

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

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

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

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

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

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

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

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

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

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

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

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

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

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

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

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

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

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

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

## APPENDIX C

### INFORMATION SECURITY & CYBER SECURITY REQUIREMENTS

#### 1. Definitions

The term “Confidential Information” as used herein includes all electronic or hard copy information, records, and communications that Contractor has gained or will gain access to in the course of rendering services under this Contract, including, but not limited to, any information, records, or communications that the Department or the State of New York (“State”), regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or source of information (e.g., the Department, other State agencies, regulated entities, electronic systems, federal government, or third-party Contractors) provides to the Contractor, its officers, agents, employees, and subcontractors or that Contractor, its officers, agents, employees, and subcontractors obtain, discover, derive, or otherwise become aware of as a result of Contractor’s performance of services under this Contract. Contractor shall maintain the security, confidentiality, integrity, and availability of all Confidential Information in accordance with the following clauses in the performance of its activities under the Contract. Contractor shall ensure that its officers, agents, employees, partners, and subcontractors, if any, are fully aware of the obligations arising under this Contract and shall take all commercially reasonable steps to ensure their compliance to prevent unauthorized use, access, or disclosure of Confidential Information. Failure by Contractor or its officers, agents, employees, partners, and subcontractors to fully comply with these requirements shall be deemed a failure to meet Contractor’s obligations under this Contract and may result in the Department suspending, canceling, and/or terminating the Contract for cause or pursuing any other legal or equitable remedies available.

#### 2. Data and Cyber Security During Contract Term

##### (a) Compliance with Department and State Information Security Policies and Standards

Contractor warrants, covenants, and represents that it will comply fully with all security policies and standards of the Department in the performance of this Contract, including State Information Technology Services (“ITS”) cyber security information security policies and standards located at <https://its.ny.gov/policies>.

Except for any privilege or privacy right recognized by law, individuals have no legitimate expectation of privacy during any access of the Confidential Information. Any access may be monitored, intercepted, recorded, read, copied, accessed, or captured in any manner including in real time, and used or disclosed in any manner, by authorized personnel without additional prior notice to individuals. Periodic monitoring will be conducted of systems used, including but not limited to all computer files; and all forms of electronic communication (including email, text messaging, instant messaging, telephones, computer systems) and other electronic records. Unauthorized access to Confidential Information is not permitted.

The Department shall have the right at any time to require that Contractor remove from interaction with the Department any Contractor representative whom the Department believes is detrimental to its working relationship with Contractor. The Department will provide Contractor with notice of its determination and the reasons it requests the removal. If the Department signifies that a potential security violation exists with respect to the request, Contractor shall immediately remove such individual. Contractor shall not assign the individual to any aspect of the Contract or future work orders without the Department's consent.

Contractor, to the extent the following meets or exceeds the ITS information security policies described above, shall use industry standard security measures, including standard encryption protocols, to protect and guard the confidentiality, security, integrity, and availability of information, and adhere to all the Department's security policies. Contractor is strictly prohibited from using Confidential Information in any fashion other than that defined herein. There may be instances in which the Department will communicate security procedures necessitated by the Department's operations. Contractor will use reasonable efforts to implement such procedures.

Contractor warrants that it will be properly informed and trained regarding security standards and is prohibited from disclosing Confidential Information to any persons without a need to know.

**(b) Protection and Transmission of Confidential Information**

Contractor shall use appropriate means to preserve and protect Confidential Information. This includes, but is not limited to, preventing the tampering with, disengaging, or otherwise circumventing Department or third-party IT security controls; use of stable storage media; regular data backups and archiving; password protection of volumes; and data encryption. Consistent with the State Encryption Standard found at <https://its.ny.gov/policies>, to the extent that doing so is applicable based on the specific services provided by Contractor to the Department under this Contract, the Contractor must encrypt Confidential Information at rest, on file storage, database storage, or on back-up media, and in transit in accordance with local, state, and federal laws, rules, regulations, ordinances, policies, standards, and guidelines. Contractor must use up-to-date, secure means for all electronic transmission or exchange of system, user, and application data with the Department, with encryption at rest specifically using, at minimum, FIPS 140-3, Security Requirements for Cryptographic Modules | CSRC (nist.gov), and the secure means used for electronic transmission or exchange of system, user, and application data with the Department shall be up-to-date and align with industry best practices. Contractor agrees that to the extent it has been authorized to use such storage, any and all Confidential Information will only be stored, processed, and maintained on designated devices, and that no Confidential Information at any time will be processed on or transferred to any unauthorized portable computing device or any portable storage medium.

Contractor shall also comply fully with all requirements of this Contract specific to the services Contractor is providing under this Contract. In addition to the specific security provisions required herein, Contractor shall also use, to the extent the following meets or exceeds the Department and the ITS information security policies referenced above, commercially reasonable best efforts to address and remediate any vulnerabilities associated with the types of application development or configuration services it is providing under this Contract. If any system or application security scanning undertaken hereunder reveals vulnerabilities or any other security risks attendant to a provided solution, Contractor is responsible for ensuring those vulnerabilities and risks are remediated in a timely fashion and to the Department's reasonable satisfaction.

**(c) Physical Transport of Confidential Information**

To the extent the Department agrees under this Contract that Contractor may physically transport any Confidential Information, such physical transport may only occur upon the written direction and approval of the Department. This includes but is not limited to transport between the Contractor's offices, to and from third parties, and to and from the Department.

**(d) Data Storage, Access, and Location - Offshore Restrictions**

Contractor may conduct help desk, support services, and software development and testing activities under this Contract from any location convenient to Contractor, except that the Department and Contractor agree that: (a) all Confidential Information shall remain within, and may not be stored or accessed from outside of, the Continental United States ("CONUS"); and (b) unless expressly agreed to in a writing approved by a Department-authorized signatory adhering to established Department practices, Contractor shall not have remote access to the Department's information technology resources.

All access to Confidential Information, physical or virtual, must be conducted within CONUS and have adequate security systems in place to protect against the unauthorized access to State facilities and Confidential Information stored therein. The Contractor shall not send or permit to be sent to any location outside of the CONUS any Confidential Information.

To the extent support by Contractor requires replication of a set of conditions such as a software crash event, Contractor shall replicate that set of conditions in its own environment when providing support, and while communicating with Department technical personnel. For software development activities, such as patches, updates, or adding new functionality, Contractor shall conduct that software development within its own development, quality assurance, and production environments, and, when the software is ready, shall package and provide it through an agreed-to Internet-based location, from which Department technical personnel will download such software, and install and test it in the Department's information technology environment.

Upon the Department's prior written approval, to the extent Contractor requires access to Department system or application audit logs for support and troubleshooting, Contractor or any subcontractors shall maintain such logs only within CONUS, shall take the strictest measures to ensure such logs do not contain Confidential Information including production data, and shall maintain such logs in a secure environment subject to audits by the Department.

**(e) Separation of Duties/Access Controls**

The Contractor must ensure that all Confidential Information that it holds under this Contract is stored in a controlled access environment to ensure data confidentiality, integrity, and availability. Contractor shall provide the Department with a list of the physical locations where Contractor has stored any Confidential Information at any given time and shall update that list if the physical location changes. All Contractor facilities must have adequate security systems in place to protect against the unauthorized access to such facilities and data stored therein. Contractor shall restrict access to and within such facilities through an access control system that requires positive identification of authorized individuals and shall maintain a log of all access (e.g., date and time of the event, type of event, user identity, component of the information system, and outcome of the event). The Contractor shall have a formal procedure in place for granting and terminating computer system access to Confidential Information and to track access. Contractor access to Confidential Information for any types of projects outside of those approved by the Department is prohibited.

The Department requires the Contractor to follow the principle of least privilege by adhering to separation of job duties and limiting Contractor staff knowledge of Confidential Information provided under this Contract to that that is absolutely needed to perform job duties. Upon request, Contractor will provide documentation to the Department clearly defining the security roles and access levels for each of its staff working with Confidential Information provided under this Contract with a level of specificity objectively reasonable to and approved by the Department.

**(f) Cloud Security Requirements**

If cloud-based services are a component of the solution or services to be provided by Contractor, Contractor shall comply with FedRAMP (<https://www.fedramp.gov>) standards for cloud services, and local, state, and federal laws, rules, regulations, ordinances, policies, standards, and guidelines.

