



Department of Civil Service

AMENDED REQUEST FOR PROPOSALS Changes in RED

ENTITLED:

**"New York State Health Insurance Program
Banking Services"**

RELEASE DATE:

October 6, 2023

PROPOSAL DUE DATE:

November 10, 2023

IMPORTANT NOTICE: A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement, and it will remain in effect until State Comptroller approval of the resultant Contract. During the Restricted Period for this Procurement ALL communications must be directed, in writing, solely to the Designated Contact as listed in Section 2 of this RFP and shall be in compliance with the Procurement Lobbying Law and the NYS Department of Civil Service "Rules Governing Conduct of Competitive Procurement Process" (refer to RFP, Section 2: Procurement Protocol and Process).

**All inquiries, questions, filings, and submission of
Proposals must be directed in writing to:**

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New York State Department of Civil Service
Attn: Office of Financial Administration, Floor 17
Agency Building 1, Empire State Plaza
Albany, New York 12239
DCSprocurement@cs.ny.gov

Timothy R. Hogues
Commissioner
NYS Department of Civil Service

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SECTION 1: INTRODUCTION

1.1 Purpose

The New York State Department of Civil Service (Department or DCS) has issued this Request for Proposal (RFP) to seek competitive proposals from a state or federally chartered bank or financial payment processor with the legal authority to operate in the State of New York to provide Banking Services (hereinafter collectively referred to as Project Services) for the Department in its administration of the New York State Health Insurance Program (NYSHIP).

The required Project Services are set forth in detail in Section 3. These Project Services include maintaining four lockboxes and processing premium payments remitted by Enrollee and Agencies. This RFP defines minimum contract requirements, details response requirements, and outlines the Department's process for evaluating responses and selecting a qualified organization (Offeror). Capitalized terms used herein shall have the meanings specified in the *Glossary of Defined Terms* (Attachment 14) or the body of this RFP.

The Department will only contract with a single Offeror, which will be the sole contact regarding all provisions of the Contract. The selected Bidder may be required to cooperate with the Treasury and/or the New York State Statewide Financial System ("SFS") on matters related to the performance of services under the resulting Contract.

The Department uses the SFS to compile, capture, and summarize the Departments detailed accounting information. The selected Bidder may work with ITS to integrate the Department's Account and other information as outlined herein.

This RFP and other relevant information may be reviewed at:
<https://www.cs.ny.gov/2023BankingServicesRFP/>

1.2 Period of Performance

The term of this Agreement shall be for a period commencing as of the date approved by the OSC Bureau of Contracts and shall continue for a period of up to 10 years. Subject to the provisions of this Agreement, the term is comprised of (i) a seven year period for the performance of the Services ("Performance Period"), which incorporates a period of

up to one year to complete an orderly transition of services to a subsequent bank (“Transition Period”), and (ii) a subsequent period of up to three years, starting from either the expiration or, if earlier, the termination of this Agreement, during which the Bank will complete (a) the processing, payment, and/or handling of checks issued or resolution of other transactions made relative to any of the Department’s accounts during the Performance Period and in satisfaction of the Department’s continuing obligations, and/or (b) any legally mandated escheatment (“Closeout Period”).

The duration of the Closeout Period will be subject to the Department’s discretion. Compensation to the Bank during the Closeout Period will be at the rates and in the manner set forth in this Agreement.

1.3 Overview of the New York State Health Insurance Program

NYSHIP was established by the New York State Legislature in 1957 to provide essential health insurance protection to eligible employees and retirees (and their eligible dependents) of New York State (NYS), Participating Employers (PEs), and Participating Agencies (PAs). NYSHIP is composed of The Empire Plan, a number of HMOs, and ancillary benefit programs including dental and vision services. Total NYSHIP enrollment is approximately 1.2 million.

The Empire Plan is self-funded and has the highest level of enrollment with approximately 1 million plan members. The benefit design of The Empire Plan is the result of collective bargaining between NYS and the various unions representing its employees. Benefits are administratively extended to non-represented NYS employees, employees of PAs and PEs, and retirees.

1.4 Minimum Offeror Eligibility Requirements

Offerors must meet the following Minimum Offeror Eligibility Requirements to be eligible to submit a Proposal.

Failure to meet these Minimum Offeror Eligibility Requirements will result in a Proposal being found non-responsive and eliminated from consideration.

Offeror means any responsible and eligible entity submitting a responsive Proposal to this RFP.

- A. The Offeror must, at time of Proposal submission possess the legal capacity to enter into a Contract with the Department including all registrations, filings, approvals, authorizations, consents, and examinations required by any governmental authority for the provision of the delivery of Project Services (as detailed in Section 3 of this RFP).
- B. The Offeror must be a state or federally chartered bank or financial payment processor authorized to do business in New York State and must have at least one branch or office with a physical location in New York State.
- C. The Offeror and any Subcontractor(s) must, at time of Proposal submission be a member of the National Automated Clearing House Association (NachA)
- D. The Offeror must possess the authority to accept Deposits held in the name of the State of New York. Deposit is defined in this RFP as any transaction involving the transfer of monies to the banking institution for the payment of NYSHIP premiums.
- E. The Offeror must possess the ability to act as both an Originating Depository Financial Institution (ODFI) and a Receiving Depository Financial Institution (RDFI) and able to both initiate and receive Automated Clearing House (ACH) entries.
- F. Sections 105 and 106 of the New York State Finance Law require financial institutions holding deposits of New York State monies to pledge collateral with the State to the extent deemed appropriate by the State. As required by such law, the Offeror must agree and maintain throughout the term of the Contract, to pledge securities or to obtain a surety bond by companies with the highest ratings issued by nationally recognized statistical rating organizations to secure the State's interest in any depository account and any "pass-through" accounts to the extent deemed appropriate by the State. The State shall establish and periodically review and adjust, as necessary, the amounts held as collateral. Collateral must be held at the New York State fiscal agent. The State reserves the right to periodically verify the amount of collateral held.
- G. The Proposer must have a Kroll Bond Rating Agency financial strength rating of at least "C+" for the quarter most recently ended prior to the deadline for receipt of proposals. This rating will be independently verified by OSC. Proposers are not required to subscribe to the Kroll service and a Kroll rating is not contingent upon any such subscription.

- H. The Offeror must have on file, or be willing to file with OSC and Treasury, a *State of New York Undertaking for Bank Deposits and Assignment of Securities form* (attachment 9) before any accounts are established.
- I. The Offeror must represent and warrant that at time of Proposal submission that it has maintained an organization capable of performing that portion of Project Services to be rendered by the Offeror in continuous operation for at least the past three (3) years. If the Offeror is proposing the use of a Subcontractor or Affiliate, the Offeror must also represent and warrant that the Subcontractor or Affiliate has maintained an organization capable of performing that portion of Project Services to be rendered by the Subcontractor or Affiliate in continuous operation for at least the past three (3) years.

1.5 CONUS

The Department has a strong preference for all of Offeror's data, access, and processing locations (each a "Facility") to be located within the Contiguous United States ("CONUS").

1.6 Entirety of Resulting Contract; Conflict of Documents and Clauses

The Contract resulting from this solicitation shall be deemed inclusive of the following documents. Only documents expressly mentioned below shall be deemed a part of the resulting Contract, unless DCS in its sole discretion determines otherwise. Conflicts between the documents shall be resolved in the following order of precedence:

- A. Appendix A – Standard Clauses for NYS Contracts, dated June 2023;
- B. Appendix B Standard Clauses for all Department of Civil Service Contracts
- C. Appendix C – Information Security Requirements
- D. Appendix D – MWBE/EEO/SDVOB Requirements
- E. Appendix E – Insurance Requirements
- F. Any Amendments to the body of the resulting Contract;
- G. The body of the Contract, including Appendices and Attachments as described in the contract;

H. Including, but not limited to, the attachments from the Request for Proposal (RFP) entitled, "New York State Health Insurance Program Banking Services" listed below:

- a. Attachment 1 (Department's Official Responses to Offerors Questions raised concerning the RFP);
- b. Attachment 2 which consists of Department's Request for Proposal (RFP) entitled, "New York State Health Insurance Program Banking Services", except for Appendix A (Standard Clauses for all New York State Contracts), which incorporates any appendices, attachments, exhibits, amendments, and updates to said RFP released on September 28th, 2023, including any amendment;
- c. Attachment 3 "Contract Fees", which consists of the Contractor's Fees for Project Services;
- d. Attachment 4 the Offerors' Proposal (Technical Proposal, Cost Proposal, and Administrative Proposal), as modified by any clarifications thereto, and excludes any banking services schedules, other standard Bank-related materials, and proposed Contract modifications submitted by Offeror with its Proposal;
- e. Attachment 5 banking services schedules and other standard Bank-related documents ("Banking Services Schedules" or "Schedules") submitted by the Bank with its Proposal. (See Section 1.7 below).

1.7 Banking Service Schedules

With regard to Banking Services Schedules and other standard Bank-related materials submitted by Offeror with its Proposal, the Offeror should note that nothing contained in such Schedules and materials will be effective to the extent that it constitutes a variance with the terms or requirements of the resulting Contract, the RFP, and which has not been agreed to by the Department in the final Contract. Any proposed banking services schedules submitted with the Proposal must be submitted as an attachment to the Administrative Proposal and must be provided in editable, Word format.

1.8 Timeline of Key Events

EVENT	DATE
RFP Release Date	October 6, 2023
Deadline for Submission of Offeror Questions	October 17, 2023
Release Date of Official Responses to Offeror Questions	October 27, 2023
Proposal Due Date	November 10, 2023
Anticipated Tentative Contract Award	December 1, 2023
Signed Contract due from Tentative Awardee	December 30, 2023
Anticipated Contract Approval	January 30, 2024
Implementation Start Date	Date of OSC approval
Contract Services Start Date	July 1, 2024

SECTION 2: PROCUREMENT PROTOCOL AND PROCESS

2.1 Rules Governing Conduct of Competitive Procurement Process

All inquiries, questions, filings, and submission of Proposals in regard to the RFP must be directed in writing to the Designated Contact listed below. Proposals may not be submitted by e-mail or facsimile. Any inquiries, questions, filings or submission of Proposals that are submitted to any other contact or physical address shall not be considered as official, binding, or as having been received by the Department.

1. Designated Contact

In accordance with New York State Finance Law § 139-j(2)(a) (Procurement Lobbying Law (PLL)), the following individual is the Designated Contact for this Solicitation. All questions relating to this Solicitation must be addressed to the following Designated Contact:

Dyane McGee
New York State Department of Civil Service
Attn: Office of Financial Administration, Floor 17
Agency Building 1, Empire State Plaza
Albany, New York 12239
DCSprocurement@cs.ny.gov

2. Restrictions on Contacts Between Offerors and State Staff During the Procurement Process

- a. Pursuant to New York State Finance Law sections 139-j and 139-k, this Procurement imposes certain restrictions on communications between the Department and an Offeror during the procurement process. An Offeror is restricted from making contacts unless the contact falls within certain statutory exceptions (“permissible contacts”) set forth in State Finance Law §139-j(3)(a), from the earliest posting, on the Department’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Article 4-C of the Economic Development Law, of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerors intending to result in a contract with the Department through final award and approval of the contract by the Department and, if applicable, the Office of the State Comptroller). This time period is defined as the Restricted Period. The Designated Contact for this procurement is set forth in section 2.1.1 of this RFP. Staff is required to obtain certain information from an Offeror whenever contacted about the procurement during the restricted period and is required to make a determination of the Offeror’s responsibility that addresses the Offeror’s compliance with the statutory requirements. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offeror is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at <https://www.ogs.ny.gov/ACPL/>.
- b. The Department strictly controls communications between any Offeror and participants in the procurement process. “Offeror” means the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, who contacts the Department about a governmental procurement during the restricted period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicate with the Department regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offeror. “Offeror” includes prospective Offerors prior to the due date for the submission of offers/bids in response to the solicitation document.

3. Submission of Errors or Omissions in this RFP Document

If an Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Offeror shall immediately notify The Department’s

Designated Contact via the email address listed in Section 2.1.1 of the RFP of such error or omission and request clarification or modification of the document.

If, prior to the Deadline for Submission of Bids, an Offeror fails to notify the Department of a known error or omission or an error or omission that reasonably should have been known, the Offeror shall assume the risk of bidding. If awarded the Contract, the Offeror shall not be entitled to additional compensation by reason of the error or omission or its correction.

The Department reserves the right to determine and act in the best interests of the State in resolving any assertion of error or omission in this RFP document.

4. Submission of Questions

Using the *Questions Template* (Attachment 3), a prospective Offeror may submit questions concerning the content of this RFP via email to the Designated Contact's address specified in Section 2 of this RFP. Only those questions received prior to the Questions Due Date specified in Section 1 of this RFP, will be accepted. After the Questions Due Date, the Department will provide an email notification of the posting of all questions and the Department's official answers to all those individuals who provided an email address on the submitted *Offeror's Certification Form* (Attachment 1), and the *Questions Template* (Attachment 3). The questions and answers will also be posted to: <https://www.cs.ny.gov/2023BankingServicesRFP/>

[Note: See Bid Deviations section below, specifically 6(b) with regard to submission of questions.]

5. Submission of Proposal

The Department has provided a *Bid Submission Checklist* (Attachment 15) to assist with organizing your proposal. Each Offeror must submit its Bid submission in the method outlined below:

Bid Submission Requirements: USB Flash Drive

The Offeror must submit two USB flash drives.

One USB flash drive will be your Bid submission and should be saved on the USB drive as Adobe, searchable, files. (**Please see exception below**) The files must be representative copies of the original documents, including signatures.

Schedule of Fees (AMENDED Attachment 8) must be completed using the provided Excel file and must be saved to the USB in an Excel format.

The second USB must meet the needs found in section 2.2.1.b Disclosure of Bid Contents- FOIL.

Note: Any bid submission that deviates from these bid submission requirements may be deemed non-responsive. Submission of other types of data storage devices will not be accepted.

Clearly mark the envelope and your USB flash drive as “NYSHIP Banking [Offeror’s Name].”

The Offeror must retain the original bid documents in its records. If the Offeror is selected for award, the Offeror must submit wet ink signed documents to The Department prior to contract execution.

It is the Offeror’s responsibility to ensure that the USB flash drive is free from any and all malicious software and that the files are accessible and uncorrupted. The Offeror should scan the USB flash drive before submission to ensure there is no malicious software (i.e., malware) on the drive and that all files are accessible and uncorrupted. The Department will perform a security scan on the USB flash drive before accessing the stored files. If the security scan identifies malicious software, or the files are inaccessible or corrupted, the Department may reject the submission and disqualify the Offeror from further consideration.

Note: Documents requiring signature should be signed with an ink pen (i.e., wet signature). Bids submitted with e-signatures or scanned signatures may be accepted by the Department, at the Department’s discretion, subject to the requirements set forth herein.

All Submissions must be mailed or hand-delivered to the address provided in Section 2.1.1 of this RFP. To make arrangements for hand-delivery, the Offeror must notify the Designated Contact twenty-four hours prior to delivery. All Submissions must be received by 3:00 p.m. ET on the Submission Due Date as set forth in Section 1.8 of the RFP.

Any submissions received after 3:00 p.m. ET on the Submission Due Date, as specified in Section 1.8, may not be accepted by the Department and may be

returned to the submitting entity at the Department's discretion. All Submissions submitted become the property of the Department.

The Department will accept amendments and/or additions to an Offeror's Submission if the amendment and/or addition is received by the Submission Due Date. All amendments to an Offeror's Submission must be submitted in accordance with the format set forth in Section 2.1.5 of this RFP and will be included as part of the Offeror's Submission.

An Offeror is solely responsible for timely delivery of the Submission to the Department prior to the Submission Due Date stated in Section 1.8 of this RFP. Delays in United States mail deliveries or any other carrier, including couriers or agents of New York State, shall not excuse late bid submissions. If the Submission is delivered by mail or courier, the Department recommends that it be sent "Returned Receipt Requested", so the Offeror obtains proof of timely delivery. No phone, facsimile or e-mail Submissions will be accepted for this RFP. In addition, it is the sole responsibility of the Offeror to verify that all elements of the Submission are complete, correct and without error.

