

**CONTRACT No. PS70484**

**New York State Office of General Services  
and  
Phillips Lytle LLP  
for Cybersecurity Legal Services  
for the Period  
upon OSC approval, through 5 years 2029,**

This is a centralized contract (this "Contract") by and between the New York State Office of General Services ("OGS" or the "State") and Phillips Lytle LLP ("Law Firm"), having an office at One Canalside 125 Main Street, Buffalo, NY 14203. The State and Law Firm may hereinafter be referred to individually as a "Party" and collectively as the "Parties."

**WITNESSETH**

**WHEREAS**, OGS issued Request for Proposals #23331 (the "RFP") for Cybersecurity Legal Services in order to establish one or more Statewide Centralized Contracts, which are available for use by any Authorized User, as that term is defined in State Finance Law § 163(1)(k), across the State of New York, including but not limited to: New York State agencies; public authorities; political subdivisions such as cities, towns and villages; school districts; the State University of New York (SUNY); the City University of New York (CUNY); and certain other associations, entities and non-profit organizations designated as Authorized Users under State Finance Law §163(1)(k); and

**WHEREAS**, Contractor submitted a bid in response to the RFP; and

**WHEREAS**, in accordance with the Method of Award set forth in the RFP, OGS made awards to responsive and responsible bidders who met the requirements of the RFP; and

**WHEREAS**, the State has determined that Law Firm is qualified to perform such services; and

**WHEREAS**, each Authorized User acquiring services from Law Firm under this Contract will enter into an Engagement Agreement with Law Firm that will detail the specific services to be provided, and the terms and conditions of such Engagement Agreement, together with the terms and conditions of this Contract, shall govern the provision of services; and

**NOW, THEREFORE**, in consideration of the terms and conditions of this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby mutually agreed by and between the State (on behalf of itself and the Authorized Users) and Law Firm, as follows:

I. Services to Be Provided

The State hereby engages Law Firm to provide the following Cybersecurity Legal Services:

1. Assisting Authorized Users with the review of cybersecurity incident response plans; cyber risk management and intellectual property; asset, privacy and data protection policies; preparedness activities related to cybersecurity, cyber resiliency, cyber preparedness, and privacy; and related matters.
2. Counseling and advising Authorized Users during incident response, including for example, by assisting with privileged incident response investigations; helping to coordinate resources and efforts, including breach notification; engaging with governmental entities such as the U.S. Department of Homeland Security, federal, state, and local law enforcement; analyzing incident investigatory findings; providing advice on breach, notification, and privacy implications; and making recommendations for remediation following an incident.
3. Providing legal advice to Authorized Users pertaining to state, federal, and international laws and regulations as well as policies and best practices related to cybersecurity, cyber resiliency, cyber preparedness, privacy, and related matters.
4. Advising Authorized Users on contracts and disputes with third-party vendors related to cybersecurity, cyber resiliency, cyber preparedness, privacy, and related matters.

Such services shall be provided to Authorized Users only in accordance with an Engagement Agreement signed by Law Firm and each Authorized User. Law Firm and Authorized User must use the form of Engagement Agreement attached hereto as Appendix B.

II. Term

The State hereby engages Law Firm to furnish the Cybersecurity Legal Services set forth in Section I, for a period of five years, effective upon the date of approval of this Contract by the Office of the State Comptroller (the "Initial Term"). At the option of the State and with the consent of Law Firm, this Contract may be extended for up to one additional year (the "Extension Term"). At expiration of the final term of this Contract (whether the Initial Term or the Extension Term), this Contract may be extended with the same terms and conditions as the original Contract and any approved modifications

with the concurrence of Law Firm for a period of up to 90 calendar days subject to approval by the Office of the Attorney General and the Office of the State Comptroller.