**(g) Compliance with State Statutory Breach Notification and Data Security Requirements**

Contractor shall be responsible for complying with the statutory breach notification and data security requirements set forth in New York General Business Law ("GBL") §§ 899-aa and 899-bb and New York State Technology Law ("State Technology Law") §208 as well as the following terms contained herein with respect to any private information (as

defined in GBL §899-aa) received by Contractor under this Contract (“Private Information”) that is within the control of the Contractor either on the Department’s information security systems or the Contractor’s information security systems. In the event of a breach of the security of the system (as defined by GBL §899-aa), Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and restore the security of the system to prevent any further breaches. Contractor shall also notify the Department of any breach of the security of the system or any potential breach of the system within four (4) hours following discovery of such breach or potential breach. Notice of such breach or potential breach shall be sent to the Department at:

[information.security@dfs.ny.gov](mailto:information.security@dfs.ny.gov)

Except as otherwise instructed by the Department, Contractor shall, to the fullest extent possible, first consult with and receive authorization from the Department prior to notifying any individuals, the State Department of State, the State Division of State Police, the State Office of the Attorney General (“OAG”), or any consumer reporting agencies of a breach of the security of the system or concerning any determination to delay notification due to law enforcement investigations.

Nothing herein shall in any way impair the authority of OAG to bring an action against Contractor to enforce the provisions of applicable statutory breach notification and data security provisions or limit Contractor’s liability for any violations of GBL §899-aa, GBL §899-bb, State Technology Law §208, or any other applicable laws, rules, or regulations. In the event that the Contractor is advised by a law enforcement agency pursuant to GBL §899-aa(4) to delay the notice under GBL §899-aa(3), the Contractor shall provide the notice to the Department not more than twenty-four (24) hours after the Contractor has been advised that it may provide the notice under GBL §899-aa(3).

In accordance with applicable statutory breach notification and data security provisions, Contractor is responsible for complying with the following terms with respect to any Private Information received by or on behalf of the Department under this Contract. The Contractor:

- (i) Shall supply the Department with a copy of its breach notification policy, which shall be modified to be in compliance with this Appendix.
- (ii) Shall encrypt any database fields and backup tapes that contain Private Information as set forth in applicable statutory breach notification and data security provisions.
- (iii) Shall ensure that the Private Information is encrypted in transit to/from Contractor’s systems.
- (iv) Shall ensure that Private Information is not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.
- (v) Shall monitor for breaches of security to any of its systems that store or process

- Private Information.
- (vi) Shall take all steps as set forth in applicable statutory breach notification and data security provisions to ensure that Private Information will not be released without authorization from the Department.
  - (vii) In the event a security breach occurs as defined by GBL §899-aa, shall notify the Department's contact at [information.security@dfs.ny.gov](mailto:information.security@dfs.ny.gov) within four (4) hours of becoming aware of the breach and commence an investigation in cooperation with the Department to determine the scope and cause of the breach, and to prevent the future recurrence of such security breaches.
  - (viii) Shall coordinate all communication regarding the data breach with the Department's Chief Information Security Officer.
  - (ix) Shall take immediate steps necessary to restore the information security system to prevent further breaches and take corrective action in the timeframe required by the Department and State. If Contractor is unable to complete the corrective action within the required timeframe, in addition to any other remedies available, the Department and/or the State may contract with a third-party to provide the required services until corrective actions and services resume in a manner acceptable to the Department, or until the Department has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period.
  - (x) Shall be responsible for providing all notices required by applicable statutory breach notification and data security provisions and for all costs associated with providing said notices.

The Department reserves the right to require commercially standard credit monitoring for any and all individuals affected by any data breach at the sole expense of the Contractor for a period to be determined by the Department, but not less than twelve (12) months, which shall begin thirty (30) days following the notice of offer from the Contractor of such credit monitoring to those affected individuals, which shall be within a reasonable time following the identification of such affected individuals. The Department reserves the right to require notice by regular or electronic mail.

**(h) Breaches Not Addressed by GBL §899-aa, GBL §899-bb, or State Technology Law §208**

In addition to any responsibilities of Contractor under the Contract for reporting breaches of Private Information under GBL §899-aa, GBL §899-bb, or State Technology Law §208, Contractor must, within four (4) hours of becoming aware of a breach, report to the Department *any* breaches or information security incidents of any Confidential Information whether it consists of Private Information or otherwise. Notice of such incident shall be sent to the Department at:

[information.security@dfs.ny.gov](mailto:information.security@dfs.ny.gov)

Contractor shall ensure that the personnel charged with carrying out services under this Contract are aware of Contractor's obligations to the Department hereunder.

Contractor's staff's browsing, viewing, altering, appending, or modifying the Confidential Information in violation of Contractor's own security policies shall be deemed to have breached the security of the system for the purposes of this Contract. Contractor represents and warrants that the Confidential Information that it hosts for the Department remains at all times the property of the Department and must be fully accessible to the Department during the term of the Contract and at the Contract's conclusion. Contractor will take all reasonable measures at no additional cost to the Department to ensure that the Department is able to extract or receive any and all Confidential Information out of Contractor's hosted solution, including metadata and attachments, in a format that is reasonably accessible to the Department and capable of being used in technical solutions that compete with Contractor's hosted solution, as further described below.

### **3. Data Transparency, Accessibility, Migration, and Destruction at End of Contract**

#### **(a) Data Migration**

Contractor shall ensure that the services it performs and the solutions it designs under this Contract are performed in such a way as to ensure easy migration of any Confidential Information held by Contractor as required by the Department. This may include:

- (i) Contractor keeping Confidential Information, including Department policy and profile information, separate from processes of any software itself and maintaining that information in a format that allows the Department to easily transfer it to an alternative application platform;
- (ii) Contractor making its Application Programming Interfaces (APIs) available to the Department; and
- (iii) Contractor reformatting data and/or applications at Contractor's own expense in order to allow the Department easily to switch to alternative software providers or move the Confidential Information back in-house at the Department.

#### **(b) Data Return and Destruction - In General**

During any period of suspension of services or of the Contract, the Contractor will not take any action intentionally to erase any Confidential Information.

At the expiration or termination of the Contract, the Contractor shall implement an orderly return of Department assets and the subsequent secure disposal of Department assets. The Department shall be entitled to any post-termination assistance generally made available by Contractor with respect to the services it provides unless a unique alternative data retrieval arrangement has been established between the parties.

At the Department's option, the Contractor must provide the Department with a copy of all Confidential Information, including metadata and attachments, in a mutually agreed upon, commercially standard format at no additional charge to the Department, and give the Department continued access to the Confidential Information for no less than ninety (90) days beyond the expiration or termination of the Contract. Thereafter, except for data required to be maintained by local, state, and federal laws, rules, regulations, ordinances, policies, standards, and guidelines or this Contract, Contractor shall destroy Confidential Information from its systems and wipe all its data storage devices to eliminate any and all Confidential Information from Contractor's systems. The sanitization process must be in compliance with State Security Policy NYS-S13-003, located at <https://its.ny.gov/policies>, and, where required, Criminal Justice Information Services sanitization and disposal standards. If immediate purging of all data storage components is not possible, the Contractor will certify that any Confidential Information remaining in any storage component will be safeguarded to prevent unauthorized disclosures until such purging is possible. Contractor must then certify to the Department, in writing, that it has complied with the provisions of this paragraph including any supporting documentation as requested.

**(c) Data Return and Destruction - Regulated Data**

The Department considers the protection of sensitive and Confidential Information and business systems to be of the utmost importance. The Confidential Information collected and maintained by the Department is protected by a myriad of federal, state, and local laws, rules, regulations, ordinances, policies, standards, and guidelines. Access to and use of Confidential Information is limited to authorized government employees and legally designated agents, for authorized purposes only.

Appendix D to this Contract, entitled "PRIMARY SECURITY AND PRIVACY MANDATES," reflects several significant federal and State laws, rules, regulations, ordinances, policies, standards, and guidelines that providers doing business with the Department must be aware of and comply with if applicable to the services being provided. Links to further guidance are included in that Exhibit. The list is intentionally US-centric and is not intended to be all-inclusive. Further, since local, state, and federal laws, rules, regulations, ordinances, policies, standards, and guidelines and industry guidelines change, consulting definitive sources to assure a clear understanding of compliance requirements is critical.

To the extent that Contractor has access to federal, state, or local government regulated data pursuant to its responsibilities under the Contract, Contractor agrees that it will abide by the requirements of those federal, state, and local laws, rules, regulations, ordinances, policies, standards, and guidelines, and will require in writing its officers, agents, employees, partners or subcontractors to similarly abide by any such requirements including the execution of any documents or contracts required to be executed, certifying their compliance with same.