6. Bid Deviations

The Department will not entertain bid deviations to Standard Clauses for New York State Contracts (Appendix A). The Department will also not entertain material and substantive bid deviations to the solicitation to Standard Clauses for All Department Contracts (Appendix B), Information Security Requirements (Appendix C) MWBE/EEO/SDVOB Requirements (Appendix D) and the Insurance Requirements (Appendix E). NYS law precludes awarding a contract based on material deviation(s) from the specifications, terms, and/or conditions set forth in the solicitation. Therefore, Submissions containing a bid deviation (including additional, inconsistent, conflicting or alternative terms) that are a material and substantive change from the specifications, terms, and conditions set forth in the solicitation may render the Submission non-responsive and may result in rejection of the submission.

If Offeror has an issue or concern regarding provisions in the solicitation and is considering a submission containing a bid deviation, Offeror is strongly advised to raise such issues and/or concerns during the question-and-answer period so that the Department may give due consideration to the issue prior to submission. Failure to use the question-and-answer period and instead submitting a bid deviation could render the entire Submission non-responsive and rejected in its entirety.

In general, a material and substantive bid deviation is one that would (i) impair the interests of New York State, (ii) place the successful Offeror in a position of unfair economic advantage, (iii) place other Offerors at a competitive disadvantage, or (iv) which, if it had been included in the original solicitation, could have formed a reasonable basis for an otherwise qualified Offeror to change its determination concerning the Submission. For example, a deviation that would substantially shift liability (risk) or financial responsibility from the Offeror to New York State would be considered material.

Unless specifically required by the solicitation to be submitted as part of an Offeror's submission, an Offeror is further advised that its standard, pre-printed material (including but not limited to product literature, order forms, manufacturer's license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Offeror's Submission are not considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Submission. Rather, such material shall be deemed by the Department to have been included by Offeror for informational or promotional purposes only. If such materials are requested by the solicitation, an Offeror must ensure that the materials are properly referenced.

To submit a non-material bid deviation, an Offeror must complete and submit the proposed deviation(s) using the *Non-Material Deviations Template* (Attachment 4), as part of the Bid Submission. If a non-material bid deviation does not meet these requirements, it shall not be considered by the State and shall be rejected.

An Offeror who does not submit the *Non-Material Deviations Template* (Attachment 4), as part of the Bid Submission is presumed to have no bid deviations.

7. Notification of Tentative Contract Award

A tentative award letter will be sent to the selected Offeror indicating a tentative award subject to successful contract negotiations. The remaining Offerors will be notified of the tentative award and the possibility that failed negotiations could result in an alternative award.

8. Debriefing

In accordance with NYS State Finance Law §163(9)(c), the Department shall upon written request provide a debriefing to any Bidder that responded to the IFB regarding the reason that the bid submitted by the unsuccessful Offeror was not selected for a contract award. A Debriefing must be requested in writing by the

entity within fifteen (15) business days of the Department's notifying of Bidder Selection/Non-Selection. A Bidder's written request for a Debriefing shall be submitted to the designated contact indicated in Section 2. The Debriefing shall occur within ten (10) days of the Department's receipt of this request or as soon after that time as practicable under the circumstances. All Offeror's requesting a Debriefing will be accorded fair and equal treatment with respect to its opportunity for Debriefing.

9. Submission of a Protest

A Bidder wishing to challenge the selection of a firm for contract award must send a Notice of Protest on business letterhead, within seven (7) business days of notice of a contract being awarded, to the Designated Contact in Section 2 of this RFP. If a request for a Debriefing is received by the Department as set forth in this RFP, then a Notice of Protest is due within two business days after the Debriefing session occurs.

The Notice of Protest must include at a minimum the following information: (a) RFP number if applicable and RFP title, (b) the specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the contract award, and (c) a contact name, address, and e-mail address to which the Department may address its Protest Determination.

The Department will review the Notice of Protest, and within fifteen (15) business days notify the protesting party of its Protest Determination. If the Department requires additional time, then it will notify the protesting party within the above stated fifteen (15) business days. The Department may summarily deny a protest that fails to contain specific factual or legal allegations. Upon receipt of the Department's Protest Determination, the protesting party may file an appeal with the Office of the State Comptroller (OSC). The process for filing such an appeal is set forth at:

<https://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/17.htm>

10. Department of Civil Service Reservation of Rights

In addition to any rights articulated elsewhere in this RFP, the Department reserves the right to:

- a. Make or not make an award under the RFP, either in whole or in part;
- b. Prior to the bid opening, amend the RFP. If the Department elects to amend any part of this RFP, such amendments will also be posted to:
<https://www.cs.ny.gov/BankingServicesRFP/>;

- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent RFP amendments;
- d. Withdraw this RFP, at any time, in whole or in part, prior to OSC approval of award of the Contract;
- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any of the mandatory requirements of this RFP;
- g. Require clarification at any time during the Procurement process and/or require correction of apparent errors for the purpose of assuring a full and complete understanding of an Offeror's Proposal and/or to determine an Offeror's compliance with the requirements of this RFP;
- h. Reject any or all Proposals received in response to this RFP;
- i. Change any of the scheduled dates stated in this RFP;
- j. Seek clarifications and revisions of Proposals;
- k. Establish programmatic and legal requirements to meet the Department's needs, and to modify, correct, and/or clarify such requirements at any time during the Procurement, provided that any such modifications would not materially benefit or disadvantage any particular Offeror;
- l. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the Offerors;
- m. For the purposes of ensuring completeness and comparability of the Proposals, analyze submissions and make adjustments or normalize submissions in the Proposal(s), including the Offeror's technical assumptions, and underlying calculations and assumptions used to support the Offeror's computation of costs, or to apply such other methods it deems necessary to make level comparisons across Proposals;
- n. Use the Proposal, information obtained through any site visits, and the Department's own investigation of an Offeror's qualifications, experience, ability or financial standing, and any other material or information submitted by the Offeror in response to the Department's request for clarifying information, if any, in the course of evaluation and selection under this RFP;
- o. Negotiate with the successful Offeror within the scope of this RFP in the best interests of the Department;
- p. Utilize any and all ideas submitted in the Proposal(s) received except to the extent such information/ideas are protected under the New York State Freedom of Information Law, Article 6 of the Public Officers Law as critical infrastructure information or trade secrets;
- q. If the Department determines that contract negotiations between the Department and the selected Offeror are unsuccessful, the Department may invite the Offeror with the next highest Total Combined Score to enter into negotiations for purposes of executing a Contract. Prior to negotiating with the

Offeror with the next highest Total Combined Score, the Department will notify the Offeror originally selected and provide the date when negotiations shall cease should an agreement not be reached. Scores will not be recalculated for any remaining Offerors should contract negotiations between the Department and the selected Offeror be unsuccessful because of material differences in key provision(s);

- r. Unless otherwise specified in this RFP, every offer is firm and not revocable for a minimum period of one hundred and eighty days from the Proposal Due Date as set forth in the RFP; and
- s. Any Offeror whose Proposal might become eligible for a tentative award may be asked to extend the time for which its Proposal shall remain valid if the original award is withdrawn.

11. Disclaimer

The Department is not liable for any costs incurred by any Offeror prior to approval of the Contract by OSC. Additionally, no costs will be incurred by the Department for any prospective Offeror or Offeror's participation in any Procurement-related activities. Further, the Department shall not be liable for any costs incurred by the Offeror prior to performing the activities set forth in Section 3 of this RFP. The Department has taken care in preparing the data accompanying this RFP (hard copy attachments, website attachments, and sample document attachments). However, the Department does not warrant the accuracy of the data. The numbers or statistics which appear in hardcopy attachments, website attachments, and sample document attachments referenced throughout this RFP are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future performance or participation. Accordingly, prospective Offerors should rely upon and use such numbers or statistics in preparing their Proposal at their own discretion.

2.2 Compliance with Applicable Laws, Rules and Regulations, and Executive Orders

This Procurement is subject to the New York State competitive bidding laws and also governed by, at a minimum, the legal authorities referenced below. An Offeror must fully comply with the provisions set forth in this section of the RFP, as well as the provisions of the *Standard Clauses for New York State Contracts* (Appendix A), the *Standard Clauses for All Department Contracts* (Appendix B), which will become a part of the resulting Contract. The Department will consider for evaluation and selection purposes

only those Offerors who agree to comply with these provisions and whose Proposal contains the submission required hereunder.

1. Disclosure of Proposal Contents – Freedom of Information Law (FOIL)

a. NOTICE TO OFFEROR AND ITS LEGAL COUNSEL

All materials submitted by an Offeror in response to this RFP shall become the property of the Department and may be returned to the Offeror at the sole discretion of the Department. Proposals may be reviewed or evaluated by any person, other than one associated with a competing Offeror, designated by the Department. Offerors may anticipate that Proposals will be evaluated by staff and consultants retained by the Department and may also be evaluated by staff of other New York State Agencies. The Department has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this RFP.

The Department shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this solicitation that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Offeror upon submission. To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding FOIL. If an Offeror believes that any information in its Proposal or supplemental submission(s) constitutes proprietary and/or trade secret or critical infrastructure information and desires that such information not be disclosed pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Offeror must make that assertion by completing a *FOIL Redaction Chart* (Attachment 5). The Offeror must complete the form specifically identifying by page number, line, or other appropriate designation, the specific information requested to be protected from FOIL disclosure and the specific reason why such information should not be disclosed. Page 2 of *FOIL Redaction Chart* (Attachment 5) contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, or summary assertions that material is proprietary, or trade-secret are inadequate and will not result in protection from FOIL disclosure.

The completed *FOIL Redaction Chart* (Attachment 5) must be submitted to the Department on the USB storage drive as described below. If the Offeror chooses not to assert any Proposal material and/or supplemental submission should be protected from FOIL disclosure, the Offeror should check the applicable box on *FOIL Redaction Chart* (Attachment 5). If a completed *FOIL Redaction Chart* (Attachment 5) form is not submitted, the Department will assume that the Offeror chooses not to assert that any proposal material or supplemental submission, as

applicable, should be protected from FOIL disclosure.

Acceptance of the identified information by the Department does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the Department.

b. Requested Redactions -USB Storage Drive:

At the time of Proposal submission, the Offeror is required to identify the portions of its Proposal that it is requesting to be redacted in the event that its Proposal is the subject of a FOIL request as follows.

The Offeror must provide an electronic copy of the Administrative Proposal, the Technical Proposal, and the Financial Proposal on a separate USB storage drive of the type outlined in RFP Section 2, which reflect the Offeror's requested redactions. The electronic documents must be prepared in PDF format. Each specific portion of the Proposal documents requested to be protected from FOIL disclosure must be identified using the Adobe "Mark for Redaction" function; do not use the "Apply Redactions" function; or by highlighting such portions in yellow. The resulting documents must show the Offeror's requested redactions as outlined, while the content remains visible. This will allow the Department to either apply or remove requested redactions when responding to FOIL requests. The documents included on the USB storage drive must be complete Proposals, including all Attachments. No section may be omitted from the USB storage drive even if the entire section is requested to be redacted; such sections should be marked for redaction, not removed. For forms, attachments, and charts, please mark for redaction only those cells/fields/entries that meet the criteria for protection from FOIL, not the entire page. Do not request redaction of Department-supplied materials or information.

During the Proposal evaluation process, the Department may request additional information through clarifying letters. Any requested redactions for additional written material provided by the Offeror in response to the Department's requests also must be submitted following the instructions, above.

2. New York State Required Certifications

An Offeror is required to submit the signed *Offeror's Certification Form* (Attachment 1) with its Bid submission. This attachment sets forth the Offeror's attestation that the Offeror meets the minimum qualifications and has binding authority to submit

a Bid. Additionally, it acknowledges and attests the Offeror's ability to meet the minimum requirements to bid, as well as certifying compliance with the MacBride Fair Employment Principles and Non-Collusive Bidding Certification as well as attestation the Offeror has read and will abide by New York State Finance Law 139 j-k Lobbying Law and its permissible contacts. It also sets forth the certifications regarding compliance with the Federal Americans with Disabilities Act, compliance with the New York State Public Officers Law, certification required under Executive Order No. 177 and certification required by New York State Finance Law section 139-I regarding written sexual harassment policies and Executive Orders 14 and 16, certifying the offeror is not a Russian entity or doing business with a Russian entity.

3. New York Subcontractors and Suppliers

An Offeror is required to complete *New York State Subcontractors and Suppliers* section found in (Attachment 1) and must be submitted with the Offeror's Administrative Proposal. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in NYS, an Offeror for this RFP is strongly encouraged and expected to consider NYS businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés, or other supporting roles.

SECTION 3: PROJECT SERVICES

For the purpose of submitting a Proposal, an Offeror must provide the following services:

1. Maintaining two Lockboxes: one United States Postal Service (USPS) Lockbox for premium remittances received through the mail from Enrollees and one United States Postal Service (USPS) Lockbox for premium remittances received through the mail from PE and PA Agencies.
2. Maintaining two Electronic Lockboxes: one Electronic Lockbox for Enrollees and one Electronic Lockbox for PE and PA Agencies submitting premium payments by e-checks and ACH through Online Banking Accounts.
3. Non-Lockbox Services The Department requires one (1) Remote Deposit Capture scanners to be installed at the Department to securely transmit payments that are sent directly to the Department.

4. Establish and maintain an Offeror-Hosted Web Application/Interface where payers can initiate Credit Card Payments. If the Offeror engages the services of a Subcontractor, they must ensure the Subcontractor also remains compliant, as applicable, and also provide the appropriate documentation to demonstrate the Subcontractor's PCI DSS compliance.
5. Processing premium payments using remittance slips and Enrollee and Agency lookup files, which involves making daily bank Deposits, reporting individual remittance information on a daily basis, including the provision of specific Deposit information, and providing monthly bank statements;
6. Imaging and displaying on an Online Banking Portal all items determined to be unprocessable by the Offeror, including Deposits, checks, money orders and related remittance slips, for the Department to review and process as needed;
7. Directly depositing the funds received in the Lockboxes into the State's General Checking Account by automatic transfer (sweep) on a daily basis.

3.1 Account Team

Duties and Responsibilities

Throughout the term of the Contract, the Offeror must maintain an organization of sufficient size with staff that possesses the necessary skills and experience to administer, manage, and oversee all aspects of the Project during implementation, operation, and transition and Close-Out.

1. The account team must be comprised of qualified and experienced individuals who are acceptable to the Department and who are responsible for ensuring that the operational and information technology resources are in place to operate the Project in an efficient manner.
2. The Offeror must ensure that there is a process in place for the account team to gain immediate access to appropriate corporate resources and senior management necessary to meet all Project requirements and to address any issues that may arise during the performance of the Contract.
3. The Offeror's account team must be experienced, accessible and sufficiently staffed to:

- a. Provide timely responses (within one Business Day) to administrative concerns and inquiries posed by the Department regarding payment processing for the duration of the Contract to the satisfaction of the Department;.
- b. Immediately notify the Department, in writing, of actual or anticipated events impacting Project delivery of services such as, but not limited to, legislation, litigation, and operational issues;
- c. Provide advice and recommendations regarding Project Services, including but not limited to technological improvements and innovation, with the understanding that the Department is under no obligation to act on such advice or recommendations; and
- d. Ensure that the Project is in compliance with all legislative and statutory requirements. If the Offeror is unable to comply with any legislative or statutory requirements, the Department must be notified in writing immediately.

3.2 Lockbox Services

Throughout the term of the Contract, the Offeror is responsible for all Lockbox Services for the four required Lockboxes. It is required that the Offeror process items within the timeframes indicated below. However, it is understood that due to circumstances beyond the Offeror's control, a slight delay in processing transactions may occur and the Department expects these delays to be resolved as soon as possible. In those instances of delay, the Offeror is required to notify the Department in writing, within 24 hours of any such delay and take immediate steps to rectify and process receipts. The determination as to whether the circumstances that caused the delay were in fact beyond the Offeror's control is solely in the Department's discretion.

