice of Termination, the CONTRACTOR shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the Notice.
- C. The CONTRACTOR shall submit its termination claim to the CHAMBER promptly after receipt of a Notice of Termination, but in no event later than 30 days from the effective date thereof, unless one or more extensions in writing are granted by the CHAMBER upon written request of the CONTRACTOR within such 30-day period or authorized extension thereof. Upon failure of the CONTRACTOR to submit its termination claim within the time allowed, the CHAMBER may determine, on the basis of available information, the amount, if any, due to the CONTRACTOR by reason of termination, and shall thereupon pay to the CONTRACTOR the amount so determined.
- D. If the Termination for cause results from unsatisfactory performance by the CONTRACTOR, the value of the work performed by the CONTRACTOR prior to termination shall be established by the CHAMBER.
- E. The CONTRACTOR agrees to transfer title to the CHAMBER, and to deliver in the manner, at the time, and to the extent, if any, directed by the CHAMBER, such information and work products for which the CONTRACTOR produced and received compensation by the CHAMBER.
- F. In addition, non-compliance with the procurement laws as noted in Section XIX of this AGREEMENT will lead to contract termination.

XVIII. FORCE MAJEURE

Neither party will be liable for losses, defaults, or damages under this AGREEMENT which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this AGREEMENT, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

XIX. COMPLIANCE WITH PROCUREMENT LAWS

- A. By execution of this AGREEMENT, the CONTRACTOR certifies that information provided to the State of New York with respect to the Vendor Responsibility Questionnaire, Procurement Lobbying Certifications, Contractor Disclosure Forms (A and B) and Section 5-a of the Tax Law (Forms ST-220-TD and ST-220-CA) is complete, true and accurate.
- B. The CONTRACTOR hereby acknowledges that the Vendor Responsibility Questionnaire and certification are made part of its proposal and thereby this AGREEMENT and that any misrepresentation of fact in the Questionnaire and attachments, or in any CONTRACTOR responsibility information that may be requested by the CHAMBER, may result in termination of this AGREEMENT.

The CONTRACTOR shall at all times during the contract term remain responsible. During the term of this AGREEMENT, any changes in the provided Questionnaire shall be disclosed to the CHAMBER, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of this AGREEMENT. Furthermore, the CONTRACTOR agrees, if requested by the CHAMBER, 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.

The CHAMBER, in its sole discretion, reserves the right to suspend any or all activities under this AGREEMENT, at any time, when it discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. Contract activity may resume at such time as the CHAMBER issues a written notice authorizing a resumption of performance under this AGREEMENT.

Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard with the appropriate CHAMBER officials or staff, this AGREEMENT may be terminated by the CHAMBER at the CONTRACTOR'S expense where the CONTRACTOR is determined by the CHAMBER to be non-responsible. In such event, the CHAMBER may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

- C. CONTRACTOR hereby acknowledges that State Finance Law Section 163(4)(g) imposes certain reporting requirements on the contractor doing business with New York State. In furtherance of these reporting requirements, the CONTRACTOR agrees to complete and submit an initial planned employment data report and an annual employment report (Forms A and B respectively).

Complete instructions and forms may also be accessed at:
<http://www.osc.state.ny.us/agencies/guide/MyWebHelp>.

XX. ENTIRE AGREEMENT

This AGREEMENT and its Appendices constitute the entire AGREEMENT between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This AGREEMENT shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto. Appendix A – Standard Clauses for New York State Contracts and Appendix B, Proposal dated January 27, 2014 are hereby made a part of this AGREEMENT as if fully set forth at length herein.

XXI. CONDITIONS PRECEDENT

This AGREEMENT and any subsequent amendments to this AGREEMENT shall not be deemed executed, valid or binding unless and until approved in writing by the Offices of the Attorney General and State Comptroller.

XXII. USE BY OTHER STATE AGENCIES

The CHAMBER shall have the option to extend the terms and conditions related to the scope of services covered by this AGREEMENT to any New York State agency.

XXIII. ADDITIONAL SERVICES

The CHAMBER may, at any time, by written notice, request changes or additions to work or services within the general scope of this AGREEMENT (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of this AGREEMENT, an equitable adjustment shall be agreed upon by the Parties and made in the price using the billing rates set forth in the AGREEMENT, and the CONTRACTOR shall be notified in writing accordingly. A change to the scope of the AGREEMENT must be set forth in a contract amendment that is subject to the approval of OSC and the New York State Office of the Attorney General. Nothing in this clause shall excuse the CONTRACTOR from proceeding with this AGREEMENT as modified.

XXIV. INTERPRETATION

In the event of any discrepancy, disagreement or ambiguity among the following documents - this AGREEMENT, Appendix A (Standard Clauses for New York State

C000236

IN WITNESS WHEREOF, each of the Parties hereto has caused this AGREEMENT to be executed by its duly authorized officers on the day and year stated below.

Agency Certification

In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Approved by:

CYBERSEARCH CORP

By: [Signature]
Name: Edward C. O'Reilly
Title: President
Date: 2/10/14

NEW YORK STATE EXECUTIVE CHAMBER

By: [Signature]
Name: Theresa A Brennan
Title: Director of Administrative Services
Date: 3/3/14

**Attorney General:
ERIC T. SCHNEIDERMAN**

By: [Signature]
Date: MAR 26 2014
Lorraine I. Remo
LORRAINE I. REMO
PRINCIPAL ATTORNEY

**State Comptroller:
THOMAS P. DINAPOLI**

By: [Signature]
Date: 4/10/14

5150,000
KAA/jz