Contractor must, in accordance with applicable law and the instructions of the Department: maintain such regulated data for the time period required by applicable laws, rules, regulations, ordinances, policies, standards, and guidelines; exercise due care for the protection of data; and maintain appropriate data integrity safeguards against the deletion or alteration of such data. In the event that any regulated data is lost or destroyed because of any act or omission of the Contractor or any non-compliance with the obligations of this Contract, then Contractor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, Contractor shall reimburse the Department for any costs incurred by the Department in correcting, recreating, restoring, or reprocessing such data or in assisting therewith.

In the event that it becomes necessary for Contractor to receive Confidential Information that federal, state, or local laws, rules, regulations, ordinances, policies, standards, and guidelines prohibit from disclosure, Contractor hereby agrees to return or destroy all such Confidential Information that has been received under this Contract when the purpose that necessitated its receipt by Contractor has been completed. In addition, Contractor agrees, after termination of the Contract, not to retain any Confidential Information that federal, state, or local laws, rules, regulations, ordinances, policies, standards, and guidelines prohibit from disclosure.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify the Department accordingly. Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information that federal, state, or local laws, rules, regulations, ordinances, policies, standards, and guidelines prohibit from disclosure.

#### **4. Audits and Access to State Facilities**

##### **(a) Audits of Contractor's Security Controls**

Contractor may be asked to provide recent independent audit reports on its security and compliance controls before and during the term of this Contract. The Department shall have the right to send its officers and employees into the offices of the Contractor for inspection and audit of the facilities and operations used by Contractor in the performance of any work under this Contract. On the basis of such inspection, Contractor may be required by the Department to implement specific additional security and compliance measures in cases where the Contractor is found to be non-compliant with Contract safeguards. The Department will provide at least two (2) weeks' notice of its intention to exercise this audit right and will not use an independent third-party that is a competitor of Contractor. Such audit shall be conducted to ensure compliance with the requirements of the Contract.

**(b) Accessing State Facilities**

Contractor may access Department information technology resources and state facilities solely at the Department's request, and solely for work associated with this Contract. In the event Contractor accesses state facilities, Contractor will comply fully with all security procedures of the Department concerning such access communicated to it in the performance of this Contract or any amendments hereof.

Contractor agrees that it will adopt procedures to ensure the confidentiality, security, integrity, and availability of all Confidential Information provided under this Contract that is known to Contractor. Those procedures include, for each prospective and current officers, agents, employees, partners, and subcontractors of Contractor designated to work under this Contract or under any amendments hereof, that they are required:

- (i) if entering state facilities through physical means, to be required to undergo the same security clearances as are required of those workforce members of the Department who physically access state facilities including, upon request by Department, submitting identifying information and being fingerprinted on-site at Contractor's expense. The Department shall arrange for the scheduling of such fingerprinting activities on Department premises; or
- (ii) if using or entering state facilities through electronic, telecommunications, information technology, or any other virtual means, to be required to undergo the same security clearances as are required of those workforce members of the Department who access state facilities including, upon request by the Department, submitting identifying information and being fingerprinted at Contractor's location at Contractor's expense. Contractor shall arrange for the scheduling of such fingerprinting activities at a law enforcement agency in Contractor's locale, and in accordance with the law of the jurisdiction in which such fingerprinting takes place, either
  - (a) submit those fingerprints to a local law enforcement or criminal justice agency for the purpose of obtaining a criminal history record report, and, at the Department's discretion, to the Federal Bureau of Investigation for a national criminal history record check, and report to the Department the substance of the criminal record of any of the fingerprinted individuals; or
  - (b) mail those fingerprints to the Department for the Department to submit them for the purpose of obtaining a criminal history record report(s).

## **5. Accessibility of Web-based Information and Applications**

Contractor is solely responsible for the administration, content, intellectual property rights, and materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, subcontractors, or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the Department. As applicable, Contractor agrees to comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications, as such policy may be amended or modified, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. Any web-based information and applications development, or programming delivered pursuant to this Contract or procurement, must comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as determined by quality assurance testing. Quality assurance testing may be conducted by the Department and the results of such testing, if performed, must be satisfactory to the Department before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

## Appendix D

### PRIMARY SECURITY AND PRIVACY MANDATES<sup>1</sup>

#### **Significant federal and state laws, regulations, policies, standards, and guidelines**

- Criminal Justice Information Services (CJIS) Security Policy
- Federal Educational Rights and Privacy Act (FERPA)
- Federal Information Security Management Act (FISMA)
  - National Institute of Technology Standards
- Gramm-Leach-Bliley Act (GLB)
- Health Insurance Portability and Accountability Act (HIPAA)
- Health Information Technology for Economic and Clinical Health Act (HITECH)
- IRS Publication 1075
- Payment Card Industry Data Security Standard (PCI DSS)
- Sarbanes-Oxley Act (SOX)
- Electronic Communications Privacy Act, Stored Communications Act and the PATRIOT Act
- New York State Breach Notification Act: [Breach Notification and Incident Reporting | Office of Information Technology Services \(ny.gov\)](#)
- NYS Cyber Security Policy and related Standards: [Policies | Office of Information Technology Services \(ny.gov\)](#)
- NYS Cyber Incident Reporting: [Breach Notification and Incident Reporting | Office of Information Technology Services \(ny.gov\)](#)
- Minimum Acceptable Risk Standards for Exchanges (MARS-E)

#### 1.1 Criminal Justice Information Services (“CJIS”) Security Policy

The CJIS Security Policy represents a shared responsibility between the Federal Bureau of Investigations (“FBI”) and CJIS System Agencies (“CSA”) and State Identification Bureau (“SIB”). For the State of New York, the NY State Police is the CSA, and the Division of Criminal Justice Services is the SIB. The policy covers the roles and responsibilities for the FBI and the CSA and service providers covered under CJIS security addendums and CJS management control agreements.

CJIS requirements guidance:

- [CJIS Security Policy Resource Center — LE \(fbi.gov\)](#)

#### 1.2 Federal Educational Rights and Privacy Act (“FERPA”) - State Ed, Higher Ed

Protects the privacy of student education records. “Education records” are those records, files, documents, and other materials that 1) contain information directly related to a student; and 2) are maintained by an educational institution. Examples: Grades, courses taken, schedule, test scores, advising records, educational services received, disciplinary actions, student identification number, Social Security number, student private email.

FERPA applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

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<sup>1</sup> Please note that any hyperlinks provided in this document are subject to change and are not exhaustive of all resources available.

FERPA requirements guidance:

- [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/An%20Eligible%20Student%20Guide%20to%20FERPA\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/An%20Eligible%20Student%20Guide%20to%20FERPA_0.pdf)
- Electronic Code of Federal Regulations, Title 34, Part 99

1.3

Federal Information Security Management Act of 2002 (“FISMA”)

FISMA requires each federal agency to develop, document, and implement an effective agency-wide program to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source. It is Title III of the E-Government Act of 2002. It affects Federal agencies, and other agencies they share data with.

Key requirements/provisions include:

- Periodic risk assessments.
- Policies and procedures based on these assessments that cost-effectively reduce information security risk and ensure security is addressed throughout the life cycle of each information system.
- Subordinate plans for information security for networks, facilities, etc.
- Security awareness training for personnel.
- Periodic testing and evaluation of the effectiveness of information security policies, procedures, practices, and controls, at least on an annual basis.
- A process to address deficiencies in information security policies.
- Procedures for detecting, reporting, and responding to security incidents.
- Procedures and plans to ensure continuity of operations for information systems that support the organization's operations and assets.

FISMA requirements guidance:

- <https://csrc.nist.gov/topics/laws-and-regulations/laws/fisma>
- [Federal Information Security Modernization Act | CISA](#)

FISMA requires that federal agencies comply with Federal Information Processing Standards (FIPS) developed by the National Institute of Standards and Technology (“NIST”). Guidance documents and recommendations are issued in the NIST Special Publication (SP) 800-series. Office of Management and Budget (“OMB”) policy OMB Memorandum M-10-15, directs agencies to follow NIST guidance.

NIST Special Publications: <https://csrc.nist.gov/publications/sp>

1.4

Gramm-Leach-Bliley Act of 1999 (“GLB”)

GLB (also known as the Financial Modernization Act of 1999) includes provisions to protect consumers’ personal financial information held by financial institutions. There are three principal parts to the privacy requirements: the Financial Privacy Rule, the Safeguards Rule, and pretexting provisions.