Duties and Responsibilities

1. Set up and maintain two (2) Electronic Lockbox or alternate receivable system for the Department, one Electronic Lockbox for Enrollees and one Electronic Lockbox for PE and PA Agencies submitting premium payments by e-checks and ACH through Online Banking Accounts;
2. Secure and maintain two (2) USPS Lockbox located near the Offeror's processing center. One United States Postal Service (USPS) Lockbox for premium remittances received through the mail from Enrollees and one United States Postal

Service (USPS) Lockbox for premium remittances received through the mail from PE and PA Agencies;

3. Offeror must maintain the PO Boxes and pay any associated fees to USPS to maintain such service throughout the term of the Contract. The Lockboxes shall be used to enable Enrollee and Agencies to make direct payments by check or money order;
4. Accurately process payments submitted with a remittance statement, which includes an Optical Character Recognition (OCR) scanline. The font for the scanline is OCR-A, pitch 10 and height is 12;
5. Utilize lookup files submitted by the Department to the Offeror to process payments submitted without a remittance statement or with a remittance statement that is unprocessable. The lookup file will be provided in Comma Separated Value (CSV) format and is described in *Lookup File Layout Enrollees* (Attachment 10) and *Lookup File Layout Agencies* (Attachment 10a);
6. Utilize effective controls to ensure only a five-digit numerical code, as assigned by the Department, is used for processing Agency payments received by the Lockboxes and a ten-digit numerical code, as assigned by the Department, is used for processing Enrollee payments received by the Lockboxes;
7. Provide ACH debit block services to prevent unauthorized, or fraudulent, debiting of the Department's account;
8. Post all Deposits on the Business Day retrieved/received and make funds available within one Business Day of Deposit;

3.3 Credit Cards

The Department wishes to accept credit card payments. This is a new service for the Department. The Department asks the Offeror to provide in its response innovative and cost-effective ways to establish these new services to the Department.

1. The Department seeks to have the Offeror create and maintain an Online/interface method for the Department to allow users to make credit card payments with the flexibility to:
 - a. make a one-time payment to be processed immediately;

- b. set up a one-time payment to be processed on a scheduled date;
 - c. set up recurring payments with a fixed amount on a fixed frequency; or
 - d. set up variable recurring payments where the amount and/or time of each payment can vary.
2. The Department would like an Online/interface for users to make credit card payment as well as allowing the Department to use the Online/interface for all services in this RFP. The Online/interface needs to be compatible with the below platforms:
 - Google Chrome current version for Windows,
 - Mozilla Firefox current version,
 - Safari current version, and
 - Microsoft Edge current version

The Online/interface must be mobile friendly, fully functional, and display correctly on devices such as:

- Smartphones;
 - iPhones;
 - iPads;
 - Tablets; and
 - Laptops
-
3. The Offeror must accept Master Card and Visa but is encouraged to accept payment by as many major credit cards as possible. The Offeror and any Subcontractors must also maintain compliance with the Payment Card Industry Data Security Standards (PCI DSS) at all times. The Offeror may be asked to

provide documentation annually to demonstrate PCI DSS compliance. In addition, the Offeror must ensure that the Department does not electronically receive any cardholder data in which the entire Primary Account Number (PAN) is readable. If the Offeror engages the services of a Subcontractor, the Offeror must ensure the Subcontractor is and remains PCI DSS compliant, as applicable, and provide the appropriate documentation to demonstrate the Subcontractor's compliance;

4. The Offeror shall not charge a fee to the user making a Credit Card Payment. The Offeror will provide pricing for Credit Card transactions in *Schedule of Fees AMENDED* Attachment 8.

3.4 Reporting

Duties and Responsibilities

The Offeror will be responsible for making all transactional information available in an Online Banking Portal. This Online Banking Portal may be a separate Online/interface than the Online/interface that allows for users to make Credit Card Payments. For this section, Online Banking Portal relates to the Department's access to its banking data via an Online Portal. and is defined as a vendor-provided secure website for Department staff to view and manage account information.

The Online Banking Portal must have the following functionality:

1. Provide all Deposit information within one Business Day of Deposit for designated Departmental staff to perform banking activities including, but not limited to: access to weekly statements; access to all transaction types; and access to all return check items;
2. Be available 24 hours a day, 7 days a week to designated individuals employed (staff or Contractors) by the Department as well as individuals from other State Agencies designated by the Department, except for scheduled maintenance. Offeror shall make best efforts to provide prior notification to the Department when scheduled maintenance is proposed to occur. Note: Whenever possible maintenance of the Online Banking Portal should occur during non-business hours so that Project Services are not impacted;

3. Allow designated Department staff to generate accurate reports of payment transactions and Deposits as required by the Department for its use upon request in the review, management, and analysis of the payment transactions. In addition, access to all State transaction data must be available Online for at least three years from the paid date;
4. Allow designated Department staff to generate ad hoc reports and other data analysis tools such as specific transaction searches or queries. The reports must have the ability to run for a single date or a range of dates as designated by Department staff;
5. any generated standard reports must be available to download and online viewing in multiple electronic formats including, but not limited to, Microsoft Access, Excel, PDF, and/or a text file;
6. Provide customer and technical support of the Online Banking Portal between the hours of 8 am and 5 pm ET. Support should be available through e-mail and telephone communication to remedy any urgent issues with availability and performance of the Online Banking Portal;
7. Provide notification and detail of dishonored or returned payments after a second attempt has been made to present the transaction;
8. Immediately notify the Department, in writing, of actual or anticipated events impacting Project delivery of services such as, but not limited to, legislation, litigation, and operational issues; and
9. Make available Payment Detail Transaction Files for each of the Lockboxes. These files should be made available as follows:
 - a. Electronically for the Department to retrieve from the Offeror using a secure internet connection daily, by midnight ET on the day of the Deposit.
 - b. In the layouts described in the *Agency Transaction File Layout* (Attachment 11) and the *Enrollee Transaction File Layout* (Attachment 12).
 - c. Maintain a HIPAA compliant level of security to protect the confidentiality of information on the Offeror's computer system, including the Online Banking Portal, and in the Offeror's physical work environment.

10. Remote Deposit

- a. The Offeror will provide Remote Check Deposit functionality to the Department for same-day deposit with confirmation of remote deposit.
- b. Upon implementation of the functionality, the Offeror shall furnish the Department with one (1) remote deposit scanner, as requested by the Department, at no additional cost. The scanner will be housed in a single location at the Department's office in Albany, NY.
- c. The Department prefers the ability to distinguish which user created each deposit.
- d. The Offeror will provide the Department to cancel transactions prior to transmission of the remote deposit.
- e. The Offeror will provide an online summary and deposit reporting by bank account, including but not limited to
 - Deposit Date;
 - Deposit Amount;
 - User ID;
 - Bank Account Number;
 - Unique Identification Number per transaction within a deposit;
 - Check Information – ABA, Account, Check Number, Dollar Amount;
 - Deposit Status; and
 - Transaction Counts.
- f. Additionally, the Online reporting shall include an export feature to Excel, .csv or PDF by specific deposit date or date range.
- g. The Department prefers the ability to identify the user making a remote deposit through an Online Bank Report/Statement, as well as the option for the user to enter information with each remote deposit to be displayed on the Online Bank Report/Statements.
- h. The remote deposit shall allow the user to enter information with each remote deposit that will then be transmitted back to the Department on either Attachment 11 Agency Transaction File Layout or Attachment 12, Enrollee Transaction File Layout or other transmittal document as approved by the Department.

11. The Department prefers to have Credit Card transactions and Credit Card reporting functions as stated above available via the same Online Portal, however, would consider viewing Credit Card transactions and Credit Card reporting functions as stated in this RFP in a separate interface for Credit Card transactions and reports.

3.5 Implementation and Testing

All possible costs associated with the Implementation and Testing are to be built into the implementation/development cost, reflected on the *Schedule of Fees* (**AMENDED** Attachment 8)

Implementation period should not exceed 180 calendar days per section 1.8 of this RFP.

Payments for the Implementation and Testing will be as follows:

Upon approval of the final written Implementation Plan the Department will pay 15% of the one-time Implementation/Development fee to the Contractor in accordance with the contract pricing found in Appendix F of the Contract in a test environment. Once the test environment has been tested and approved by the Department, the Department will pay 20% of the one-time Implementation/Development fee to the Contractor in accordance with the contract pricing found in Appendix F of the Contract. The Department reserves the right to request modifications to the Implementation plan in the Test Environment and has the final say to determine the completeness of the Implementation Plan.

Upon receipt and approval of the Contractor's Full Simulation plan of an active State bank account using test data for both Enrollee and Agencies representing up to 5,000 payments in a single file in a test environment, to include transmitting an issuance file, posting outstanding items, obtaining images, posting voids, and matching paid items to the issuance file, The Department will issue a payment of 25% of the one-time Implementation/Development fee to the Contractor in accordance with the contract pricing found in Appendix F of the Contract. Once the test environment has been tested and approved by the Department, the Department will pay 40% of the one-time Implementation/Development fee to the Contractor in accordance with the contract pricing found in Appendix F of the Contract. The Department reserves the right to request modifications to the Full Simulation plan and has the final say to determine the completeness of the Full Simulation Plan

1. The Awarded Offeror must provide a written Implementation Plan within 30 calendar days or as mutually agreed upon by both parties after notification of Contract Approval by OSC. The Department has 30 calendar days or as mutually agreed upon by both parties to review and provide comments or approval. The plan must show a minimum of the following but not limited to the work to be included in the implementation plan, the timeline for completion of each activity, and show how the Offeror will work with all parties necessary to:

- a. Show the paid items/issuance file can be posted to the reconciliation system for both Enrollees and Agencies;
- b. Electronic transmission of payments to the Department;
- c. Provide sample of required reports;
- d. Online inquiry system can be accessed to perform status inquiry and void requests;
- e. Processing of any type of electronic payments;
- f. Processing of ACH payments and pre-notes;
- g. Processing of acknowledgement file indicating receipt of ACH file;
- h. Processing of alternative methods of payments proposed by the Offeror as accepted by the Department;
- i. Accessing Deposit and ACH Federal Wire information;
- j. Test checks can be matched to an issuance file;
- k. Testing and Conversion Capabilities;
- l. Check imaging and retrieval capability;
- m. Remote Deposits of checks by the Department;
- n. Test that all encryption methods are in place and working for bi-directional Secure File Transfer Protocol (SFTP) of all payment files and enrollment files, as applicable.

2. Implementation Plan Testing- Full Simulation

The awarded Offeror has 30 calendar days, or another period of time as mutually agreed upon by both parties, to create a test environment to demonstrate to the complete satisfaction of the Department a full simulation of an active State bank account using test data supplied by the Department for both Enrollee and Agencies representing up to 5,000 payments in a single file. This will include the minimum functionality of transmitting an issuance file, posting outstanding items, obtaining images, posting voids, and matching paid items to the issuance file. The Department has 15 days or as mutually agreed upon by both parties to give comments or approval. The Department reserves the right to

request modifications prior to switching from a test environment to a live environment to ensure all of the requirements in this RFP have been met.

3.6 Transition, Close-Out, and Termination of Contract

1. Transition period

Upon notification of DCS's intent to terminate the Contract or any portion thereof, or at least one year prior to the end date of the Contract "Performance Period", the selected Proposer must work with the State to develop and implement a detailed transition plan to transition to a successor Bank/Contractor. The Transition period will run until such time as an orderly transition to the State, a third party, or the successor Offeror has been completed pursuant to the approved Transition Plan. The State will prescribe the disengagement process to be followed during the transition phase of the Services.

Duties and Responsibilities:

To ensure that the transition to a successor entity provides uninterrupted Banking Services, the transition process shall be governed as follows:

- a. The Transition Period shall not exceed one (1) year. The State reserves the right to subsequently amend the Transition Period upon thirty (30) days advance written notice to the Contractor.
- b. At all times during the Transition Period and unless directed otherwise in writing by the Department, the Offeror shall continue all contractual obligations set forth in the resulting Contract, until such time as an orderly transition to the State, a third party, or the successor Offeror pursuant to the approved Transition Plan. The Offeror shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.
- c. Transition Plan. The Contractor must, one hundred twenty (120) Days prior to the end of the resulting Contract, or if this Contract is terminated prior to the end of its term, within forty-five (45) Days of notification of termination, provide the Department with a detailed written plan for transition which outlines, at a minimum, the tasks, milestones and deliverables associated with Project Service transition to a successor bank.

1. Within 15 Business Days from receipt of the Contractor's proposed Transition Plan, the Department shall either approve the Transition Plan or notify the Contractor, in writing, of the changes required to the Transition Plan so as to make it acceptable to the Department.
2. Within 15 Business Days from the Contractor's receipt of the required changes, the Contractor shall incorporate said changes into the Transition Plan and submit such revised Transition Plan to the Department.
3. The Contractor shall be responsible for transitioning the Banking Services in accordance with the approved Transition Plan.

2. Close Out Period and Termination of Contract

After completion of the Transition Period to a successor Contractor. The awarded Offeror will be required to provide continued services pursuant to the resulting Contract for a period of up to three years to ensure the processing of deposits, payments, and/or handling of checks issued or resolution of other transactions made relative to any Department accounts during the Performance Period and in satisfaction of the Department's continuing obligations, and/or any legally mandated escheatment.

Department Responsibilities for Transition and Close-Out:

The Department shall assume responsibility for Transition and Close-Out program management. A program manager responsible for coordinating activities, maintaining task schedule, and approving deliverables shall be appointed.

Compensation for Transition and Close-Out:

Awarded Contractor shall be reimbursed for Transition and Close-Out Services performed during the Close-Out Period at the rates set forth in the resulting Contract.

Contractor Responsibilities:

The Contractor is required to provide Contractor-related obligations and deliverables to the Department through the final financial settlement of this Contract (Close Out Period). Except to the extent required by law or regulation, this will include, but not be limited to:

- a. Ensure that payments or Deposits sent in error will be processed, deposited and posted to appropriate State accounts in an accurate and timely manner;
- b. Complete all reports as required in Section 3 of the RFP;

- c. Provide the Banking Services Project with sufficient staffing in order to address State audit requests and reports in a timely manner;
- d. Fully cooperate with all Department or Office of State Comptroller (OSC) audits consistent with the audit requirements of the resulting Contract and Appendices A and B;
- e. Perform timely reviews and responses to audit findings submitted by the Department and Comptroller's audit unit in accordance with the requirements set forth in the resulting Contract and Appendices A and B;
- f. Remit reimbursement due the Department within 15 Days upon final audit determination;
- g. Return of paper records, including, but not limited to, work papers, photocopies, computer printouts, and transcripts, or destruction by shredding or disintegrating to the extent practicable;
- h. Inactivation of all the State's accounts on the selected Offeror's system;
- i. Transfer of all State data from the selected Proposer's system to the State, or successor;
- j. To the extent practicable, removal of State data from the selected Proposer's system. Storage devices such as hard disk drives, thumb drives, and other magnetic media such as tapes, diskettes, or CDs/DVDs must be physically destroyed or securely overwritten to prevent unauthorized disclosure of State data; and
- k. Data destruction pursuant to this requirement shall be in compliance with the Office of Information Technology Services Policy for Sanitization/Secure Disposal in NYS-S13-003 found here: https://its.ny.gov/system/files/documents/2022/10/nys-s13-003_sanitization_secure_disposal_standard.pdf or to the extent consistent with any regulatory retention requirements that apply to the selected Proposer.

3. No Interruption in Service

At all times during the Transition and Close-Out period, and unless directed otherwise in writing by the Department, the Contractor shall continue all contractual obligations set forth in the resulting Contract until such time as the Department (i) has approved the Contractor's proposed Transition Plan, (ii) an orderly transition to the Department, a third party, or the successor Contractor has been completed pursuant to the approved Transition Plan and financial settlement of the resulting Contract. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the Department.

SECTION 4: ADMINISTRATIVE PROPOSAL

This section of the RFP sets forth the requirements for the Offeror's Administrative Proposal. The Administrative Proposal should contain all requirements listed below. A proposal that is incomplete in any material respect may be eliminated from consideration. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP will be subject to verification for accuracy. Additional details pertaining to the required forms are found in Section 2 of this RFP.