III. Compensation

- A. Law Firm shall bill the Authorized User monthly for services performed under this Contract according to the hourly rate set forth in the Engagement Agreement. During the Initial Term, the blended hourly rate for attorney and non-attorney cybersecurity professional services may not exceed \$375 and the blended rate for law clerk and paraprofessional services may not exceed \$260. If the Parties agree to an extension of the Contract term, the maximum blended hourly rates during the Extension Term may be adjusted by a rate equivalent to the change in the CPI from the date of the commencement of the Initial Term to the date of the most recently published CPI data at the time of the extension. The term "CPI" shall mean the Consumer Price Index for All Urban Consumers, (CPI-U) for all items in U.S. city average, all urban consumers, not seasonally adjusted (Base Period: 1982-84 = 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor.
- B. The hourly rates set forth above shall include all fixed overhead costs including but not limited to expenses for word processing, secretarial or clerical work, subscriptions for research materials and services, and reference librarians. Law Firm may bill for routine out-of-pocket expenses incurred on the Authorized User's behalf, such as filing fees, transcript expenses, travel (in accordance with NYS Travel Guidelines), messenger service, photocopies, long distance telephone calls, facsimiles, and computerized research. Any extraordinary expenses will be incurred only after discussion and agreement between Law Firm and the Authorized User. Billings for actual expenses incurred by Law Firm must be substantiated and documented.
- C. Total payments under this Contract, inclusive of expenses and other disbursements, shall not exceed a maximum amount of \$10 million, which does not mean that this maximum amount will actually be spent. If the State determines that the not to exceed amount under this Contract should be increased, this Contract may be amended.
- D. With respect to all Authorized Users that are State agencies, fees and expenses shall become payable pursuant to NYS Finance Law Article 11-A and upon the receipt of an approvable invoice that includes the following information:
1. The Contract number (XXXXXX), Law Firm's New York State Vendor Identification Number, and an invoice number;
  2. The start and end date of the period to which the statement pertains;
  3. A brief description of the work performed;
  4. The name of each individual performing the service, such person's title, and billing rate;

5. A summary of the total number of hours of services performed;
6. The dates each billed service was rendered;
7. A description of all reimbursable disbursements and expenses itemized by category, including travel, with receipts and documentation; and
8. The total amount billed for services for the invoice period.

Authorized Users other than State agencies may require different or additional information in order to effectuate payment, and Law Firm agrees to provide the Authorized User with such detailed documentation substantiating fees and expenses as the Authorized User may reasonably request.

- E. Unless otherwise agreed to in an Engagement Agreement, all invoices should be submitted electronically to the Authorized User.
- F. Law Firm acknowledges that it will not receive payment on any invoices submitted under this Contract unless or until it complies with the Authorized User's payment procedures as set forth in the relevant Engagement Agreement.
- G. Law Firm shall not be reimbursed for the preparation of invoices or billing statements or for time spent correcting any errors in previously submitted invoices or billing statements.

#### IV. Relationship of Parties

- A. The relationship of Law Firm, including any subcontracted attorneys, to the Authorized User shall be that of an attorney and client. Nothing herein shall be construed as limiting or amending the attorney-client privileges afforded by law.
- B. Law Firm is and shall be, in all respects, an independent contractor in performing services pursuant to this Contract. In accordance with such status as an independent contractor, Law Firm 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 State or Authorized User 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 State or Authorized User, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership credit.

#### V. Law Firm Personnel

- A. Law Firm shall assign Anna Mercado Clark as the lead partner for its duties hereunder. Law Firm may not make changes to the lead engagement partner without the State's prior approval.
- B. Law Firm specifically represents and agrees that its partners, members, shareholders, officers, employees, agents, servants, and consultants have the

experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder. All partners, members, shareholders, officers, employees, agents, servants, and consultants of Law Firm who shall provide services under this Contract 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 Contract on behalf of Law Firm shall, in performing the services, comply with all applicable federal and state laws concerning employment in the United States.

- C. In the course of providing services hereunder, Law Firm shall be fully responsible for performance of work by its employees, agents, and consultants.

#### VI. Conflicts of Interest

Law Firm is not aware of any conflicts of interest that would prevent it from providing the services set forth herein to Authorized Users, who primarily consist of State and local government entities in New York State. Law Firm shall be required to perform a conflicts check in connection with each Engagement Agreement hereunder.