GLB affects financial institutions (banks, securities firms, insurance companies), as

well as companies providing financial products and services to consumers (including lending, brokering, or servicing any type of consumer loan; transferring or safeguarding money; preparing individual tax returns; providing financial advice or credit counseling; providing residential real estate settlement services; and collecting consumer debts).

Key requirements/provisions: The privacy requirements of GLB include three principal parts:

- The Financial Privacy Rule: Requires financial institutions to give customers privacy notices that explain their information collection and sharing practices. In turn, customers have the right to limit some sharing of their information. Financial institutions and other companies that receive personal financial information from a financial institution may be limited in their ability to use that information.
- The Safeguards Rule: Requires all financial institutions to design, implement, and maintain safeguards to protect the confidentiality and integrity of personal consumer information.
- Pretexting provisions: Protects consumers from individuals and companies that obtain their personal financial information under false pretenses, including fraudulent statements and impersonation.

GLB requirements guidance:

- [How To Comply with the Privacy of Consumer Financial Information Rule of the Gramm-Leach-Bliley Act | Federal Trade Commission \(ftc.gov\)](#)
- [Financial Privacy Rule | Federal Trade Commission \(ftc.gov\)](#)

1.5

Health Information Portability and Accountability Act (“HIPAA”)

HIPAA has two major arms: Privacy and Security. Privacy tends to be a business (non-IT) focus, involving the program, HIPAA Privacy Officer and legal. Security tends to be more IT-focused (though it does cover handling of paper records as well).

Many health agencies have compliance requirements that are more stringent than HIPAA – HIPAA is the baseline. For example, the NYS Public Health law has tight requirements regarding AIDS information. The federal regulations at 42 CFR Part 2 guide privacy requirements of substance abuse information. The NYS Mental Hygiene law extends HIPAA consent requirements. Accordingly, meeting baseline HIPAA requirements may not be sufficient in all cases.

HHS (Federal Health and Human Services) HIPAA resources and requirements:

- Privacy rule: <https://www.hhs.gov/hipaa/for-professionals/privacy/index.html>
- Security rule: <https://www.hhs.gov/hipaa/for-professionals/security/index.html>

Summarized versions:

- <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>
- <https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html>

HHS Educational Series bulletins:

- <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/index.html>
- <https://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html>

AMA summary of violation (HHS Office of Civil Rights (OCR) audits can result in significant fines for not following the rules regardless of the scope of impact from a breach).

- <https://www.ama-assn.org/practice-management/hipaa/hipaa-violations-enforcement>

## 1.6 Health Information Technology for Economic and Clinical Health Act (“HITECH”)

HITECH, enacted in 2009, promotes the adoption and meaningful use of health information technology. Subtitle D of HITECH addresses the privacy and security concerns associated with the electronic transmission of health information, in part, through several provisions that strengthen the civil and criminal enforcement of the HIPAA rules.

HITECH requirements guidance:

- <https://www.hhs.gov/hipaa/for-professionals/security/guidance/hitech-act-rulemakingimplementation-update/index.html>

## 1.7 IRS Safeguard Program, Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies and Entities

Publication 1075 contains specific requirements for safeguarding federal tax information (current revision effective on Jan. 1, 2014).

- <https://www.irs.gov/privacy-disclosure/safeguards-program>
- <https://www.irs.gov/pub/irs-pdf/p1075.pdf>

## 1.8 Payment Card Industry Data Security Standard (“PCI DSS”)

The PCI DSS is a set of requirements for enhancing security of payment customer account data, developed by the founders of the PCI Security Standards Council, including American Express, Discover Financial Services, JCB International, MasterCard Worldwide and Visa to help facilitate global adoption of consistent data security measures. PCI DSS includes requirements for security management, policies, procedures, network architecture, software design, and other critical protective measures. The Council also issued requirements called the Payment Application Data Security Standard (PA DSS) and PCI Pin Transaction Security (PCI PTS). PCI DSS affects retailers, credit card companies, and anyone else handling credit card data. Currently, PCI DSS specifies 12 requirements, organized in six basic objectives:

Objective 1: Build and Maintain a Secure Retail Point of Sale System.

- Requirement 1: Install and maintain a firewall configuration to protect cardholder data.
- Requirement 2: Do not use vendor-supplied defaults for system passwords and other security parameters.

Objective 2: Protect Cardholder Data

- Requirement 3: Protect stored cardholder data.
- Requirement 4: Encrypt transmission of cardholder data across open, public networks.

Objective 3: Maintain a Vulnerability Management Program

- Requirement 5: Use and regularly update anti-virus software.
- Requirement 6: Develop and maintain secure systems and applications.

Objective 4: Implement Strong Access Control Measures

- Requirement 7: Restrict access to cardholder data by business need-to-know.
- Requirement 8: Assign a unique ID to each person with computer access.
- Requirement 9: Restrict physical access to cardholder data.

Objective 5: Regularly Monitor and Test Networks

- Requirement 10: Track and monitor all access to network resources and cardholder data.
- Requirement 11: Regularly test security systems and processes.

Objective 6: Maintain an Information Security Policy

- Requirement 12: Maintain a policy that addresses information security.

PCI compliance requirements:

- PCI Document Library: [https://www.pcisecuritystandards.org/document\\_library](https://www.pcisecuritystandards.org/document_library)
- PA DSS: [PCI Security Standards Council – Protect Payment Data with Industry-driven Security Standards, Training, and Programs](#)
- PCI PTS: [https://www.pcisecuritystandards.org/assessors\\_and\\_solutions/pin\\_transaction\\_devices](https://www.pcisecuritystandards.org/assessors_and_solutions/pin_transaction_devices)

1.9

Sarbanes-Oxley Act of 2002 (“SOX”)

SOX is designed to protect investors and the public by increasing the accuracy and reliability of corporate disclosures. It was enacted after the high-profile Enron and WorldCom financial scandals of the early 2000s. It is administered by the Securities and Exchange Commission, which publishes SOX rules and requirements defining audit requirements and the records businesses should store and for how long. It affects U.S. public company boards, management and public accounting firms.

The Act is organized into 11 titles:

1. Public Company Accounting Oversight
2. Auditor Independence
3. Corporate Responsibility
4. Enhanced Financial Disclosures
5. Analyst Conflicts of Interest
6. Commission Resources and Authority
7. Studies and Reports
8. Corporate and Criminal Fraud Accountability
9. White-Collar Crime Penalty Enhancements

10. Corporate Tax Returns
11. Corporate Fraud Accountability

SOX requirement guidance:

- <https://www.congress.gov/bill/107th-congress/house-bill/3763>
- <https://pcaobus.org/>

- 1.10 The U.S. Electronic Communications Privacy Act, The U.S. Stored Communications Act, The U.S. PATRIOT Act

The Electronic Communications Privacy Act (ECPA) and the Stored Communications Act (SCA) create statutory privacy rights for people's electronic communications stored by a third-party service provider in "electronic," "computer," "temporary" or "intermediate" storage. Certain types of electronic communications (unread mail that is newer than 180 days) may only be obtained by law enforcement from a service provider via a search warrant. Other electronic communications and user information may be more easily obtained by law enforcement from a third-party provider by a court order or subpoena. Any communications may be obtained by law enforcement from a third-party provider if the end user has provided consent. End users should be careful not to give such consent by clicking through a Terms of Use and/or Privacy Policy or by signing a contract. The PATRIOT Act allows law enforcement to obtain or intercept electronic communications and other end user data from third-party service providers for terrorism investigations using protocols that are less stringent than those that would normally apply.

- U.S. Electronic Communications Privacy Act: [Electronic Communications Privacy Act of 1986 \(ECPA\) | Bureau of Justice Assistance \(ojp.gov\)](#)
- U.S. Stored Communications Act: <https://uscode.house.gov/view.xhtml?path=/prelim@title18/part1/chapter121&edition=prelim>
- U.S. PATRIOT Act: <https://www.justice.gov/archive/ll/highlights.htm>

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**APPENDIX F**  
**Insurance Requirements**

The Bidder shall be required to procure, at its sole cost and expense, all insurance required by this Appendix.