4.1 Attachment 1 Offeror's Certification Form

Submit a PDF copy of the signed and notarized *Offeror's Certification Form* (Attachment 1). Attachment 1 must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the Department.

4.2 Formal Offer Letter

Submit the formal offer in the form *Formal Offer Letter* (Attachment 2). Attachment 2 must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the Department. Except as otherwise permitted under section 2.1(6), Bid Deviations, the Offeror must accept the terms and conditions as set forth in this RFP, *Standard Clauses for New York State Contracts* (Appendix A), *Standard Clauses for All Department Contracts* (Appendix B), *Information Security Requirements August 2023* (Appendix C), *MWBE/EEO/SDVOB Requirements* (Appendix D), *Insurance Requirements* (Appendix E) and the *Glossary of Defined Terms* (Attachment 14), and agree to enter into Contract with the Department containing, at a minimum, the terms and conditions identified in this RFP and appendices as cited herein. If an Offeror proposes to include the services of a Subcontractor(s) or Affiliate(s), the Offeror must be required to assume responsibility for those services as "Prime Contractor." The Department will consider the Prime Contractor solely responsible for contractual matters.

4.3 Non-Material Deviations

Submit *Non-Material Deviations* (Attachment 4). See section 2.2.1.6 for more information requirements for completing Attachment 4.

4.4 FOIL Redaction Chart

Submit *FOIL Redaction Chart* (Attachment 5) in accordance with section 2.2.1.b of the RFP.

4.5 Subcontractors or Affiliates

Complete the *Subcontractors or Affiliates* form (Attachment 7) to identify all Subcontractors or Affiliates with whom the Offeror subcontracts to provide Project Services. For purposes of reporting in the *Subcontractors or Affiliates* form (Attachment 7), Subcontractors include:

1. All vendors who will provide \$100,000 or more in Project Services over the term of the Contract that results from this RFP; or
2. Any vendor who will provide Project Services in an amount lower than the \$100,000 threshold, and who is a part of the Offeror's Account Team (described in section 3.1, Account Team).

For each Subcontractor identified, the Offeror must complete and submit the *Subcontractors or Affiliates* form (Attachment 7) and indicate whether or not, as of the date of the Offeror's Proposal, a subcontract has been executed between the Offeror and the Subcontractor for services to be provided by such subcontractor relating to the RFP. On the *Subcontractors or Affiliates* form (Attachment 7), the Offeror must:

1. Mark the applicable box if the Offeror will not be subcontracting with any Subcontractor(s) or Affiliate(s) to provide Project Services.
2. Indicate whether or not, as of the date of the Offeror's Proposal, a subcontract (or shared services agreement) has been executed between the Offeror and the Subcontractor or Affiliate for services to be provided by the Subcontractor or Affiliate relating to this RFP.
3. Provide a brief description of the services to be provided by the Subcontractor or Affiliate.
4. Provide a description of any current relationships with such Subcontractor or Affiliate and the clients/projects that the Offeror and Subcontractor or Affiliate are currently servicing under a formal legal agreement or arrangement, the date when such services began and the status of the project.

5. Indicate if Subcontractor or Affiliate has certified their Vendor Responsibility Questionnaire. <https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

4.6 Banking Services Schedules

With regard to Banking Services Schedules and other standard Bank-related materials submitted by Contractor with its Proposal, per Section 1.7 of the RFP, the Offeror should note that nothing contained in such Schedules and materials will be effective to the extent that it constitutes a variance with the terms or requirements of the resulting Contract, the RFP, and which has not been agreed to by the Department in the final Contract. Any proposed banking services schedules submitted with the Proposal must be submitted as an attachment to the Administrative Proposal and must be provided in editable, Word format.

4.7 Proof of financial stability rating

Provide proof of a current long-term rating of C+ or better from at least two out of four rating agencies (Kroll Bond Rating Agency, S&P, Moody's, and Fitch).

4.8 Proof of PCI DSS compliance

Provide proof of compliance with PCI DSS policies and standards.

4.9 NYS Undertaking for Bank Deposits and Assignment of Securities

Complete and submit *NYS Undertaking for Bank Deposits and Assignment of Securities Form* (Attachment 9)

4.10 New York State Standard Vendor Responsibility Questionnaire

The Offeror and any Subcontractor or Affiliate receiving more than \$100,000 over the life of the Contract must complete and certify the New York State Vendor Responsibility

Questionnaire. A person legally authorized to represent the Offeror must execute the questionnaire.

The Department recommends each Offeror file the required Questionnaire online via the New York State VendRep System. To use the VendRep System, please refer to:

<https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

By submitting a Proposal, the Offeror agrees to complete the Questionnaire fully and accurately. The Offeror acknowledges that the Department's execution of the Contract will be contingent upon the State's determination that the Offeror is responsible, and that the State will rely on the Offeror's responses to the Questionnaire when making its responsibility determination. The Offeror agrees that if it is found by the State that the Offeror's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Department may terminate the Contract. 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, which may be sustained by the Contractor as a result of such termination.

4.11 New York State Tax Law Section 5-a

Tax Law § 5-a requires certain Offerors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Offeror's sales delivered into NYS is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any Affiliates and subcontractors whose sales delivered into NYS exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

An Offeror is required to file the completed and notarized Form ST-220-CA with the Department certifying that the Offeror filed the ST-220-TD with DTF. If the forms are not completed and returned with bid submission, the Offeror should complete and return the certification forms within five Business Days from the date of request. Failure to make either of these filings may render an Offeror non-responsive and non-responsible. The Offeror must take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Offeror certification forms and instructions are provided below.

1. Form ST-220-TD must be filed with and returned directly to DTF and can be found at: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Offeror, its Affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.
2. Form ST-220-CA must be submitted to the Department. This form provides the required certification that the Offeror filed the ST-220-TD with DTF. This form can be found at: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

Note: Although these NYS Tax law forms are not required as part of the proposal, the State encourages Offerors to include them with their proposal to expedite contract execution if the Offeror is awarded the Contract.

SECTION 5: TECHNICAL PROPOSAL REQUIREMENTS

The purpose of Section 5 of the RFP is to set forth the submissions required of the Offeror. The Offeror's Technical Proposal must contain responses to all required submissions from the Offeror in the format requested. Each Offeror may submit only one Technical Proposal. Each Offeror's Technical Proposal will be evaluated based on the responses to the required submissions contained in Section 5 of this RFP.

An Offeror must not include any cost information in the Technical Proposal, including attachments. Specific savings estimates (dollars or percentages) must not be quoted in the Technical Proposal or in any attachments submitted with the Technical Proposal.

5.1 Account Team

The Offeror must provide a narrative describing in detail the proposed processes that will be utilized to provide Account Team Services specified in Section 3.1 of this RFP, including how the Offeror will maintain an organization of sufficient size with staff that possesses the necessary skills and experience to administer, manage, and oversee all aspects of the Project during implementation, operation, transition and close-out.

1. Provide an organizational chart and a narrative illustrating how you propose to administer, manage, and oversee all aspects of the Project. Include the following:

- a. Reporting relationships and the responsibilities of each key position of the Account Team and how the team will interact with other departments such as Lockbox Services, payment processing, and reporting within your organization. Describe how the account team interfaces with senior management and ultimate decision makers within your organization; and
 - b. Where your account services, Lockbox Services, payment processing, and reporting staff will be located, and approximately how many staff members will work in each functional area.
2. In a narrative, describe how the Account Team will have access to larger corporate resources as well as upper-level management. Include what tools and resources are available to the Account Team to manage the Project and what tools will be available to the Department to work with the dedicated Account Team to manage the Project.
3. In a narrative, describe how the Account Team's experience and accessibility to staff will:
 - a. Provide timely responses (within one Business Day) to administrative concerns and inquiries posed by the Department regarding payment processing for the duration of the Contract to the satisfaction of the Department;
 - b. Immediately notify the Department, in writing, of actual or anticipated events impacting Project delivery of services such as, but not limited to, legislation, litigation, and operational issues;
 - c. Provide advice and recommendations regarding Project Services, including but not limited to technological improvements and innovation, with the understanding that the Department is under no obligation to act on such advice or recommendations; and
 - d. Ensure that the Project is in compliance with all legislative and statutory requirements. If the Offeror is unable to comply with any legislative or statutory requirements, the Department must be notified in writing immediately.
4. Submit *Biographical Sketch Form* (Attachment 6).

5.2 Lockbox Services

The Offeror must provide a narrative describing in detail the proposed processes that will be utilized to develop Lockbox Services (both non-electronic and electronic) specified in Section 3.2 of this RFP, including the following:

1. Describe the Offeror's capability to set up and maintain two (2) Electronic Lockbox or alternate receivable system for the Department, to enable Enrollee and Agencies to make direct payment by e-checks and ACH through Online Banking Accounts;
2. Describe how the Offeror will secure and maintain two (2) USPS Lockbox located near the Offeror's processing center used to enable Enrollee and Agencies to make direct payments by check or money order and how the Offeror will maintain the PO Box and pay any associated fees to USPS to maintain such service throughout the term of the Contract;
3. Describe how the Offeror's will accurately process payments submitted with a remittance statement, which includes an Optical Character Recognition (OCR) scanline;
4. Describe how the Offeror will utilize a lookup file submitted by the Department to the Contractor to process payments submitted without a remittance statement or with a remittance statement that is un-processable;
5. Describe how the Offeror will utilize effective controls to ensure only a five-digit numerical code, as assigned by the Department, is used for processing Agency payments received by the Lockboxes and a ten-digit numerical code, as assigned by the Department, is used for processing Enrollee payments received by the Lockboxes;
6. Describe how the Offer will provide ACH debit block services to prevent unauthorized, or fraudulent, debiting of the Department's account;
7. Describe how the Offeror will post all Deposits on the Business Day retrieved/received and make funds available within one Business Day of Deposit;

5.3 Credit Cards

The Offeror must provide a narrative describing in detail the proposed processes that will be utilized to allow the Department to accept credit card payments specified in Section 3.3 of this RFP. Describe in detail how the Offeror will provide innovative and cost-effective ways to establish these new services to the Department.

1. Describe how the Offeror will create and maintain an Online/interface for the Department to allow users to make credit card payments with the flexibility to:
 - b) make a one-time payment to be processed immediately;
 - c) set up a one-time payment to be processed on a scheduled date;
 - d) set up recurring payments with a fixed amount on a fixed frequency; or
 - e) set up variable recurring payments where the amount and/or time of each payment can vary.

2. Describe how the Offeror will provide the Department with the ability to accept Credit Card payments made on a variety of platforms as well as be mobile friendly, fully functional, and display correctly on a multitude of devices;
3. Describe the variety of Credit Cards the Offeror can accept as payment and describe how the Offeror and any Subcontractors will maintain compliance with the Payment Card Industry Data Security Standards (PCI DSS) at all times; and
4. Describe how the Offeror will ensure that the Department does not electronically receive any cardholder data in which the entire Primary Account Number (PAN) is readable. If the Offeror engages the services of a Subcontractor, how the Offeror will ensure the Subcontractor is and remains PCI DSS compliant, as applicable, and provide the appropriate documentation to demonstrate the Subcontractor's compliance.

5.4 Reporting

1. The Offeror must provide a narrative describing in detail the proposed processes that will be utilized to execute the Reporting specified in Section 3.4 of this RFP, including how the Offeror will be responsible for making all transactional information available to the Department Online.
 - a. Describe how the Offeror will Provide all Deposit information within one Business Day of Deposit for designated Departmental staff to perform banking activities including, but not limited to: access to weekly statements; access to all transaction types; and access to all return check items;
 - b. Describe how the Offeror will be available 24 hours a day, 7 days a week to designated individuals employed (staff or Contractors) by the Department as well as individuals from other State Agencies designated by the Department, except for scheduled maintenance. Describe how the Offeror will make best efforts to provide prior notification to the Department when scheduled maintenance is proposed to occur;
 - c. Describe how the Offeror will allow designated Department staff to generate accurate reports of payment transactions and Deposits as required by the Department for its use upon request in the review, management, and analysis of the payment transactions and Deposits. In addition, access to all State transaction data must be available online for at least three years from the paid date;
 - d. Describe how the Offeror will allow designated Department staff to generate ad hoc reports and other data analysis tools such as specific transaction searches or queries. The reports must have the ability to run for a single date or a range of dates as designated by Department staff;
 - e. Describe how generated standard reports showing transactions will be available for at least three years past the paid date for downloading and

- Online viewing in multiple electronic formats including, but not limited to, Microsoft Access, Excel, PDF, and/or a text file;
- f. Describe how the Offeror will provide customer and technical support of the Online Banking Portal between the hours of 8 am and 5 pm ET. Support should be available through e-mail and telephone communication to remedy any urgent issues with availability and performance of the Online Banking Portal;
 - g. Describe how the Offeror will provide notification and detail of dishonored or returned payments after a second attempt has been made to present the transaction;
 - h. Describe how the Offeror will notify the Department, in writing, of actual or anticipated events impacting Project delivery of services such as, but not limited to, legislation, litigation, and operational issues;
 - i. Describe how the Offeror will make available Payment Detail Transaction Files for each of the Lockboxes;
 - j. Describe how the Offeror will The Offeror will provide Remote Check Deposit functionality to the Department for same-day deposit with confirmation of remote; and
 - k. Describe how the Offeror proposes the Department will be able to review Credit Card Transactions and Credit Card reporting features that match all other transactions and reporting functions in this RFP.

5.5 Implementation and Testing

The Offeror must provide a narrative describing in detail the proposed approach to Implementation and Testing as specified in Section 3.5 of this RFP, including the following:

- 1. Describe the Offerors approach to Implementation Plan as found described in Section 3.5 of this RFP; and
- 2. Describe the Offerors approach to provide the services under Implementation Testing- Full Simulation found in Section 3.5 of this RFP;

5.6 Transition, Close-Out, and Termination of Contract

The Offeror must provide a narrative describing in detail the proposed approach to Transition, Close-Out, and Termination of Contract found specified in Section 3.6 of this RFP, including the following:

1. The Offeror must provide an outline of the key elements and tasks that the Offeror proposed would be included in its Transition to ensure that all the required duties and responsibilities are completed if the Offeror were to be the incumbent Contractor. Include a brief explanation on how the Offeror would accomplish this with the successor Contractor;
2. The Offeror must describe how the key elements and tasks that the Offeror proposed would be included in the Close-Out Period and Termination of the Contract. and Include a brief explanation on how the Offeror would accomplish this with the successor Contractor; and
3. Describe how the Offeror will ensure no interruption in Service.

SECTION 6: FINANCIAL PROPOSAL

This section of the RFP sets forth the requirements for the Offeror's Financial Proposal submission and the cost structure required by the Department for Offerors to use in developing their submission. The Offeror's Financial Proposal must respond to all the following mandatory sections as set forth below in the formats as specified.

The sole compensation for the Contractor under the Contract will be payments based on the provisions set forth in this section of the RFP. All costs associated with the requirements of this RFP must be incorporated into the categories shown in the *Schedule of Fees* (**AMENDED** Attachment 8). As such, the Offeror must build a per transaction fee structure to cover all fees incurred from any method of payment accepted by this RFP. No add-ons are permitted, nor may fees be passed through to the Department except for Credit Card transaction fees and no fees may be passed on to the payers. This consolidated Monthly Fee should incorporate all bonuses, discounts, waivers or any other adjustments. During the term of the Contract, amounts paid for which it is subsequently determined that the Contractor was not entitled, if any, must be refunded to the Department. Submission of an invoice and payment thereof shall not preclude the Department from recovery or offset of payment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Contract.

Evaluations of Financial Proposals will be performed in accordance with the provisions presented in Section 7.3 of the RFP.

6.1 Method of Compensation

The Department reserves the right to determine the method to be used to compensate the Contractor for Services. This determination will be made on an account-by-account basis.