#### VII. Warranties

- A. Law Firm warrants that it will perform services in good faith and in a workmanlike and professional manner in accordance with all applicable laws, rules, regulations applicable to the rendering of services hereunder.
- B. Law Firm warrants that its services shall be performed in accordance with applicable professional standards and that Law Firm shall correct, at no charge to the State or Authorized User, services that fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

#### VIII. Insurance and Indemnification

- A. In the performance of services under this Contract and any Engagement Agreement, Law Firm shall at its own expense maintain adequate (i) professional liability insurance and (ii) workers compensation and disability insurance for the benefit of Law Firm employees required to be covered by the New York Workers Compensation Law and the New York Disability Benefits Law.
- B. In the course of providing services under this Contract and any Engagement Agreement hereunder, Law Firm shall be fully liable for the actions of its partner, members, shareholders, officers, employees, agents, servants, and consultants and shall fully defend and indemnify the State and relevant Authorized Users from suits, actions, proceedings, claims, losses, damages, and costs arising from the provision of services hereunder; provided, however, that Law Firm shall not

be obligated to indemnify the State or Authorized User for that portion of any claim, loss, damage, or cost arising from the negligent act or failure to act by the State or Authorized User, as the case may be. Notwithstanding anything in this Contract to the contrary, and to the extent permissible under applicable ethical or professional rules, codes, or canons, Law Firm shall not be liable to the State or Authorized User for any special, consequential, or incidental damages, including without limitation lost profits or lost savings.

C. In connection with the foregoing, the State or Authorized User, as the case may be, shall give Law Firm: (i) prompt written notice of any suit, action, proceeding, claim or threat of suit, and (ii) assistance in the defense of any such suit, action, proceeding, or claim at the expense of Law Firm. Notwithstanding the foregoing, the State reserves the right to join such suit, action, proceeding, or claim, at its sole expense, when the State determines there is an issue involving a significant public interest.

IX. Modification of Contract Terms/Additional or Alternative Terms and Conditions in an Engagement Agreement

A. The terms and conditions set forth in this Contract shall govern all Engagement Agreements entered into between an Authorized User and Law Firm under this Contract. This Contract may be modified or amended only in accordance with Section XIV.B. hereof.

B. An Authorized User and Law Firm may mutually agree to include additional or alternative terms and conditions to an Engagement Agreement for a specific Authorized User transaction only.

C. Notwithstanding subsection B. above, no additional or alternative term or condition shall be valid or binding on an Authorized User to the extent that such additional or alternative term or condition is less favorable to the Authorized User than, or conflicts with, any of the following provisions of this Contract: All provisions of Appendix A (Standard Clauses for New York State Contracts); the not-to-exceed pricing set forth in Section III. Compensation, Section VIII. Insurance and Indemnification, Section X. Termination and Suspension, Section XIII. Condition Precedent, and Section XV. Opinions and OAG Consultation.

X. Termination and Suspension

A. This Contract may be terminated by the State: (1) at any time upon 30 day's prior written notice; (2) immediately for cause; or (3) if Law Firm's certifications under State Finance Law §§ 139-j and 139-k are found to be intentionally false or intentionally incomplete.

B. This Contract may also be suspended or terminated as follows:

1. Law Firm shall at all times during the contract term remain responsible. During the term of this Contract, any changes in the provided Vendor Responsibility Questionnaire shall be disclosed to the State, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of this Contract. Furthermore, Law Firm agrees, if requested by the State, to present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.
2. The State, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when it discovers information that calls into question the responsibility of Law Firm. In the event of such suspension, Law Firm shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Law Firm must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under this Contract.
3. Upon written notice to Law Firm, and a reasonable opportunity to be heard by the appropriate State officials or staff, this Contract may be terminated by the State at Law Firm's expense where Law Firm is determined by the State to be non-responsible. In such event, the State may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

- C. If this Contract is terminated for any reason, Law Firm shall immediately inform all Authorized Users for which Law Firm is currently providing services hereunder and explain the reasons why this Contract was terminated. Authorized Users shall have the option of continuing to receive services from Law Firm, in accordance with the respective Engagement Agreement, for a period of up to one year from and after the termination of this Contract. Law Firm shall fully cooperate with Authorized User with regard to the transfer of records and any transition of services to another attorney or law firm.