The Bidder shall be required to provide proof of compliance with the requirements of this Appendix, as follows:

- Proof of Workers' Compensation and Disability Benefits Insurance should be provided at the time of Bid submission;
- Proof of all other insurance shall be provided in accordance with Section B below;
- After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

The failure to comply with the requirements of this Appendix at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of any Contract resulting from this Solicitation and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation, at law or in equity.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation/this Contract, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York.

The Department may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Bidders and Contractors shall deliver to the Department evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation/Contract in a form satisfactory to the Department. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by the Department does not, and shall not be construed to relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation and any Contract resulting from this Solicitation/Contract.

The Contractor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the term of any Contract resulting from this Solicitation/the Contract.

**A. General Conditions Applicable to Insurance.** Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

The Department requires Contractors to submit only certificates of insurance and additional insured endorsements. Contractors should refrain from submitting entire insurance policies. If an entire insurance policy is submitted but not requested, the Department shall not be obligated to review it and shall not be chargeable with knowledge of its contents. In addition, the submission of an entire insurance policy not requested by the Department does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation. The Department reserves the right to request other proof of insurance, including, but not limited to, policies, and Contractors agree to comply with all reasonable requests.

All policies of insurance required by this Solicitation and any Contract resulting from this Solicitation/Contract shall comply with the following requirements:

**1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B *Insurance Requirements* below.

**2. Policy Forms.** Except as otherwise specifically provided herein, or agreed to in the Contract resulting from this Solicitation, all policies of insurance required by this Attachment shall be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, the Department reserves the right to accept claims-made policy forms, in its sole discretion, provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.

**3. Certificates of Insurance/Notices.** Bidders and Contractors shall provide the Department with a Certificate or Certificates of Insurance, in a form satisfactory to the Department as detailed below, and pursuant to the timelines set forth in Section A.13. below. Certificates shall name The New York State Office of General Services, Bureau of Risk and Insurance Management (BRIM), 32<sup>nd</sup> Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to DFS and in accordance with the New York State Insurance Law (e.g., an ACORD 25);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation and any Contract resulting from this Solicitation/Contract;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

**4. Primary Coverage.** All Commercial General Liability, Business Automobile Liability, and Umbrella/Excess Liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents,

and employees shall be excess of and shall not contribute with the Bidder/Contractor's insurance.

**5. Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Attachment at any time during the term of any Contract resulting from this Solicitation/the Contract shall be considered a breach of the terms of any Contract resulting from this Solicitation/the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation/the Contract, at law or in equity.

**6. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from the Department. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

**7. Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable, and shall be provided to the Department upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

**8. Waiver of Subrogation.** For all Commercial General Liability, Business Automobile Liability, Umbrella/Excess Liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

**9. Additional Insured.** The Contractor shall cause to be included in each of the Commercial General Liability, Business Automobile Liability, and Umbrella/Excess Liability policies required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 12

19 and CG 20 37 12 19 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation/the Contract and their officers, agents, and employees. An Additional Insured Endorsement, or the equivalent, evidencing such coverage shall be provided to DFS pursuant to the timelines set forth in Section 13 below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

**10. *Excess/Umbrella Liability Policies.*** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

**11. *Notice of Cancellation or Non-Renewal.*** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide DFS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation/Contract.

**12. *Policy Renewal/Expiration*** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation/Contract shall be delivered to the Department. If, at any time during the term of any Contract resulting from this Solicitation/the Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation and any Contract resulting from this Solicitation/Contract, or proof thereof is not provided to the Department, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by the Department.

**13. *Deadlines for Providing Insurance Documents after Renewal or Upon Request.*** As set forth herein, certain insurance documents must be provided to the Department BRIM contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to the Department as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days from request or renewal;
- For information on self-insurance or self-retention programs: 15 calendar days from request or renewal;
- For other requested documentation evidencing coverage: 15 calendar days from request or renewal;
- For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from request or renewal.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the Department, the Department shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

### B. Insurance Requirements

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation/the Contract, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation/the Contract, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
<b>Commercial General Liability</b>	No less than \$1,000,000 each occurrence	Upon notification of tentative award and updated in accordance with Contract
General Aggregate	\$2,000,000	
Products-Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
<b>Professional Liability</b>	\$5,000,000	
<b>Business Automobile Liability Insurance</b>	No less than \$1,000,000 each accident	
<b>Workers' Compensation</b>		
<b>Disability Benefits</b>		
<b>Data Breach and Privacy Liability Insurance (Cyber Insurance)</b>	\$10,000,000	
<b>Technology Errors and Omissions Liability Insurance</b>	\$2,000,000	
<b>Crime Insurance</b>	\$50,000	

- Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products- completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) [and explosion, collapse & underground coverage].

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:

- Premises liability;

- Independent contractors;
  - Blanket contractual liability, including tort liability of another assumed in a contract;
  - Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation/the Contract;
  - Cross liability for additional insureds; and
  - Products/completed operations for a term of no less than three [1-3] years, commencing upon acceptance of the work, as required by the Contract.
2. **Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of automobiles used in connection with performance under any Contract resulting from this Solicitation/the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation/the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation/the Contract on a form provided by the Department. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation/the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to the Department in accordance with the insurance requirements of any Contract resulting from this Solicitation/the Contract.

3. **Professional Liability:**

Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services (i.e. professional services, legal advisement, counseling, cyber risk management, etc.).

- Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services.
- If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than one (1) year from the time work under any Contract resulting from this Solicitation is completed or must agree to insure for one year following any Contract under award. Written proof of this extended reporting period or agreement must be provided to the Department upon request.
- The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of any Contract resulting from this Solicitation.

4. **Data Breach and Privacy Liability Insurance (Cyber Insurance):** The Contractor shall maintain, during the term of the Contract, Data Breach and Privacy Liability Insurance (Cyber Insurance) including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Department's systems due to the actions of the Contractor that results in unauthorized access to the Department or its data. The Contractor shall carry and maintain applicable coverage with a limit of not less than \$10,000,000.

- Said insurance shall provide coverage for damages arising from, but not limited to, the following:
- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate

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- information;
  - Personally identifiable nonpublic information (e.g., medical, financial or personal in nature in electronic or non-electronic form);
  - Privacy notification costs;
  - Regulatory defense and penalties;
  - Website media liability; and
  - Cyber theft of Department property, including but not limited to data, PII, money and securities.
  - If the policy is written on a Claims-Made basis, the Contractor must provide to the Department proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is complete in the event that coverage is cancelled or not renewed. This requirement applies to both primary and Excess Liability Policies, as applicable.
- 5. Technology Errors and Omissions Liability Insurance:** The Contractor shall maintain, during the term of the Contract, Technology Errors and Omissions Liability Insurance for Claims for damages arising from computer related services including, but not limited to, the following:
- Consulting;
  - Data Processing;
  - Programming;
  - System Integration;
  - Hardware or Software Development;
  - Installation;
  - Distribution or Maintenance;
  - Systems Analysis or Design;
  - Training;
  - Staffing or Other Support Services; and
  - Any electronic equipment, or computer software developed, manufactured, distributed, licensed, marketed or sold.
  - The Contractor shall carry and maintain applicable coverage with a limit of not less than \$2,000,000. The policy shall include coverage for third-party fidelity including cyber theft, if applicable.
  - If the policy is written on a Claims-Made basis, the Contractor must provide to the Department proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is complete in the event that coverage is cancelled or not renewed. This requirement applies to both primary and Excess Liability Policies, as applicable.
- 6. Crime Insurance:** Crime Insurance, on “loss sustained form: or a “loss discovered form” providing coverage for third-party fidelity in an amount not less than \$50,000, including coverage for:
- Employee Theft;
  - Forgery or Alteration;
  - Inside the Premises – Theft of Money and Securities;
  - Inside the Premises – Robbery or Safe Burglary of Other Property;
  - Outside the Premises;
  - Computer Fraud; and
  - Money Orders and Counterfeit Paper Currency.

Policy must allow for reporting of circumstances or incidents that might give rise to future Claims.

The Department, including its affiliates and subsidiaries, must be included as “Loss Payees” as respects this specific amount as their interests may appear.

Any warranties required by the Insurer must be disclosed and complied with. Said insurance shall extend coverage to include the principals of the Contractor and Subcontractor as a result of any Contract resulting from this solicitation. This policy shall not contain a condition requiring an arrest and conviction.