The method may include Direct Fee, Compensating Balances, or a combination of both. The method of compensation shall be that which is expected to provide the lowest cost of Services to the State, as determined by The Department. The Department reserves the right to change the compensation method. The Department will not change the method of compensation at a frequency greater than once annually, except in extraordinary circumstances, as determined by The Department. The Department shall provide the Contractor with advance notice of such a change. If an alternate payment method is deemed necessary by The Department, payment procedures shall be established by authorized representatives of the Contractor and The Department in accordance with the Fee Proposal, depending on the method of compensation.

Depending upon the method of compensation chosen by The Department, the following procedures will be used to determine the payment for Services:

Payment by Direct Fee – If The Department elects to pay by Direct Fee, it may choose to offset the fee payment with Earnings Credits (as hereinafter defined) or request Earnings Credits reimbursement from the Contractor. If, for any month, the Earnings Credits exceed the monthly bank charges, the Contractor shall carry forward the excess to the following month or, at the election of The Department, such excess may be applied against the cost of Services for any other Compensating Balance relationship the Contractor has with The Department. Earnings Credits are to be calculated using the following formula:

Earnings Credits = (average available account balance) x (ECR) x Time Where:

ECR = Earnings Credit Rate, the determination of which is described below

Time = number of days in period/365

The Earnings Credit Rate is the monthly average investment rate on the thirteen-week Treasury Bill, as determined at the weekly auction and published on the US Treasury website, or the Contractor's standard rate, whichever is greater. The Earnings Credit Rate shall be determined by The Department and confirmed with the Contractor monthly. The Department will not use any other method of calculation for the ECR.

Payment for Services by Direct Fee must be billed by the Contractor to The Department and will be paid in accordance with the voucher and audit procedures set forth in the Contract. When payment is by Direct Fee, the Contractor must provide a monthly bank account analysis electronically (currently an 822 file) to The Department along with the invoice to The Department as applicable. This analysis must include the monthly volume and total costs associated with the accounts.

Payment by Compensating Balances – If The Department elects to pay by Compensating Balances, an account specific to this use may need to be established. The value of the Compensating Balances shall be calculated using the same formula as shown above under “Payment by Direct Fee.” The Earnings Credit Rate shall be determined by The Department and confirmed with the Contractor monthly. If payment is made via Compensating Balances, the Contractor must provide a monthly bank account analysis electronically (currently an 822 file) to The Department. This analysis must include the monthly volume and total costs associated with the Accounts. All excess Earnings Credits on a monthly basis must be carried forward to offset future payments throughout the term of the Contract.

Unit costs proposed must be inclusive of all costs associated with the Services. There must be no additions, deletions or omissions of Service lines from the Fee Proposal; if the Bidder proposes a zero-value fee for any Service line, that service line should be marked as zero and not left blank. Blank service lines will be evaluated as zero value fees and incorporated into the Contract as such. No add-on costs are permitted. The Bidder must ensure that no additional costs will be assessed directly against the bank accounts associated with these Services. Any pricing information that does not conform to the presentation allowed on the Fee Proposal cannot be evaluated, will be disregarded as extraneous, and cannot be charged to the State after the award of a Contract.

The Financial Proposal must consist of a completed *Schedule of Fees* (**AMENDED** Attachment 8) which will include fixed fees for each of the seven-year terms of the Contract and all-inclusive costs associated with the delivery of the Project Services in accordance with requirements in this RFP. There must be no additions, deletions or omissions of Service lines from the Fee Proposal

Throughout the term of the Contract, the Offeror must charge only those monthly and transactional fees as quoted by the Offeror in the *Schedule of Fees* (**AMENDED** Attachment 8). Transactional fees may only be charged based on the actual monthly volumes of transactions and will be reimbursed monthly, in compliance with the NYS State Finance Law, based on items processed for the preceding month.

SECTION 7: EVALUATION AND SELECTION CRITERIA

The Department seeks to contract with a single Offeror to provide the Project Services. To this end, the Department intends to select the responsive and responsible Offeror whose Proposal offers the “Best Value” to the State, as defined in Section 7.5 of this RFP.

7.1 Administrative Proposal Evaluation

Proposals determined by the Department to satisfy the submission requirements set forth in Section 4 of this RFP will be reviewed by an evaluation team composed of staff from the Department.

7.2 Technical Proposal Evaluation

The evaluation of the Offeror’s Technical Proposal will be based on the Offeror’s written Technical Proposal and responses to clarifying questions (if any) and as deemed necessary by the Department, oral presentation(s) and/or site visits conducted to amplify and/or clarify information in the Offeror’s Technical Proposal.

1. Technical Score Ratings

The Technical Proposal of any Offeror meeting the requirements set forth in Section 7.1 of this RFP will be evaluated by the Department and may be evaluated by representatives from other State Agencies. Each Offeror’s Technical Proposal will be evaluated based on the below point allocation, as applied to each response, as required in Section 5 of this RFP.

2. Allocation of Technical Score Points

The allocation of points shall be distributed as follows:

Section	Title	Number of Points
5.1	Account Team	5
5.2 and 5.3	Lockbox Services and Credit Card Services	40
5.4	Reporting	25
5.5	Testing and Implementation	5
5.6	Transition, Close-Out and Termination of Contract	5
Total		80

2. Technical Proposal Scoring

The Technical evaluators will independently allocate points to each item according to the above chart for each Technical Proposal that meets the submission requirements of this RFP. The individual Committee Member's allocated points for each item will be averaged to calculate the Initial Technical Score for each responsive Proposer.

If any clarifications are sought, they will be disseminated to the Evaluators. The Evaluators after receiving the clarification may re-allocate points for each item that was clarified. The Evaluator's re-allocated points for each item will be re-averaged to calculate the Final Technical Score for each responsive Proposer.

7.3 Financial Proposal Evaluation

The Financial Proposal of any Offeror meeting requirements set forth in Section 4 of this RFP will be evaluated by the Department.

1. Financial Proposal Scoring

- a. The Department will calculate a Total Projected Cost for each Offeror fees for each of the seven-year terms of the Contract by computing the sum of the Offeror's proposed monthly fees plus the transactional fees, from the

Schedule of Fees (**AMENDED** Attachment 8), multiplied by the estimated annual utilization for each type of transaction. The table below includes information about average annual transactions.

Type of Transaction	Average Monthly Transactions in 2021	Average Dollar Value of Monthly Transactions in 2021
Electronic Deposit ¹	1,222	\$ 450,406
Non-Electronic Deposit ²	9,373	\$ 306,338,443
ACH Payments	21	\$225,867,870
Credit Card Payment ⁴	900	\$300,000

- b. The Offeror's Cost Proposal with the lowest Total Projected Cost will be allocated a maximum 20 of the 100 total points. A Financial Proposal Score for each remaining Offerors will be determined based on the following formula:

Cost points allocated = 20 potential points x (Lowest Cost Proposal / Cost of Proposal Being Evaluated).

7.4 Total Combined Score

The evaluator's final averaged allocated points for each item will be totaled to equal the Final Technical Score for each responsive Proposer. The Total Combined Score assigned to each Offeror will be the sum of the Final Technical Score, not to exceed 80 points, plus the Offeror's Financial Score not to exceed 20 points for a total maximum, not to exceed, 100 points.

² Currently the electronic lockbox is mostly deposits from "bill pay" enrollees (payment directly from an enrollee's bank account to the Department's bank account) and ACH payments. It does not currently permit payment by credit cards, debit cards or e-checks. It is anticipated that this figure will increase with the introduction of additional credit card payment methods.

³ Checks and money orders only.

⁴ This will be a new payment method for the Department. Therefore, the monthly transactions are estimated based on enrollee demographics.

7.5 Best Value Determination

Best Value means that the proposal that optimizes quality, cost, and efficiency among responsive and responsible bidders shall be selected for award (State Finance Law, Article 11, Section 163). Best Value will be determined by a point system, with 80 points allocated to the Technical Proposal and 20 points allocated to the Financial Proposal. The Department shall select and enter into negotiations for the purpose of executing a Contract with the responsive and responsible Offeror that has obtained the highest Total Combined Score, inclusive of both cost and technical. If two Offeror's Total Combined Scores are tied, the award shall go to the bidder with the highest cost score (lowest price), as calculated pursuant to Section 7.3 of this RFP.

SECTION 8: ADDITIONAL PROVISIONS

The Offeror that is determined to provide the Best Value to the Department shall be notified of its conditional award of Contract subject to the successful development of a Contract. The resulting Contract shall incorporate the requirements set forth in the RFP. Additional terms and conditions not already addressed in the RFP are set forth below.

1. Continued Access to Data after Termination of Contract

The Contractor must provide the Department with continued Online access to all State transaction data and statements for at least three years after the paid date. All Contract provisions related to the protection and security of the Data will survive termination of the Contract. This provision does not limit or lessen the time period or Contractor's obligations, pursuant to *Standard Clauses for New York State Contracts* (Appendix A), to establish and maintain records.

2. Use and Disclosure of Protected Health Information

- a. The Offeror acknowledges that the Offeror is a "Business Associate" as that term is defined in the HIPAA implementing regulations at 45 CFR 160.103, of the Department as a consequence of the Offeror's provision of Project Services on behalf of the Department within the context of the Offeror's performance under the resulting Contract and that the Offeror's provision of Project Services will involve the disclosure to the Offeror of individually identifiable health information from the Department or other service providers on behalf of the Department, as well as the Offeror's disclosure

to the Department of individually identifiable health information as a consequence of the Project Services performed under the resulting Contract. As such, the Offeror, as a Business Associate, will be required to comply with the provisions of this Section.

- b. For purposes of this Section, the term “Protected Health Information” (PHI) means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of the resulting Contract, PHI may be received by the Offeror from the Department or may be created or received by the Offeror on behalf of the Department in the Offeror’s capacity as a Business Associate. All PHI received or created by the Offeror in the Offeror’s capacity as a Business Associate and as a consequence of its performance under the resulting Contract is referred to herein collectively as “Department’s PHI”.
- c. The Offeror acknowledges that the Department administers on behalf of NYS, several group health plans as that term is defined in HIPAA’s implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a “covered entity” under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these “covered entities” under HIPAA. The Offeror further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA), respectively. The Offeror further acknowledges that
 1. The Offeror is a HIPAA “Business Associate” of the group health plans identified herein as “covered entities” as a consequence of the Offeror’s provision of certain services to and/or on behalf of the Department as administrator of the “covered entities” within the context of the Offeror’s performance under the resulting Contract, and that the Offeror’s provision of such services may involve the disclosure to the Offeror of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Offeror’s disclosure to the Department of individually identifiable health information as a consequence of the services performed under the resulting Contract; and
 2. Contactor is a “covered entity” under HIPAA in connection with its provision of certain services under the resulting Contract. To the extent Offeror acts as a HIPAA “Business Associate” of the group health plans identified as “covered entities”, the Offeror shall adhere to the

requirements as set forth herein. Offeror is responsible to obtain from Members and Enrollees all consents and/or authorizations, if any, required for Offeror to perform the services hereunder and for the use and disclosure of information, including the Department's PHI, as permitted under the resulting Contract.

- d. Permitted uses and disclosures of the Department's PHI: The Offeror may create, receive, maintain, access, transmit, use, and/or disclose the Department's PHI solely in accordance with the terms of the resulting Contract. In addition, the Offeror may use and/or disclose the Department's PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Offeror may use and disclose the Department's PHI for the proper management and administration of the Offeror if such use is necessary for the Offeror's proper management and administration or to carry out the Offeror's legal responsibilities, or if such disclosure is required by law or the Offeror obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Offeror of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, the Offeror may use and/or disclose the Department's PHI, as appropriate:
 - 1. For treatment, payment and health care operations as described in 45 CFR Section 164.506(c)(2), (3) or (4); and
 - 2. To de-identify the information or create a limited data set in accordance with 45 CFR §164.514, which de-identified information or limited data set may, consistent with this section, be used and disclosed by Offeror only as agreed to in writing by the Department and permitted by law.
- e. Nondisclosure of the Department's PHI: The Offeror shall not create, receive, maintain, access, transmit, use, or further disclose the Department's PHI otherwise than as permitted or required by the resulting Contract or as otherwise required by law. The Offeror shall limit its uses and disclosures of PHI when practicable to the information comprising a Limited Data Set, and in all other cases to the minimum necessary to accomplish the intended purpose of the PHI's access, use, or disclosure.
- f. Safeguards: The Offeror shall use appropriate, documented safeguards to prevent the use or disclosure of the Department's PHI otherwise than as provided for in the resulting Contract. The Offeror shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards that satisfy the standards set forth in the HIPPA Security Rule at 45 CFR §§ 164.308, 164.310, and 164.312, along with corresponding policies and procedures, as required by

45 CFR § 164.316, appropriate to the size and complexity of the Offeror's operations and the nature and scope of its activities, to reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains, accesses, or that it transmits on behalf of the Department pursuant to the resulting Contract to the same extent that such electronic PHI would have to be safeguarded if created, received, maintained, accessed, or transmitted by a group health plan identified herein.

- g. Breach Notification: In addition to the Disclosure of Breach requirements specified in *Standard Clauses for All Department Contracts* (Appendix B), the following provisions shall apply:

1. Reporting: The Offeror shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by the resulting Contract, of which the Offeror becomes aware. An acquisition, access, transmission, use, or disclosure of the Department's PHI that is unsecured in a manner not permitted by HIPAA or the resulting Contract is presumed to be a breach unless the Offeror demonstrates that there is a low probability that Department's PHI has been compromised based on the Offeror's risk assessment of at least the following factors:
 - a. The nature and extent of Department's PHI involved, including the types of identifiers and the likelihood of re-identification;
 - b. The unauthorized person who used Department's PHI or to whom the disclosure was made;
 - c. Whether Department's PHI was actually acquired or viewed; and
 - d. The extent to which the risk to Department's PHI has been mitigated.
2. Required Information: In addition to the information required in *Standard Clauses for All Department Contracts* (Appendix B), Disclosure of Breach, the Offeror shall provide the following information to the Department within the time period identified in *Standard Clauses for All Department Contracts* (Appendix B), Disclosure of Breach, except when, despite all reasonable efforts by the Offeror to obtain the information required, circumstances beyond the control of the Offeror necessitate additional time. Under such circumstances, the Offeror shall provide to the Department the following information as soon as possible and without unreasonable

delay, but in no event later than thirty Calendar Days from the date of discovery:

- a. The date of the breach incident;
 - b. The date of the discovery of the breach;
 - c. A brief description of what happened;
 - d. A description of the types of unsecured PHI that were involved;
 - e. Identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired, or disclosed during the breach;
 - f. A brief description of what the Offeror is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
 - g. Any other details necessary to complete an assessment of the risk of harm to the individual.
3. The Offeror will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired, or disclosed as a result of a breach, as well as the Secretary of the United States Department of Health and Human Services and the media, as required by 45 CFR Part 164.
4. The Offeror shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.
5. The Offeror shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Offeror not permitted by the resulting Contract.
- h. Associate's Agents: The Offeror shall require all of its agents or Subcontractors to whom it provides the Department's PHI, whether received from the Department or created or received by the Offeror on behalf of the Department, to agree, by way of written contract or other written arrangement, to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Offeror with respect to the Department's PHI under the resulting Contract.