XI. Compliance with Procurement Laws

- A. By execution of this Contract, Law Firm certifies that information provided to the State with respect to the Vendor Responsibility Questionnaire, Procurement Lobbying Certifications, Contractor Disclosure Form A and Section 5-a of the Tax Law (Forms ST-220-TD and ST-220-CA) is complete, true, and accurate.
- B. Law Firm hereby acknowledges that State Finance Law § 163(4)(g) & § 163(14)(a-d) impose certain reporting requirements on contractors providing

consulting services to the State. In furtherance of these reporting requirements, Law Firm agrees to complete and submit an initial planned employment data report and an annual employment report (Forms A and B respectively) as required by law. Complete instructions and forms may also be accessed at: <https://www.osc.ny.gov/state-agencies/gfo/chapter-xi/xi18c-consultant-disclosure>.

#### XII. Participation by MWBEs and SDVOBs

The State is committed to providing meaningful participation in public procurements for Minority- and Women-Owned Business Enterprises (“MWBEs”) and Service-Disabled Veteran-Owned Businesses (“SDVOBs”) but has determined that setting goals on this Contract is not feasible and that contract goals are better addressed within each Engagement Agreement. Law Firm shall be required to demonstrate good faith efforts to meet any goals set in an Engagement Agreement and to otherwise comply with all the requirements for MWBE and SDVOB participation set forth therein.

#### XIII. Condition Precedent

This Contract and any subsequent amendments to this Contract shall not be deemed executed, valid, or binding unless and until approved in writing by the Office of the Attorney General and the Office of the State Comptroller. Engagement Agreements executed by State agencies under this Contract shall be subject to approval by the Office of the Attorney General and the Office of the State Comptroller.

#### XIV. Entire Agreement and Interpretation

- A. This Contract, Appendix A (Standard Clauses for New York State Contracts), and Appendix B (Engagement Agreement Template) 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.
- B. This Contract shall not be changed, modified, extended, or altered in any manner except by an instrument in writing executed by both Parties and approved by the Office of the Attorney General and the Office of the State Comptroller.
- C. In the event of any discrepancy, disagreement, or conflict between this Contract and Appendix A (Standard Clauses for New York State Contracts), the terms of Appendix A shall be given preference.

#### XV. Opinions and OAG Consultation

- A. Opinions prepared by Law Firm construing the statutes or Constitution of the State of New York-

do not constitute the opinion of the State of New York 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.

- B. Law Firm will represent the State of New York in judicial litigation related to the services to be provided under this Contract only when such services are specifically requested by the Authorized User's counsel and approved by the Attorney General. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of services therefor.
- C. Law Firm is required to consult with the Attorney General's Bureau of Internet & Technology on the appropriate interpretation and application of the New York SHIELD Act and any New York data security, privacy, or consumer protection law.

XVI. Severability

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected, but shall remain binding and effective as against the Parties hereto.

**[Contract No. PS70484]**

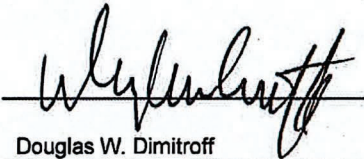
IN WITNESS WHEREOF, each of the Parties hereto has caused this Contract to be executed by its duly authorized officers on the day and year stated below.

Agency Certification

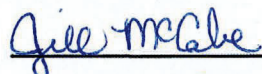
In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Approved by:

**CONTRACTOR**

By:   
Name: Douglas W. Dimitroff  
Title: Managing Partner  
Date: October 4, 2024

**NEW YORK STATE OFFICE OF  
GENERAL SERVICES**

By:   
Name: Jill McCabe  
Title: Director  
Date: 10/8/2024

**State Comptroller:  
THOMAS P. DINAPOLI**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**APPROVED**  
DEPT. OF AUDIT & CONTROL  
  
Jan 06 2025  
Michelle Ko  
  
FOR THE STATE COMPTROLLER