### **Workers’ Compensation Insurance and Disability Benefits Requirements**

New York State Workers’ Compensation Law (“WCL”) Sections 57, 220 and 230 require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original issuances and renewals, whether the governmental agency is having the work done or is simply issuing the contract. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of the Contract.** Therefore, prior to the Department executing any Contract, the Contractor must submit proof to the Department that it has workers’ compensation and disability benefits coverage as required by the WCL, or proof that it is legally exempt from obtaining such coverage in compliance with the WCL. Evidence of coverage must be submitted on one of the forms specified by the Chair of the New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage to satisfy these statutory requirements.**

Proof of Compliance with the Workers’ Compensation Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers’ Compensation Law pertaining to Workers’ Compensation coverage, a Contractor must:

- A. Be legally exempt from obtaining Workers’ Compensation coverage; or
- B. Obtain such coverage from an Insurance carrier; or
- C. Be a New York State Workers’ Compensation Board approved self-insured employer or participate in an authorized Self-Insurance plan.

A Contractor seeking to enter into a contract with a municipal or State entity must provide one of the following forms showing proof of coverage or an exemption:

- Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain Out-of-State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is not Required, which is available on the New York State Workers’ Compensation Board’s website at [www.wcb.ny.gov](http://www.wcb.ny.gov); or
- Form C-105.2 (9/07), Certificate of Workers’ Compensation Insurance; if coverage is provided by the Contractor’s Insurance carrier, the Contractor must request that its carrier send this form to the Department; or Form U-26.3 if coverage is provided by the New York State Insurance Fund (“NYSIF”), the Contractor must request that NYSIF send this form to the Department; or
- Form SI-12, Certificate of Workers’ Compensation Self-Insurance, available from the New York State Workers’ Compensation Board’s Self-Insurance Office, or Form GSI- 105.2, Certificate of Participation in Workers’ Compensation Group Self-Insurance, available from the Contractor’s Group Self-Insurance Administrator.

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Proof of Compliance with the Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the WCL provisions pertaining to Disability Benefits, the Contractor must:

- A. Be legally exempt from obtaining Disability Benefits coverage; or
- B. Obtain such coverage from an Insurance carrier; or
- C. Be a New York State Workers' Compensation Board approved self-insured employer or participate in an authorized Self-Insurance plan.

A Contractor seeking to enter into a contract with the Department must provide one of the following forms showing proof of coverage or an exemption:

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the New York State Workers' Compensation Board's website at [www.wcb.ny.gov](http://www.wcb.ny.gov);
- Form DB-120.1, Certificate of Disability Benefits Insurance; the Contractor must request its business insurance carrier send this form to the Department; or
- Form DB-155, Certificate of Disability Benefits Self-Insurance; the Contractor must call the New York State Workers' Compensation Board's Self-Insurance Office at 518-402-0247 to obtain this form.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website: <http://www.wcb.ny.gov/content/main/Employers/Employers.jsp>.

**Appendix E**  
The Department of Financial Services  
Implicit Bias Training Services  
Standard Contract Clauses

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## **SECTION 1 - TERMS AND CONDITIONS**

The Solicitation, the Bidder's Proposal, and the Contract award that results from this Request for Proposals ("RFP") are subject to and incorporate the following terms and conditions.

### **1.1 STAFFING**

All employees, subcontractors, and agents of the Contractor performing work under this Contract must meet or exceed the professional, technical, and training qualifications set forth in this Contract and must comply with all security and administrative requirements of the Department that are communicated to the Contractor. The Department reserves the right to conduct a security background check or otherwise approve any employee, subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical, or training qualifications, quality of work, change in security status, or non-compliance with the Department's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract. The Department reserves the right to reject and/or bar from any facility for cause any employee, subcontractor, or agent of the Contractor.

It is understood that the staff designated in the Contractor's proposal will be the staff working on the project. If there is a need to add a new staff member, or Contractor needs to replace an existing staff member, then the Department must review the new staff member's credentials and approve the new staff member before the staff member can begin to work on the project.

### **1.2 CONSULTANT DISCLOSURE**

The requirements of New York State Finance Law ("State Finance Law") §§ 8 and 163 regarding Consultant Disclosure are hereby incorporated into this Contract.

### **1.3 TERMINATION**

The Contractor and the Department may mutually agree, in writing, to terminate this Contract at any time. The Department may also terminate this Contract at any time and for any reason by mailing written notice to the Contractor at least ten (10) days prior to such termination date.

(a) **For Cause:** For a material breach that remains uncured for more than thirty (30) calendar days or other longer period as specified by written notice to the Contractor, the Contract may be terminated by the Department. Neither the State nor the Department shall be liable for any of Contractor's costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such termination shall be upon written notice to the Contractor. In such event, the Department may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

(b) **For Convenience:** The Department retains the right to terminate the Contract, or any part thereof, without reason, provided that the Contractor is given at least ten (10) days written notice of the Department's intent to terminate. This provision should not be understood as waiving the Department's right to terminate the Contract for cause or to stop work immediately for unsatisfactory work but is supplementary to that provision.

(c) **For Violation of §§ 139-j and 139-k of the State Finance Law:** The Department reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with § 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

(d) **For Violation of § 5-a of the New York Tax Law:** The Department reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with § 5-a of the New York Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

(e) **For Non-Responsibility:** The Department reserves the right to terminate the Contract if it is found by the Department that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete.

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

In no case shall such termination of the Contract by the Department be deemed a breach thereof, nor shall the Department be liable for any damages for lost profits or otherwise, that may be sustained by the Contractor as a result of such termination.

(f) **Upon Conviction of Certain Crimes:** The Department reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York Penal Law ("Penal Law"); Corrupting the Government as defined in Article 496 of the Penal Law; or Defrauding the Government as defined in § 195.20 of the Penal Law.

(g) **Suspension of Work:** The Department, in its sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the Department. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in the Department's spending, declaration of emergency, contract compliance issues, or other circumstances. Upon issuance of such notice, the Contractor is not to accept any work requests and must comply with the suspension order. Activity may resume at such time as the Department issues a formal written notice authorizing a resumption of performance under the Contract.

### **Payment for work completed prior to termination date:**

The Department shall not incur any costs if it terminates this Contract, other than those otherwise due to the Contractor for services (“Services”) and/or deliverables (“Deliverables”) accepted by the Department pursuant to the terms and provisions of this Contract prior to the time of such termination. Upon any termination, the Contractor shall only be entitled to compensation for accepted Services and/or Deliverables delivered up to the date of termination.

In addition, in the event of any violation by the Contractor of any of the terms of this Contract, the Department may terminate the Contract without notice and with compensation to the Contractor for fees and expenses rendered only to the date of termination. Any breach of any of the terms of this Contract by the Contractor may result in immediate and irreparable injury to the Department and will authorize recourse to injunction and/or other specific performance as well as to all other legal or equitable remedies to which the Department may be entitled.

### **1.4 BILLING**

The Contractor shall provide complete and accurate itemized invoices upon the acceptance by the Department of the Services and/or Deliverables, unless specified otherwise within this Contract, to be reviewed and approved by the Department. Electronic submission of invoices is required, and invoices shall be e-mailed to [accountspayable@dfs.ny.gov](mailto:accountspayable@dfs.ny.gov). Invoices shall contain all required information along with all supporting documentation.

Payment by the Department will be made in accordance with the State Finance Law, upon receipt of such invoices, and upon approval by the Department, in accordance with State procedures and practices. Electronic payments are required. Therefore, Contractors must enroll with the New York State Office of State Comptroller (“OSC”) to authorize electronic payments by logging into the SFS Vendor Portal to complete an online form. If there are any questions, OSC may be contacted by e-mail at [eCommerce@osc.ny.gov](mailto:eCommerce@osc.ny.gov).

### **DELIVERABLE ACCEPTANCE:**

The Department will be responsible for review and acceptance of the Services and/or Deliverables. Acceptance of the Services and/or Deliverables shall be in accordance with the following:

- (a) **Notification:** The Contractor will submit to the Department written notification indicating the Services and/or Deliverables that were completed, a summary of each of the completed Services and/or Deliverables, and a copy of the completed Deliverable(s) (“Notification”), if necessary.
- (b) **Acceptance Criteria:** The acceptance criteria for the Services and/or Deliverables shall be its substantial conformance to the requirements and descriptions set forth in any Contract (“Acceptance Criteria”).
- (c) **Acceptance:** The Department shall have a twenty (20) business day acceptance period, unless otherwise mutually agreed to by the Department and Contractor, to approve Services and/or Deliverables that conform in all material respects to the Acceptance Criteria. The acceptance period shall begin upon transmittal by Contractor to the Department of written Notification the Services and/or Deliverables have been completed and are ready for approval; and shall be counted from and include the first business day following the delivery of the Notification to the Department.