- i. Availability of Information to the Department: The Offeror shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Offeror to fulfill the Department's obligations to provide access to, provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Offeror shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department. The Offeror must provide the Department with access to the Department's PHI in the form and format requested, if it is readily producible in such form and format; or if not, in a readable hard copy form or such other form and format as agreed to by the Parties, provided, however, that if the Department's PHI that is the subject of the request for access is maintained in one or more designated record sets electronically and if requested by the Department, the Offeror must provide the Department with access to the requested PHI in a readable electronic form and format.
- j. Amendment of the Department's PHI: The Offeror shall make the Department's PHI available to the Department as the Department may require Offeror to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Offeror shall, as directed by the Department, incorporate any amendments to the Department PHI into copies of such Department PHI maintained by the Offeror.
- k. Internal Practices: The Offeror shall make its internal practices, policies and procedures, books, records, and agreements relating to the use and disclosure of the Department's PHI, whether received from the Department or created or received by the Offeror on behalf of the Department, available to Department and/or the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Department and/or the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Department's compliance with HIPAA and its implementing regulations.
- l. Termination: This Contract may be terminated by the Department at the Department's discretion if the Department determines that the Offeror, as a Business Associate, has violated a material term of this Section. Data return and destruction upon Contract termination is governed by *Information Security Requirements* found in Appendix C of the RFP
- m. Indemnification: Notwithstanding the provisions in *Standard Clauses for All Department Contracts* (Appendix B), the Offeror agrees to indemnify, defend and hold harmless the State and the Department and its respective employees, officers, agents, or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this section, Use and Disclosure of Protected Health Information, or from any acts or

omissions related to this section by the Offeror or its employees, officers, subcontractors, agents, or other members of its workforce, without limitations. Accordingly, the Offeror shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs, or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding, or demand by any third party which results from the Offeror's acts or omissions hereunder. The Offeror's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Contract.

n. Miscellaneous:

1. Survival: The respective rights and obligations of Business Associate and the "covered entities" identified herein under HIPAA and as set forth in this Section, USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION, shall survive termination of the resulting Contract.
2. Regulatory References: Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended, or modified, as of their respective compliance dates.
3. Interpretation: Any ambiguity in the resulting Contract shall be resolved to permit covered entities to comply with HIPAA.

3. Enhancements and Modifications; Change Requests

Change Requests may be used for enhancements or modifications that had neither (i) been included in the Deliverables identified in this RFP, nor (ii) been included in the Proposal, but which pertains to the scope of this RFP. Change Requests will be limited to 10% of the not-to-exceed amount of the Contract. Work on any proposed change request must not commence until any such change request is approved by the Department. In addition, any one Change Request over \$50,000 requires prior approval by OSC.

The Department, however, is under no obligation to request such enhancements or modifications and reserves its rights to:

1. Develop and/or implement enhancements or modifications internally; and/or
2. Obtain a third party to perform such work. The Offeror, if selected and awarded a contract, agrees to work with the Department and any other party to assist in the development and/or implementation of enhancements or modifications and

- shall timely develop and implement an enhancement or modification as directed by the Department.
3. Fees for the development and implementation of enhancements or modifications shall be negotiated by the Department and the selected Offeror as soon as feasible prior to commencement of work by the selected Offeror.

- a. Prior to the approval of a Change Request, the Department will conduct a review of the required number of hours for the task, the titles of staff performing such tasks, and the rates for such tasks.
- b. The selected Offeror will use its best efforts to promptly develop a requested enhancement or modification.
- c. The selected Offeror shall not implement a Department-directed enhancement or modification into “live” production until the enhancement or modification has been accepted by the Department.

4. Entire Contract

The resulting Contract, including all appendices, constitutes the entire Contract between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified, or altered in any manner except by an instrument in writing executed by both parties hereto, except as otherwise provided herein. The Contract is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by OSC and subject to the termination provisions contained herein.

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, licensor, 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
<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.

New York State Department of Civil Service
April 2022

APPENDIX B - STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

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1. Headings and Captions

The headings or captions contained within the Contract are intended solely for convenience and reference purposes and shall in no way be deemed to define, limit or describe the scope or intent of the Contract or any provisions thereof.

2. Compliance with Laws

Contractor warrants and represents that, throughout the term of the Contract, in the performance of its obligations under the Contract, it will: (i) comply with all applicable State and Federal laws, ordinances, rules and regulations and policies of any governmental entity; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.

3. Jurisdiction or Venue

Any action, suit or proceeding to enforce any provision of, or based on any matter arising out of or in connection with this Contract shall be brought in any New York state court located in Albany County or any federal court located in the Northern District of the State of New York.

4. Summary of Policy and Prohibitions on Procurement Lobbying

State Finance Law §§139-j and 139-k impose certain restrictions on communications between the Department and Offerors during the procurement process. Offerors are restricted from making contact, from the earliest posting, on the Department's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Article four-C of the Economic Development Law, of written notice, advertisement or solicitation of a Request for Proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation to solicit offers/bids through final award and approval of the procurement contract by the Department and, if applicable, the Office of the State Comptroller ("restricted period"), to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). A finding of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offeror shall be debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: <https://ogs.ny.gov/acpl>.

5. Notice of Substantial Change in Contractor Status

In addition to the requirements of New York State Finance Law §138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the Department of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries or divisions, or partners, in writing immediately upon occurrence. "Substantial change" means: (i) sales, acquisitions, mergers or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid or execution of Contract; (ii) entry of an order for relief under Title 11 of the United States Code; (iii) the making of a general assignment for the benefit of creditors; (iv) the appointment of a receiver of Contractor's business or property or that of its Affiliates, subsidiaries or divisions, or partners; or action by Contractor, its Affiliates, subsidiaries or divisions, or partners under any State insolvency or similar law for the purposes of its bankruptcy, reorganization, or liquidation; or (v) court ordered liquidation of Contractor, its Affiliates, subsidiaries or divisions, or partners.

Upon the Department's receipt of such notice, the Department shall have thirty (30) business days from the date of notice to review the information. The Contractor may not transfer the Contract to or among Affiliates, subsidiaries or divisions, or partners, or to any other person or entity, without the express written consent of the Department. In addition to any other remedies available at law or equity, the Department shall have the right to terminate the Contract, in whole or in part, for cause, if it finds, in its sole judgment, that such substantial change adversely affects the delivery of Services or is otherwise not in the best interests of the State.

6. Notice of Circumstances Expected to Adversely Affect Contractor's Performance

The Contractor shall immediately notify Department upon learning of any situation that can reasonably be expected to adversely affect the delivery of Project Services under the Contract. If such notification is verbal, the Contractor shall follow such initial verbal notice with a written notice to Department within three (3) calendar days of Contractor's becoming aware of the situation. The written notification shall include a description of the situation and a recommendation of a resolution.

7. Severability

In the event that one or more of the provisions of the Contract shall for any reason be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the

remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.

8. Waiver of Breach

No term or provision of the Contract shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by a Party to, or waiver of, a breach under the Contract shall constitute consent to, a waiver of, or excuse for any other, different or subsequent breach. The rights, duties and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law or equity. No delay or omission to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy.

9. Force Majeure

Neither Party to the Contract shall be liable or deemed to be in default for any delay or failure in performance under the Contract resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accident, fire, explosions, earthquakes, floods, the elements, acts or omissions of public utilities or strikes, work stoppages, slowdowns or other labor interruptions due to labor/management disputes involving entities other than the Parties to the Contract, or any other causes not reasonably foreseeable or beyond the control of a Party. Each Party is required to use best efforts to eliminate or minimize the effect of such events during performance of the Contract and to resume performance of the Contract upon termination or cessation of such events.

10. Modification of Contract

The Contract may be amended only by mutual written consent of the Parties and approved by the New York State Attorney General and Office of the State Comptroller, if required.

11. Change Request

At any time during the term of this Contract, the Department may make changes, subtractions or additions in any of the equipment, software, documentation, Project Services and/or other Deliverables within the general scope of work set forth in the Contract, consistent with pricing established under the terms of the Contract. All such changes shall be made using a mutually agreed upon form executed by the Parties and shall otherwise be in accordance with the terms and conditions of the Contract. If any such change causes an increase or decrease in pricing or the time required for the

performance of the Contract, an equitable adjustment of the Contract amount and/or time of performance will be made on mutual agreement of the Parties, subject to the approval of the New York State Office of the State Comptroller and any applicable control agency, if required.

12. Piggybacking

Contractor acknowledges and agrees that, pursuant to State Finance Law § 163(10)(e), the New York State Office of General Services may authorize and approve purchases from contracts between Contractor and Department to other New York State agencies, authorities, the United States Government or any other state, with the concurrence of the Office of the State Comptroller and under appropriate circumstances.

13. No Third-Party Beneficiaries

Nothing contained in the Contract, expressed or implied, is intended to confer upon any person or corporation, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Contract.

14. Work Outside of Scope of the Contract

The Contractor must not perform work outside the scope of the Contract unless such work is authorized by a properly executed written amendment to the Contract, and if applicable, approved by the Office of the State Comptroller. Work not so authorized shall not be compensated.

15. Contract Payments

Payments for commodities received or Services rendered shall be in accordance with the Contract. The State's payment obligations shall be governed by the provisions of the New York State Finance Law ("SFL") Article 11-A.

16. Liability for Taxes

- a) The Department represents that the purchases on behalf of the State of New York are not subject to any state or local sales or use taxes, or to federal excise taxes.
- b) Contractor remains liable and solely responsible without exemption for social security, unemployment insurance, workers' compensation and other taxes and obligations to which Contractor may be subject to by law.

17. State's Authority to Conduct Financial and Performance Audits

The Contractor acknowledges that the Department and the Office of the State Comptroller have the authority to conduct financial and performance audits of the Contractor's delivery of Project Services and any applicable State and federal statutory and regulatory authorities. The audit activity may include, but is not limited to, the review of documentary evidence to determine the accuracy and fairness of all items on the Contractor's submission of claims for payment under the Contract, and the review of any and all activities relating to the Contractor's performance and administration of the Contract.

In addition to any requirements set forth in the Contract, the Contractor shall make available any documentation necessary to perform such reviews including the copying of the documentation. Documentation made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation and pertinent contracts and correspondence.

The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the State Comptroller as set forth in Appendix A of the Contract, Standards Clauses for All New York State Contracts, or any audit requirements related to the security of the Contractor's systems.

Further, upon request by the State, the Contractor shall cooperate with the State, including the Office of the State Comptroller, in any investigation, audit, or other inquiry related to the Solicitation or the resulting Contract or any related litigation, at no cost to the State. This provision shall survive the termination of the Contract.

18. Independent Contractor

The Parties agree that the Contractor is an independent contractor, and the Contractor, its officers, employees, agents, consultants, contractors and/or subcontractors in the performance of the Contract shall act in an independent capacity and not as agents, officers or employees of the State or the Department. Neither the Contractor nor any subcontractor shall thereby be deemed an agent, officer, or employee of the State. The Contractor agrees, during the term of the Contract, to maintain at the Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, State, and local taxes, and all Federal Insurance Contributions Act payments.

19. Subcontracting

If allowed in the solicitation, the Contractor may arrange for specified portions of its responsibilities to be subcontracted. The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract. The Contractor shall be solely responsible to the Department for the acts or defaults of its Subcontractor(s) and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. Any Deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor.

The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements established by the Contract and enter into a written subcontract. Such subcontract shall include the functional equivalent of the Contract, and include such clauses:

- That the work performed by the Subcontractor must be in accordance with the terms and conditions of this Contract.
- That nothing contained in such subcontract shall impair the rights of the Department or the State.
- That nothing contained in the subcontract shall create any contractual relationship between the Subcontractor and the Department or the State.
- That the State and Department shall have the same authority to audit the records of all Subcontractors as it does those of the Contractor.
- That Subcontractor shall cooperate with any investigation, audit, litigation or other inquiry related to the Solicitation or the resulting Contract.
- That Subcontractor shall maintain and protect against any unauthorized disclosure of records with respect to work performed under the subcontract in the same manner as required of the Contractor.
- The Contractor shall require that the Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A, to any lower tier subcontractors.
- Unless waived by the Department, each subcontract shall expressly name the State of New York through the Department as the sole intended third party beneficiary of such subcontract.

The Department reserves the right to review and approve or reject any subcontract with a Subcontractor, as well as any amendments to said subcontract(s). This right shall not make the Department or the State a party to any subcontract or create any right, claim, or interest in the Subcontractor or proposed Subcontractor against the Department.

The Department reserves the right, at any time during the term of the Contract, to verify that the written subcontract between the Contractor and Subcontractor(s) is in compliance with all of the provisions of this Contract. In addition to other remedies

allowed by law, the Department reserves the right to terminate the Contract for cause if an executed subcontract does not contain all of the required provisions.

The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a Subcontractor or which may affect the performance of the Contractor's duties under the Contract. Failure to disclose the identity of any and all Subcontractor(s) used by the Contractor as required hereunder may, at the sole discretion of the Department, result in a disqualification of the Subcontractor, if not immediately cured, or may result in termination of the Contract for cause. The Contractor shall pay all Subcontractors for and on account of Project Services and/or Deliverables provided by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the Department, the Contractor shall submit satisfactory evidence that it has made such payment. The Contractor shall, within five (5) Business Days of the Department's written request, file promptly with the Department a copy of any subcontract providing Services for the Contract.

20. Contractor Staff

All Contractor Staff performing work under the Contract must: meet or exceed the technical and training qualifications set forth in the Contract; comply with all security and administrative requirements of the Department; possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the work will be provided or performed; and be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Project Services under the Contract on behalf of Contractor shall, in performing the Project Services, comply with all applicable Federal and State laws concerning employment in the United States. Contractor Staff may be required to execute a Department Nondisclosure Agreement, either before or upon arrival for work at a State facility or, if in Department's sole discretion, the Contractor's Staff will otherwise have access to critical State Networks, equipment or data.

The Department, in its sole discretion, may require the Contractor to remove from interaction with the State, or may refuse access to State systems and facilities or require removal from any State facility any Contractor Staff performing work under this Contract that the Department determines poses a security risk, has a work performance that the Department finds inadequate or unacceptable, or otherwise fails to meet the Department's business requirements or expectations. The Contractor shall not assign such removed person to any aspect of the Contract without the State's written consent. Such action by the Department shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

For reasons of safety and public policy, the use of illegal drugs and/or alcoholic beverages by the Contractor Staff shall not be permitted while performing any phase of Contract work.

The State shall not be liable for any expense incurred by the Contractor Staff for any parking or towing fees or as a consequence of any traffic infraction or parking violations attributable to Contractor Staff.

21. Onboarding and Suitability Determinations

The Contractor, including all Contractor Staff who work on the Contract, must comply with all State and Federal onboarding and security clearance requirements, at its own expense.

Contractor is responsible, at its own expense, for making suitability determinations on its Contractor Staff prior to the staff member performing any work in connection with this Contract. For purposes of this provision, a “suitability determination” is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the Contract requirements without undue risk to the interests of the State. Upon request of the State, the Contractor shall certify to the State that the suitability determinations required by this provision have been completed for all Contractor Staff performing work in connection with this Contract.

Failure of a security clearance or non-compliance with this provision will disqualify any Contractor Staff from performing any Services under the Contract. All expenses, including travel and lodging, associated with the onboarding and security clearance process, including fingerprinting of Contractor Staff, if required, are the responsibility of the Contractor and are not reimbursable.

If Contractor Staff have any lapse in work under the Contract, such individuals may be subject to all onboarding and security clearance requirements if they are returned to performing Project Services under the Contract.

The State also reserves the right to: (a)conduct a background check or otherwise approve any Contractor Staff performing work on this Contract or having access to Data; and (b) refuse access to, eject or require replacement of any personnel at the Department's discretion for any reason.

22. Separation of Duties

The Department requires the Contractor to follow security best practices by adhering to separation of job duties and limiting Contractor Staff access to Data to the minimum necessary to accomplish the intended purpose (i.e., job duties).

23. Dispute Resolution

Unless otherwise agreed to in writing by the Parties, any dispute raised by the Contractor concerning any question of fact or law arising under the Contract which is not disposed of by mutual agreement of the Parties shall be decided initially by the designee of the Commissioner ("Commissioner"). A copy of the written decision shall be furnished to the Contractor. The Parties shall proceed diligently with the performance of the Contract and shall comply with the provisions of such decision and continue to comply pending further resolution of any such dispute as provided herein. The decision of the designee of the Commissioner shall be final and conclusive unless, within ten (10) Days from the receipt of such decision, the Contractor furnishes the Commissioner a written appeal. In the event of an appeal, the Commissioner shall promptly review the initial decision, and confirm, annul, or modify it. The decision of the Commissioner shall be final and conclusive unless, as determined by a court of competent jurisdiction, it violates one of the provisions of section 7803 of the Civil Practice Law and Rules ("Article 78"). Pending final decision of any Article 78 proceeding, the Parties shall diligently perform the Contract in accordance with the Commissioner's decision.