The Department shall provide Contractor with:

- written approval of the Services and/or Deliverables; OR
- a written statement which identifies in reasonable detail, with references to the applicable Acceptance Criteria, all of the deficiencies preventing approval (“Deficiencies”).

All Services and/or Deliverables shall require the written approval by the Department that such Services and/or Deliverables conform in all material respects with the Acceptance Criteria.

The Contractor shall have ten (10) business days (or such other period mutually agreed to by the Department and Contractor) to complete all such corrective actions or changes in order for such Services and/or Deliverables to conform in all material respects with the Acceptance Criteria. The count of such business days shall begin on the first business day following Contractor’s receipt of the written statement of Deficiencies and/or required corrective actions identified by the Department.

The Department shall have twenty (20) business days to review the revised Services and/or Deliverables (or such other period mutually agreed to by the Department and Contractor) and to notify Contractor in writing of acceptance or rejection in accordance with the foregoing provisions of this Section. If the Department has not approved the Services and/or Deliverables after correction by Contractor, the Department and Contractor may mutually agree to further steps to correct outstanding material deficiencies. However, in no event shall the total time allocated for review, correction and re-review of material Deficiencies in Services and/or Deliverables exceed ninety (90) days.

The Department shall have final sign-off responsibility on all Services and/or Deliverables. Services and/or Deliverables may be provided concurrently to the Department for review and acceptance in accordance with this Section.

## **1.5 NOTICE**

Any notice, request, demand, or other communication required or provided for in this Contract shall be in writing and shall be deemed to have been duly given if delivered in person or mailed in a sealed envelope, postage prepaid, or sent by e-mail and addressed as follows:

To the Department: NYS Department of Financial Services  
Office of Financial Management, Suite #1850  
One Commerce Plaza, 99 Washington Avenue  
Albany, NY 12257  
E-mail: [RFP@dfs.ny.gov](mailto:RFP@dfs.ny.gov)

With a copy to: NYS Department of Financial Services  
Office of General Counsel, Suite #1700  
One Commerce Plaza, 99 Washington Avenue  
Albany, NY 12257  
E-mail: [counsel@dfs.ny.gov](mailto:counsel@dfs.ny.gov)

To Contractor:

Either party may designate another or further address by notice given in accordance herewith.

## **1.6 CONFIDENTIAL INFORMATION**

The term “Confidential Information” as used herein includes all electronic or hard copy information, records, and communications that Contractor has gained or will gain access to in the course of rendering services under this Contract, including, but not limited to, any information, records, or communications that the Department or the State, regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or source of information (e.g., the Department, other state agencies, regulated entities, electronic systems, federal government, or third -party contractors) provides to the Contractor, its officers, agents, employees, and subcontractors or that Contractor, its officers, agents, employees, and subcontractors obtain, discover, derive, or otherwise become aware of as a result of Contractor’s performance of services under this Contract. Contractor shall maintain the security, confidentiality, integrity, and availability of all Confidential Information in accordance with Appendix C hereto in the performance of its activities under the Contract. Contractor shall ensure that its officers, agents, employees, partners, and subcontractors, if any, are fully aware of the obligations arising under this Contract and shall take all commercially reasonable steps to ensure their compliance to prevent unauthorized use, access, or disclosure of Confidential Information. Failure by Contractor or its officers, agents, employees, and subcontractors to fully comply with these requirements shall be deemed a failure to meet Contractor’s obligations under this Contract and may result in the Department suspending, canceling, and/or terminating the Contract for cause or to pursue any other legal or equitable remedies available.

## **1.7 DEPARTMENT PROPERTY AND OWNERSHIP**

The Department is not obtaining any intellectual property right in or to any training materials provided by the Contractor in connection with the Services and/or Deliverables furnished pursuant to this Contract, other than the rights of use specifically granted in this Contract. The Department will be entitled to keep and use all materials provided by the Contractor to the Department, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to Contractor.

Contractor will retain all rights, title, and interest in and to all materials developed by it prior to the effective date of this Contract and/or developed outside of Contractor’s obligations hereunder.

Any summaries, written reports, opinions and advice rendered by the Contractor shall become the sole and exclusive property of the Department, and the Contractor shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Contractor.

All information and materials received under this Contract by the Contractor from the Department are and shall remain the sole and exclusive property of the Department, and the Contractor shall have no right, title, or interest in, or to any such information or materials by virtue of their use or possession hereunder by the Contractor.

## **1.8 CONFLICTS OF INTEREST**

The Contractor represents and warrants that it has no conflict, actual or perceived, that would prevent it from performing its duties and responsibilities under this Contract. The Contractor shall disclose the relationships it has had with entities regulated by the Department during the two years prior to the date of this Contract. During the term of this Contract the Contractor shall disclose any relationships it proposes to enter into with insurance companies or other entities regulated by the Department. These disclosures must contain all facts material to any actual or potential conflict of interest. The Department may consider and approve, in writing, alternative guidelines proposed by the Contractor to redress any actual or perceived conflict of interest only when the Department deems such action appropriate.

## **1.9 PUBLICITY**

The Contractor shall not prepare or release, or cause to be prepared or released, any public notice or announcement concerning this Contract or performance under this Contract. Public notice or announcement includes, but is not limited to, notices published on or in connection with the Contractor's website. The Contractor shall not plan, conduct, or cause to be planned or conducted, or take part in, any news or other conference concerning this Contract, or work performed pursuant to it, without the Department's prior written approval. The Contractor shall not make public or publicize its relationship with the Department, nor use the Department's name, without the Department's prior written approval. The Contractor will not be permitted to use in any manner the Department's logos, or any official mark of New York State without prior written approval by the Department. The Department reserves the right, in its sole discretion, to withhold approval. In the event the Department so approves such use, then any use of the logos or official marks shall strictly comply with the terms and conditions set forth by the Department.

## **1.10 RELATIONSHIP**

The Contractor is an independent contractor and may neither hold itself out as nor claim to be an officer, employee, or subdivision of the State of New York, nor make any claim, demand, or application to or for any right based upon any different status. No staff member, officer, director, or person employed by the Contractor in connection with this Contract shall be considered or deemed to be an employee of the State of New York or represent him or herself as an employee of the State of New York.

## **1.11 LEGAL ASSISTANCE**

The Contractor must provide its own legal defense and technical assistance, at its own expense, in response to challenges arising out of or related to the duties and responsibilities of the Contractor under this Contract.

## **1.12 LIABILITY AND INDEMNIFICATION**

The Contractor assumes all risks in the performance of all its activities authorized by this Contract. The Contractor hereby covenants and agrees to defend, indemnify and hold harmless

the People of the State of New York; the New York State Executive Department; the New York State Department of Financial Services; and its Superintendents, officers, agents, employees and assigns against all liabilities, claims, suits, actions, judgments, costs, expenses, demands, losses, damages, or injury, arising out of this Contract, of whatsoever kind and nature including death or injury to person, damage or loss of property, all attorneys' fees and other costs of investigating and defending against such claims, liabilities, losses, damages, expenses, accidents or occurrences. The Contractor shall be fully liable for the actions of its agents, employees, partners and subcontractors and shall fully defend, indemnify and hold the People of the State of New York; the New York State Executive Department; the New York State Department of Financial Services; and its Superintendents, officers, agents, employees harmless from suits, actions, proceedings, claims, losses, damages, and costs (including reasonable attorney fees) of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners, and subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not be obligated to indemnify the Department for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Department. The Contractor shall be responsible for such liabilities that arise at any time prior to termination of this Contract, whether direct or indirect, and whether caused or contributed to by the Contractor, its contractors, subcontractors, agents, or employees. The Contractor's responsibility under this section shall not be limited to the required or available insurance coverage.

The Department shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify the Department; (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of the Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that such action or proceeding at law or in equity is commenced against the Department arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or subcontractors, which shall arise from or result directly or indirectly from the Commodities and Services supplied under this Contract, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Department and the New York State Office of the Attorney General ("OAG") in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify. Contractor shall in such event protect the interests of the Department and attempt to secure a continuance to permit the State and the Department to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and the Department may have. In the event of a dispute regarding the defense, the Contractor and the OAG shall try to reach amicable resolution, but the OAG shall have the final determination on such matters.

### **1.13 WARRANTIES**

**Title and Ownership:** Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Commodities acquired by the Department under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify the Department and hold the Department harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth in this Contract.