24. Indemnification and Limitation of Liability

a. Indemnification:

Contractor shall be fully liable for the actions of its agents, officers, employees, partners, or subcontractors, and shall fully indemnify and save harmless the State, without limitation, from suits, actions, damages, and costs of every name and description relating to personal injury and damage to real or personal property caused by Contractor, its agents, officers, employees, partners, or subcontractors, if any, without limitation; provided however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or negligent failure to act of the State.

Contractor shall indemnify, defend and hold the State harmless, without limitation, from any loss or damage to the State resulting from suits, actions, damages, and costs of every name and description resulting from any criminal acts committed by Contractor's officers, agents, employees, and subcontractors while providing Project Services under the Contract.

b. Indemnification for Intellectual Property Infringement:

Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees and legal fees), claims, judgments, liabilities, and costs which may be assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright,

trademark, trade secret, or other third-party proprietary right in relation to the Services, products, documentation or Deliverables furnished or utilized by Contractor under this Contract, provided that the State shall give Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit; (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 at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require. This paragraph shall not apply to that portion of any infringement claim which results from a material modification by the State, without Contractor's approval, of any products, documentation or Deliverables furnished or utilized by Contractor pursuant to this Contract. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest.

c. Limitation of Liability

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation" or not subject to the limitation of liability provisions, and regardless of the basis on which the claim is made, Contractor's liability under the Contract for direct damages shall be limited to the greater of the following: (i) \$500,000 (Five Hundred Thousand Dollars); or (ii) two (2) times the amounts paid to the Contractor for Project Services under the Contract during the twelve (12) months of the Contract term which precedes the giving of notice of the claim by the State. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to the State. Unless otherwise specifically enumerated herein, neither party shall be liable for any incidental, punitive, consequential, indirect or special damages of any kind which may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others, however caused and regardless of the theory of liability even if such party has been informed of the possibility of such damages.

d. No Indemnification by the State:

The State does not agree to any indemnification provisions that requires the State to indemnify or save harmless Contractor or third parties.

25. Insurance Requirements

Prior to the commencement of work, Contractor shall file with the Department Certificates of Insurance evidencing compliance with all the requirements contained in the Solicitation. Acceptance and/or approval by the Department does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

Contractor shall cause all required insurance to be in full force and effect as of the commencement date of the Contract and to remain in full force and effect throughout the term of the Contract and as required by the Contract. Contractor shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

26. Warranties and Guarantees

- a. Contract Deliverables: Contractor warrants and represents that the Services required by the solicitation and the Contract shall be performed or provided in accordance with all the terms and conditions, covenants, statements, and representations contained in the Contract. Contractor's failure to meet pre-defined service levels or service level guarantees may result in a credit or chargeback in an amount pre-determined by the Parties.
- b. Product Performance: Contractor hereby warrants and represents that Products acquired by the State under this Contract conform to the manufacturer's specifications, performance standards and documentation and that the documentation fully describes the proper procedure for using the Products.
- c. 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 Products acquired by the State under the Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify the State and hold the State harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.
- d. Workmanship Warranty: Contractor warrants and represents that all Services and Deliverables shall meet the completion criteria set forth in the Contract, and that Services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards.
- e. Personnel Eligible for Employment: Contractor warrants and represents that all personnel performing Services under this Contract are qualified to provide Services and eligible for employment in the United States and shall remain so throughout the term of the Contract. Contractor shall provide such proof of compliance as is required by Department.
- f. Virus Warranty: The Contractor represents and warrants that any Product acquired by the Department does not contain any known viruses. Contractor is not responsible for viruses introduced at the Department's site by third parties who are not Contractor Staff.

- g. Date/Time Warranty: Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes, or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products 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 the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and 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.
- h. Additional Warranties: Where Contractor generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the State.
- i. No Limitation of Rights: The rights and remedies of the State provided in this clause are in addition to and do not limit any rights afforded to the State by any other clause of the Contract.
- j. Survival of Warranties: All warranties contained in the Contract shall survive termination of the Contract.
- k. No Implied Warranties: To the extent permitted by law, these warranties are exclusive and there are no other express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose.

27. Ownership of and Title to Contract Deliverables

a. Contractor acknowledges that it is commissioned by the State to perform the Project Services detailed in the Contract which may include the development of intellectual property by Contractor, its Subcontractors, partners, employees or agents for the State (“Custom Products”). Unless otherwise specified in writing in the Contract, upon the creation of such Custom Products, Contractor hereby conveys, assigns and transfers to the State the sole and exclusive rights, title and interest in the Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in performing Services under the Contract in the course of Contractor’s business. The State may, by providing written notice thereof to the Contractor, elect in the alternative to take a non- exclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, the State shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in the Contract.

b. Ownership of and Title to Existing Software

Title and ownership to existing software delivered by Contractor under the Contract that is normally commercially distributed by the Contractor or a third-party proprietary owner, whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products shall remain with Contractor or the third party. Effective upon acceptance, such existing software shall be licensed to the State and must, at a minimum, grant the State a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the State as part of Contractor’s proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the State’s satisfaction) and distribute existing software to the State up to the license capacity stated in the Contract with all license rights necessary to fully effect the general business purposes stated in the Solicitation. With regards to third party software, the Contractor shall be responsible for obtaining these rights at its sole cost and expense.

28. Confidentiality and Non-Disclosure

a. Confidentiality

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any “Confidential Information” to which the Contractor, its officers, agents, employees, and subcontractors, if any, have access. This

requirement shall survive termination of the Contract. Contractor agrees that all officers, agents, employees and subcontractors, if any, shall be made aware of and shall agree to the terms of this Contract. Upon the request of the State or Department, all of Contractor's officers, agents, employees and subcontractors with access to Data shall cooperate in executing a written confidentiality/nondisclosure agreement and/or security addendum under applicable confidentiality and privacy laws, rules, and regulations or policies. If the State or Department does not request the execution of a written confidentiality/nondisclosure agreement and/or security addendum then Contractor shall ensure all officers, agents, employees and subcontractors with access to Data are bound by a confidentiality/nondisclosure agreement and/or security addendum requirements consistent with applicable confidentiality and privacy laws, rules and regulations or policies.

For purposes of the Contract, all data from the State of which Contractor, its officers, agents, employees, and subcontractors, if any, becomes aware during the Contract performance shall be deemed to be Confidential Information (whether oral, visual or written). Notwithstanding the foregoing, data that falls into any of the following categories shall not be considered Confidential Information:

- i. information that is previously rightfully known to the receiving party without restriction on disclosure;
- ii. information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and
- iii. information that is independently developed by Contractor without use of Confidential Information of the State.

In the event that it is necessary for Contractor to receive Confidential Information, which Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees it shall not retain a copy of such Confidential Information and shall either return or destroy, in accordance with the provisions of this Contract, all such Confidential Information when the purpose that necessitated its receipt by Contractor has been completed.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the contractual protections for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information.

Contractor agrees that it shall use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information, which Federal or State statute or regulation prohibits from disclosure.

Contractor agrees that it shall immediately report to the Department the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information in accordance with the Contract notification provisions. The Parties agree that a violation of this section shall be deemed a material breach of contract.

b. Non-disclosure: Except as otherwise required by law, Contractor shall not disclose Data to a third party. Except where expressly prohibited by law, Contractor shall promptly notify the Department of any subpoena, warrant, judicial, administrative or arbitral order of an executive or administrative agency or other governmental authority of competent jurisdiction (a "Demand") that it receives and which relates to or requires production of the information or data Contractor is processing or storing on the State's behalf where the State is the object of the underlying subpoena, warrant, judicial, administrative or arbitral order. If Contractor is required to produce information or data in response to such Demand, Contractor will provide the Department with the information or data in its possession that it plans to produce in response to the Demand prior to production of such information or data. Except as otherwise required by law, Contractor shall provide the Department with reasonable time to assert its rights with respect to the withholding of such information or Data from production. If the State is required to produce information or data in response to a Demand, Contractor will, at the State's request and unless expressly prohibited by law, produce to the State any information or data in its possession that may be responsive to the Demand and shall provide assistance as is reasonably required for the State to respond to the Demand in a timely manner. The State acknowledges that Contractor has no responsibility to interact directly with the entity making the Demand. The Parties agree that the State's execution of this Contract, does not constitute consent to the release or production of Data or information.

Contractor agrees that access to and use of sensitive and Confidential Information is limited to authorized employees and legally designated agents, for authorized purposes only.

To the extent that Contractor, or Contractor Staff have access to Federal, State or local government Regulated Data pursuant to their responsibilities under the Contract, Contractor agrees that it will abide by the requirements of those Federal and State laws and regulations.

29. Freedom of Information Law

Disclosure of information related to this solicitation and the resulting Contract shall be permitted consistent with New York State laws, specifically the Freedom of Information Law (FOIL). The Department shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this solicitation that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as

such by the Contractor upon submission in accordance with the solicitation provisions. If the Contractor intends to request an exemption from disclosure under FOIL, the Contractor shall at the time of submission, request the exemption in writing and provide an explanation of why the information should be exempted from disclosure pursuant to Public Officers Law § 87(2) of FOIL. Acceptance of the identified information by the Department does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the Department.

30. Data Ownership and Use

All Data is owned exclusively by the Department and will remain the property of the Department. Contractor is permitted to use Data solely for the purposes set forth in the Solicitation and resulting Contract, and for no other purpose. At no time shall the Contractor access, use, or disclose any Confidential Information (including personal, financial, health, or criminal history record information) for any other purpose. The Contractor is strictly prohibited from releasing or using Data or information for any purposes other than those purposes specifically authorized by the Department. Contractor agrees that Data shall not be distributed, used, repurposed, transmitted, exchanged or shared across other applications, environments, or business units of the Contractor or otherwise passed to other contractors, agents, subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by the Department. This provision shall survive the termination of the Contract.

31. Termination

- I. In addition to the provisions set forth in Appendix A or elsewhere in this Contract, this Contract may be terminated as follows:
 - a. For Convenience:
By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) calendar days written notice without penalty or other early termination charges due. If the Contract is terminated pursuant to this paragraph, the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.
 - b. For Cause:
The Contract may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of the Contract, provided that the Department shall give the Contractor written notice. Such written notice will specify the Contractor's failure and the termination of the Contract. Termination shall be effective no earlier than

thirty (30) Calendar Days after receipt of such notice unless the Contractor, in the opinion of the Department, has cured such failure. Such cure period may be extended by the Department in writing. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination without the prior written approval of the Department. Upon termination for cause, the Department shall have the right to award a new contract to another contractor. Termination for cause shall create a liability upon the Contractor for actual damages incurred and for all reasonable additional costs incurred in reassigning the Contract.

- c. For Suspension or Delisting of Contractor's Securities:
The State, in its sole discretion, may terminate the Contract or exercise such other remedies as shall be available under the Contract, at law or in equity if: the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable; the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets; or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors.
- d. For Vendor Responsibility Related Findings:
The Department may, in its sole discretion, terminate the Contract if it finds at any time during the Contract term that the Contractor is non-responsible, or that any information provided in the Vendor Responsibility Questionnaire submitted with Contractor's Bid was materially false or incomplete, or if the Contractor fails to timely or truthfully comply with Department's request to update its Vendor Responsibility Questionnaire.
- e. Termination for Non-Responsibility:
Upon written notice to the Contractor, and after a reasonable opportunity to be heard with the appropriate Department officials, the Contract may be terminated by the Commissioner at the Contractor's expense where the Contractor is determined to be non-responsible. In such an event, the Commissioner may complete the contractual requirements in any manner s/he may deem advisable and pursue legal or equitable remedies for the Contractor's breach.
- f. For Lack of Funds:
The Contract may be terminated immediately in the event the Department determines that funds are unavailable. The Department agrees to provide

notice to the Contractor as soon as it becomes aware that funds are unavailable in the event of termination under this paragraph. If the initial notice is via oral notification, the Department shall provide written notice immediately thereafter. The Department shall be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received, in writing, by the Contractor from the Department.

II. Mitigation of Costs:

The Contractor shall not undertake any additional or new obligations under this Contract on or after the receipt of notice of termination without the prior written approval of the State. On or after the receipt of a notice of termination and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to mitigate additional costs to the State and close out any unnecessary State obligations or expenses which do not impact the level of service required by the Contractor under the Agreement.

32. Continuing Obligation to Remain Responsible

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner or his 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, including the submission of an updated Vendor Responsibility Questionnaire.

The Contractor is required to promptly report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.

33. Suspension of Work

The Department reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reasons for such suspension include but are not limited to, a budget freeze on State spending or declaration of emergency. Upon issuance of such notice, the Contractor shall comply with the suspension order. Contractor shall be paid for Services performed prior to suspension in accordance with the Contract. Such suspension will be lifted upon written notice to Contractor.

Nothing in this paragraph shall diminish the State's right to terminate the Contract as provided in the Contract.

34. Default

- a. If either party breaches a material provision of this Contract and such breach remains uncured for a period of thirty (30) days after written notice thereof from the other party specifying the breach, then the other party may, at its option, terminate this Contract in accordance with the provisions of the Contract and exercise such other remedies as shall be available under the Contract, at law and/or equity.
- b. If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under this Contract, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Services provided prior to any such date, and if any lump-sum payment has been made, the State shall be entitled to a pro-rata refund of such payment.

35. General Provisions as to Remedies

- a. Except as otherwise set forth in the Agreement, the Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or acquiescence to, an event otherwise constituting a breach or default under the Contract.
- b. In addition to any other remedies available to the State under the Contract and state and federal law for Contractor's default, the State may choose to exercise some or all of the following:
 - i. Suspend, in whole or in part, payments due to Contractor under this Contract;
 - ii. Pursue equitable remedies to compel Contractor to perform;
 - iii. Apply Service Credits against amounts due and owing by the State under the Contract; or
 - iv. Require Contractor to cure deficient performance or perform the requirements of the solicitation at no charge to the State.

36. Cooperation with Third Parties

Upon request by the State, the Contractor shall reasonably cooperate with any third party designated by the State such as, but not limited to, other contractors or Subcontractors, including successor Contractors, retained by the State.

37. Publicity and Communications

The Contractor shall ensure that all requests for the Contractor's participation in events where the Contractor will be participating on behalf of the Department receive prior written authorization from the Department.

No public discussion or news releases relating to the Contract shall be made or authorized by the Contractor or the Contractor's agent without the prior written approval of the Department, which written approval shall not be unreasonably withheld or delayed. Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any State or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

38. Accessibility

a. Web Accessibility:

Any network-based information and applications development, or programming delivered to or by the State pursuant to this contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified or superseded (the "Accessibility Policy"). The Accessibility Policy requires that the Department's Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by Contractor and any report on the results of such testing must be satisfactory to the Department.

b. Language Access for Individuals with Limited English Proficiency:

Executive Order 26 (EO 26), directs executive state agencies that provide direct public services to offer language assistance services (translation and interpretation) to people of Limited English Proficiency (LEP). If applicable, any solution being procured which is deemed to provide a "direct public service" must comply with EO 26.

39. Branding and Universal Web Navigation

Any public facing web-based information and applications development, or programming delivered pursuant to the Contract shall comply with New York State Information Technology Standard, NYS-S16-001- New York Universal Web Navigation and New York State Branding Guidelines as such policy and standard may be amended, modified or superseded.

40. Migration

Contractor's services performed under this Contract will ensure easy migration of the Data including Confidential Information under this Contract by providing its solution in a manner designed to do so. This may include maintaining that information in a format that allows Department to easily transfer it to an alternative application platform. Contractor will make its Application Programming Interfaces (APIs) available to Department.

41. Disclosure of Breach

Notwithstanding on any other provision of this Contract or requirements of law or regulation, the Contractor shall provide notice to the Department as soon as possible following the Contractor's discovery or reasonable belief that there has been unauthorized disclosure or loss of sensitive or Confidential Information ("Security Incident").