**Virus Warranty:** The Contractor represents and warrants that any Commodities acquired under the Contract by the Department does not contain any known viruses. Contractor is not responsible for viruses introduced at the Department's site.

**Date/Time Warranty:** Contractor warrants that the Solution furnished pursuant to this Contract shall, when used in accordance with its documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transactions, including leap year calculations. If the individual parts of a Commodity furnished pursuant to this Contract must perform as a package or system, this warranty shall apply to the Commodity as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion; ii) maintenance or support services; iii) data entry or processing; or iv) contract administration services (e.g. billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including, but not limited to, the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination of this contract through a) ninety (90) days; or b) the Contractor's or Commodity manufacturer/developer's stated date/time warranty, whichever is longer. Nothing in this warranty shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

**Workmanship Warranty:** Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any. The Department must notify Contractor of any services warranty deficiencies within 90 calendar days from performance of the services that gave rise to the warranty claim.

**Survival of Warranties:** All warranties contained in this Contract shall survive the termination of this Contract.

**Prompt Notice of Breach:** The Department shall promptly notify the Contractor in writing of any claim of breach of any warranty provided herein.

**Additional Warranties:** Where Contractor, Commodity manufacturer or Service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the Department.

**No Limitation of Rights:** The rights and remedies of the State and the Department provided in this section are in addition to and do not limit any rights afforded to the State and the Department by any other section of the Contract.

#### **1.14 CONTRACTOR RESPONSIBILITY**

Contractor shall at all times during the Contract term remain responsible. Contractor agrees, if requested by the Superintendent or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

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

Upon written notice to Contractor, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Contract may be terminated by the Superintendent, or her designee, at Contractor's expense where Contractor is determined by the Superintendent to be non-responsible. In such event, the Superintendent, or her designee, may complete the contractual requirements in any manner she may deem advisable and pursue available legal or equitable remedies for breach.

#### **1.15 FORCE MAJEURE**

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Department in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond thirty (30) days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

- a. The Department may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Commodity and Services which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the Department, or
- b. The Contractor will provide the Department with access to the Commodity and Services first in order to fulfill orders placed before the force majeure event occurred. The Department agrees that it shall accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor the Department shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Department to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Department where the delay or failure will significantly impair the value of the Contract to the Department, the Department may terminate the Contract or the portion thereof which is subject to delays and thereby discharge any unexecuted portion of the Contract or relative part thereof.

In addition, the Department reserves the right to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss to the Contractor. In the event of a dispute between the Contractor and the Department, such dispute shall be resolved in accordance with the OSC Procedure for Protests; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

#### **1.16 REMEDIES FOR BREACH**

Unless otherwise specified by the Department, in the event the Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after fifteen (15) calendar days following written notice by the Department, the Department may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within fifteen (15) calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter

diligently pursue all steps necessary to cure such failure, such fifteen (15) day period may, in the sole discretion of the Department, be extended for a reasonable period in no event to exceed sixty (60) calendar days. It is understood and agreed that the rights and remedies available to the Department in the event of breach shall include but not be limited to the following:

- a. **Cover/Substitute Performance:** In the event of Contractor's material, uncured breach, the Department may, with or without issuing a formal solicitation: (i) purchase from other sources; or (ii) if the Department is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement(s) of equal or comparable quality, the Department may acquire acceptable replacement(s) of lesser or greater quality. Such purchases may be deducted from the Contract quantity without penalty or liability to the Department.
- b. **Withhold Payment:** In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Department.
- c. **Bankruptcy:** In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Contract, the Department may, at its discretion, make application to exercise its right to set-off against monies due the debtor or, under the doctrine of recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.
- d. **Reimbursement of Costs Incurred:** The Contractor agrees to reimburse the Department promptly for any and all additional costs and expenses for acquiring an acceptable replacement. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs, and expenses, including reasonable attorney's fees, shall be paid by the Contractor. Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Department may obtain replacement(s) temporarily and the cost of the replacement(s) shall be deducted from the Contract quantity without penalty or liability to the Department.
- e. **Deduction/Credit:** Sums due as a result of these remedies may be deducted or offset by the Department from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Department the amount of such claim or portion of the claim still outstanding, on demand. the Department reserves the right to determine the disposition of any rebates, settlements, restitution, or damages that arise from the administration of the Contract.

#### **1.17 ASSIGNMENT OF CLAIMS**

Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 U.S.C. § 1, et seq. and

the antitrust laws of the State of New York, New York General Business Law § 340, et seq.

### **1.18 COOPERATION WITH THIRD PARTIES**

The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other contractors or subcontractors of the Department, as necessary to ensure delivery or performance of the Contract.

### **1.19 INDEMNIFICATION RELATING TO INFRINGEMENT**

The Contractor shall also defend, indemnify and hold the Department harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret, or other proprietary right provided such claim arises solely out of the Solution as supplied by the Contractor, and not out of any modification to the Solution made by the Department or by someone other than Contractor at the direction of the Department without Contractor's approval; provided, however, that the Contractor shall not be obligated to indemnify the Department for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Department.

The Department shall give Contractor: (i) prompt written notice of any action, claim or threat of suit alleging infringement, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of the Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

If usage of the Solution shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Department the right to continue usage; (ii) to modify the Commodities and Services so that usage becomes non-infringing and is of at least equal quality and performance; or (iii) replace such Commodities and Services or parts thereof, as applicable, with non-infringing Commodities and Services of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that the Department is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action or proceeding at law or in equity is commenced against the Department arising out of a claim that the Department's use of the Solution under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth on the Contract, Contractor shall immediately notify Contract and the OAG in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify. Contractor shall in such event protect the interests of the Department and attempt to secure a continuance to permit the State and the Department to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and the Department may have. In the event of a dispute regarding

the defense, the Contractor and the OAG shall try to reach an amicable solution, but the OAG shall have the final determination on such matters. This constitutes the Department's sole and exclusive remedy for infringement of a patent, copyright, trademark, trade secret, or other proprietary right.

#### **1.20 CYBER SECURITY POLICY**

The Contractor warrants, covenants, and represents that, in the performance of the Contract, Contractor and its agents, subcontractors, officers, distributors, resellers, and employees will comply fully with all security procedures of the Department set forth in Appendix C – Information Security & Cyber Security Requirements, and in Appendix D – Primary Security and Privacy Mandates, or otherwise communicated in advance to the Contractor, including but not limited to physical, facility, documentary, and cyber security rules, procedures, and protocols.

#### **1.21 WAIVER**

No failure or delay on the part of the Department in exercising any right, power or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise.

#### **1.22 ENTIRE CONTRACT**

This Contract sets forth the entire agreement and understanding of the parties relating to the subject matter contained in this Contract except as to those matters or agreements expressly incorporated herein by reference. No covenant, representation or condition not expressed in this Contract shall be effective to interpret, change or restrict the express provisions of this Contract. This Contract supersedes any and all prior agreements, whether written or oral, relating to the subject matter contained in this Contract. This Contract shall not be amended, changed, or otherwise modified except in a writing, signed by both parties, and approved by OSC.

#### **1.23 BINDING CONTRACT**

The covenants and agreements contained in this Contract shall be binding upon the parties hereto and upon their respective executors, administrators, legal representatives, heirs, successors, distributees, and assigns. The rights or obligations granted or allocated to the Contractor in this Contract may not be assigned without the prior written consent of the Department.

#### **1.24 SEVERABILITY**

In the event any provision of this Contract is determined to be contrary to law or unenforceable for any reason whatsoever, such determination shall not in any way affect the validity or enforceability of the balance of this Contract or any other term or condition hereof.

### **1.25 GOVERNING LAW**

This Contract will be governed by the laws of the State of New York. Any disputes arising out of this Contract shall be heard in a court of competent jurisdiction in the State of New York.

### **1.26 ORDER OF PRECEDENCE**

Conflict among the documents shall be resolved in the following order of precedence:

- 1.) Appendix A -Standard Clauses for New York State Contracts;
- 2.) The Contract document setting forth the final agreement between the parties;
- 3.) The Department's Responses to Submitted Questions and/or any clarifications to the Appendices, Attachments, or Exhibits, if applicable;
- 4.) The RFP, including all attachments, appendices and exhibits, if applicable;
- 5.) The Contractor's Proposal.

All prior agreements, representations, statements, negotiations, and undertakings between the Department and the Contractor are superseded.