- a. Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, the Contractor shall provide a written report to the Department detailing the circumstances of the incident, which includes at a minimum:
 - i. A description of the nature of the Security Incident;
 - ii. The type of Department information involved including the categories of data;
 - iii. Who may have obtained the Department information;
 - iv. What steps the Contractor has taken or shall take to investigate the Security Incident;
 - v. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
 - vi. A point of contact for additional information.
- b. Each day, or as otherwise mutually agreed to in writing by the Department and Contractor, thereafter until the Contractor's investigation is complete or otherwise directed by the Department, the Contractor shall provide the Department with a written report regarding the status of the investigation and the following additional information as it becomes available:
 - i. Who is known or suspected to have gained unauthorized access to the Department's information;
 - ii. Whether there is any knowledge if the Department information has been used in an unauthorized fashion or compromised;
 - iii. What additional steps the Contractor has taken or shall take to investigate the Security Incident;

- iv. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
 - v. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- c. Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.
- d. The Contractor shall confer with the Department regarding the proper course for the investigation and risk mitigation. The Department reserves the right to conduct an independent investigation of any Security Incident, and should the Department choose to do so, the Contractor shall reasonably cooperate by making resources, personnel, and systems access available to the Department and the Department's authorized representative(s) who may include the New York State Chief Information Security Office.
- e. Subject to review and approval of the Department, the Contractor shall, at its own cost, without limitation, provide notice that satisfies the requirements of applicable law or regulation to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident as well as notice to any regulatory authority as required under the Contract or applicable law or regulation. If the Department, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to the Department by the Contractor. If the Contractor does not reimburse such costs within thirty (30) calendar days of the Department's written request, the Department shall have the right to collect such costs including as a set-off against moneys due the Contractor.
- f. The Department reserves the right to require the Contractor to provide commercially standard credit monitoring for any and all individuals affected by the data breach at the sole expense, without limitation, of the Contractor for a period not to exceed 12 months, which shall begin 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.

APPENDIX C - INFORMATION SECURITY REQUIREMENTS FOR New York State Health Insurance Program Banking Services

New York State Department of Civil Service

August 2023

The following Information Security Requirements shall be effective as of the date the awarded Offeror first receives, maintains, transmits, accesses or otherwise comes into contact with Department or New York State Data. These requirements are intended to describe the minimum standard for physical, technical and administrative controls affecting Confidential Information in relation to the Project Services being provided under the resulting Contract. The Department may suspend access to State systems or data at any time if the Department, in its sole discretion, believes the awarded Offeror is not complying with any of its obligations herein.

All capitalized terms herein shall have the meaning as set forth in this Appendix. If not defined herein will have the meaning as set forth in the resulting Contract including the Appendices and Attachments thereto.

a. Compliance

Offeror agrees to preserve the confidentiality, integrity and accessibility of State Data with administrative, technical and physical measures that conform to federal, State and Department mandates, and the security controls as stated herein, based upon the nature of the Project Services provided, the Data involved, and/or the location where such Project Services are provided. Accordingly, Contractor warrants, covenants and represents that it shall fully comply with Statewide New York State Information Technology Cybersecurity Policies, Standards and Procedures published by the New York State Chief Information Security Office at <https://its.ny.gov/policies>, as amended from time to time, or substantially equivalent standards and procedures with which Offeror complies, that are applicable to the Project Services being provided by Contractor. Contractor is responsible for understanding which policies and state or federal laws apply to the Project Services and the Data in scope for the Contract. If any requirements set forth in this section are not the same as the New York State Enterprise Security Policy, standards or procedures, then the more restrictive requirement applies. Contractor is responsible for assessing and monitoring Subcontractor control environments for compliance with the standards as documented herein.

b. Acceptable Use of Information Technology Resources

Offeror, including all Offeror staff, accessing the State's Information Technology Resources in the course of their work for the Department are required to comply with New York State Information Technology Policy NYS-P14001 – Acceptable Use of Information Technology Resources <https://its.ny.gov/policies>, as amended from time to time, prior to accessing any New York State Information Technology resources.

Access to the State's Networks, Systems, Data, or Facilities is provided to support the official business of the Department. Any use inconsistent with the Department's business activities and administrative objectives is considered unacceptable or inappropriate use.

The Department reserves the right to change its policies and rules at any time, with regard to the acceptable use of Department Networks, Systems, Data or Facilities. Non-compliance with these provisions or unacceptable use of Department Networks, Systems or Facilities may result in the revocation of system privileges, termination of the Contract with Department, and/or criminal and/or civil penalties.

c. **Department of Financial Services (DFS) Cybersecurity Requirements for Financial Services Companies**

If the Offeror is a "Covered Entity" as defined under the Department of Financial Services (DFS) Cybersecurity Requirements for Financial Services Companies as defined by 23 NYCRR Part 500, they must be compliant with DFS Cybersecurity Requirements for Financial Services Companies. See DFS Cybersecurity Requirements for Financial Services Companies, https://www.governor.ny.gov/sites/default/files/atoms/files/Cybersecurity_Requirements_Financial_Services_23NYCRR500.pdf, as this may be updated and amended from time to time.

d. **Minimize The Risks Of Unauthorized Access To Or Disclosure Of Confidential Information Associated With Physical And Logical Access**

The Offeror must restrict and monitor access to confidential State Data and utilize generally accepted security principles and practices to minimize the risks of unauthorized access to or disclosure of Confidential Information associated with physical and logical access to its systems. This will include adherence to FFIEC IT Examination Handbook Security Guidance Section II.C.8 (Physical Security), and II.C.2 (Technology Design) https://www.ffiec.gov/press/pdf/ffiec_it_handbook_information_security_booklet.pdf.

e. **Adhere To Generally Accepted Security Principles**

The Offeror must adhere to generally accepted security principles and practices in developing its security information technology standards, which shall include, at a

minimum, generally accepted system security principles to ensure that Offeror's system and applications used by Offeror and/or the State in connection with the Project Services are secure from vulnerabilities and defects.

Satisfaction of the foregoing requires Offeror to follow a recognized security framework, which may include the following (or other comparable standards):

- International Organization for Standardization (ISO/IEC) 27000 Information Security Management Systems (ISMS)

<https://www.iso.org/isoiec-27001-information-security.html>

- National Institute of Standards and Technology

<https://www.nist.gov>

- Information Systems Security Association International

<https://www.issa.org/>

- FFIEC IT Examination Handbook – Information Security

https://www.ffiec.gov/press/pdf/ffiec_it_handbook_information_security_booklet.pdf

f. **Disaster Recovery/Fail Safe Operations**

The awarded Offeror must have in place a Disaster Recovery Plan that would be used in the event of a systems failure or other disaster at the primary processing site related to these Project Services which provides a sufficient level of fail-safe and disaster recovery operations so that any disruptions to services are not apparent. The awarded Offeror will be required, if requested by the Department, to submit an updated Disaster Recovery Preparedness Plan on an annual basis for the life of the Contract.

g. **Intrusion Detection And Vulnerability Assessments**

The Offeror's and any Subcontractor's network security must include intrusion detection and regular (at least annual) vulnerability assessments in compliance with the mitigation section of FFIEC IT Examination Handbook Security Guidance. https://www.ffiec.gov/press/pdf/ffiec_it_handbook_information_security_booklet.pdf

The Offeror and any Subcontractors may be required to certify that such assessments have been completed and deficiencies, if any, addressed.

h. **Secure Data Transmission**

The Offeror will ensure that in the performance of the Services, the Offeror, any Subcontractor, and any staff who may receive or have access to Confidential

Information, will be in compliance with FFIEC IT Examination Handbook Security Guidance Section II.C.7(b)

https://www.ffiec.gov/press/pdf/ffiec_it_handbook_information_security_booklet.pdf and:

- will take all appropriate action to protect the confidentiality and integrity of all Confidential Information supplied to it or developed by it during the performance of the Project Services;
- are required to abide by applicable NYS State confidentiality policies and procedures; and
- are prohibited from copying, removing, communicating, or otherwise revealing any Confidential Information of the State.

i. **Payment Card Industry Data Security Standard**

If, in performing Project Services to or on behalf of Department, Offeror acts as a Merchant or payment card processor as defined by the Payment Card Industry Data Security (PCI DSS) standard, then Contractor agrees to comply with the applicable PCI DSS requirements.

j. **Right to Assess, Audit and Certify**

- a) The Department, or its designated agents, may assess or audit the effectiveness of Contractor's compliance with requirements herein. The Department shall provide advanced notice of any assessment or audit. The Parties shall mutually agree in writing to the timing and scope of the assessment or audit.
- b) Upon request, Contractor shall complete a security controls assessment conducted by the Department or its designated agent ("Security Assessment"). To the extent that the security controls assessment identifies any risks or deficiencies for which remediation is required such remediation requirements or compensating controls (and the timeframes within which the remediation requirement or compensating control must be successfully implemented) will be provided in writing to the Contractor. The Department and Contractor agree to negotiate in good faith a mutually agreeable timeframe within which the remediation requirements or compensation controls must be successfully implemented. If an agreement cannot be had, the Department will make the final determination regarding the timeframe. Contractor's failure to complete any remediation requirements within the required timeframe may be deemed a material breach of the Agreement.
- c) Where the Contractor is a Business Associate, or hosts, maintains or has access to Department Protected Health Information, certification in the HITRUST

Common Security Framework (CSF) or a comparable industry accepted security assessment certification in lieu of a HITRUST Common Security Framework (CSF) certification is required. (For purposes of these requirements a SOC 2 attestation report is deemed a comparable industry accepted assessment.) d) From time-to-time Contractor may be requested to respond to, inform and provide updates regarding specific high-risk security gaps or exposures that exist for new or emerging security vulnerabilities that are made publicly known for systems, applications, hardware devices, etc. In all instances Contractor will provide a response to any Department inquiry within five business days and will provide specific details as to the questions asked to ensure that the Department can appropriately evaluate the risk or exposure to the Confidential Information while still protecting the systems, applications, hardware devices etc. from further vulnerabilities.



I. General Provisions

- A. The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Department, to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals (Zero Goals- Services are on Department's Exclusion list)

- A. For purposes of this procurement, the Department hereby establishes New York State certified minority-owned business enterprises ("MBE") **0%** participation and New York State certified women-owned business enterprises ("WBE") **0%** participation (collectively, "MWBE Contract Goals") Based on the project services which are part of the Department's Exclusion list.

III. Equal Employment Opportunity (EEO)

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 – Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment



opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a **Form EEO 100** Staffing Plan identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the Department, a workforce utilization report **Form EEO 101** Workforce Utilization Report identifying the workforce actually utilized on the Contract if known.

In accordance with Executive Order 162, issued on January 9, 2017, when the prime contract is in excess of \$25,000, the contractor shall provide to the Department – on a quarterly, calendar-year basis – detailed workforce utilization reports of the contractor and each subcontractor that include, in addition to equal employment opportunity information, the job title and salary of each employee directly performing work on a State contract. Detailed workforce utilization reports, as required above, shall be submitted in such form and in such manner as shall be required by the Department

If the contractor cannot identify the individuals working directly on a State contract, then the contractor and each subcontractor shall provide such information of each employee in the contractor's entire workforce.

This provision shall not relieve the contractor's responsibility to submit payroll certification as it may be elsewhere required in this contract.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

The contractor shall include these provisions in every subcontract so that such provisions shall be binding upon each subcontractor.

NOTE: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract,



leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The Department recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Department contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, the Department encourages the use of good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.



Department of Civil Service

Appendix D

MWBE/EEO/SDVOB Requirements

Equal Employment Opportunity Staffing Plan

Submit the completed form to the address above with bid or proposal or if requested by NYSDOL. This form must be submitted before the Contract Award.

Solicitation/Contract No.:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Report includes Contractor's <input type="checkbox"/> Contractor's work force to be utilized on this contract <input type="checkbox"/> Contractor's total work force <input type="checkbox"/> Subcontractor's work force to be utilized on this contract <input type="checkbox"/> Subcontractor's total work force
Contractor/Subcontractor's Name:		
Contractor/Subcontractor's Address:		
FEIN:	Phone No.:	

Enter the total number of employees for each classification.

EEO Job Category	Total Work Force	Work Force by Gender		Work Force by Race/Ethnic Identification						Work Force by Other						
		Total Male (M)	Total Female (F)	White (M)	White (F)	Black (M)	Black (F)	Hispanic (M)	Hispanic (F)	Asian (M)	Asian (F)	American Indian or Alaskan Native (M)	(F)	Disabled (M)	(F)	Veteran (M)
Executive/Senior level Officials & Managers																
First/Mid level officials & Managers																
Professionals																
Technicians																
Sales Workers																
Administrative Support Workers																
Craft Workers																
Operatives																
Laborers and Helpers																
Service Workers																
Totals																

Prepared By (signature): _____

Phone No.: _____ Date: _____

E-Mail Address: _____

Name and Title of Preparer (Print): _____

General Instructions

All Offerors must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's total work force, the Offeror shall complete this form for the contractor's total work force. Subcontractors awarded a subcontract over \$25,000 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 must complete this form upon request of NYSDOL. Contact the Designated Contact(s) for the solicitation if you have any questions.

Instructions for completing:

1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading "Work force by Gender."
6. Break down the total work force by race/ethnic background and enter under the heading "Work force by Race/Ethnic Identification." Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

Race/Ethnic Identification

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **White:** (Not of Hispanic origin) all persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **Black:** A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **Hispanic:** A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **Asian & Pacific Islander:** A person having origins in any of the Far East countries, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **Native Indian (Native American/Alaskan Native):** A person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

Other Categories

- **Disabled Individual** any person who:
 - Has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - Has a record of such an impairment; or
 - Is regarded as having such an impairment.
- **Veteran:** An individual who served in the military during time of war.
- **Gender:** Indicate whether male or female.



Appendix D Form EEO 101

WORKFORCE UTILIZATION REPORT

WORKFORCE UTILIZATION REPORT

Reporting Entity	<input type="checkbox"/> Contractor	<input type="checkbox"/> Subcontractor
FEIN		
Contractor Name		
Contractor Address		
Contract Number		

Reporting Period - Select One		
<input type="checkbox"/> January 1 - March 31	<input type="checkbox"/> April 1 - June 30	
<input type="checkbox"/> July 1 - September 30	<input type="checkbox"/> October 1 - December 31	
Reporting Month - Select One		
<input type="checkbox"/> January	<input type="checkbox"/> February	<input type="checkbox"/> March
<input type="checkbox"/> April	<input type="checkbox"/> May	<input type="checkbox"/> June
<input type="checkbox"/> July	<input type="checkbox"/> August	<input type="checkbox"/> September
<input type="checkbox"/> October	<input type="checkbox"/> November	<input type="checkbox"/> December
Workforce Identified in Report		
<input type="checkbox"/> Workforce Utilized in Performance of Contract		
<input type="checkbox"/> Contractor/Subcontractor's Total Workforce		

Preparer's Name:	
Preparer's Title:	
Date:	

EE0101

Appendix D Equal Employment Opportunity Staffing Plan



Submit the completed form to the address above with bid or proposal or if requested by NYSDOL. This form must be submitted before the Contract Award.

Solicitation/Contract No.:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Report includes Contractor's <input type="checkbox"/> Contractor's work force to be utilized on this contract <input type="checkbox"/> Contractor's total work force <input type="checkbox"/> Subcontractor's work force to be utilized on this contract <input type="checkbox"/> Subcontractor's total work force
Contractor/Subcontractor's Name:		
Contractor/Subcontractor's Address:		
FEIN:	Phone No.:	

Enter the total number of employees for each classification.

EEO Job Category	Total Work Force	Work Force by Gender		Work Force by Race/Ethnic Identification						Work Force by Other						
		Total Male (M)	Total Female (F)	White (M)	White (F)	Black (M)	Black (F)	Hispanic (M)	Hispanic (F)	Asian (M)	Asian (F)	American Indian or Alaskan Native (M)	(F)	Disabled (M)	(F)	Veteran (M)
Executive/Senior level Officials & Managers																
First/Mid level officials & Managers																
Professionals																
Technicians																
Sales Workers																
Administrative Support Workers																
Craft Workers																
Operatives																
Laborers and Helpers																
Service Workers																
Totals																

Prepared By (signature): _____

Phone No.: _____ Date: _____

E-Mail Address: _____

Name and Title of Preparer (Print): _____

General Instructions

All Offerors must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's total work force, the Offeror shall complete this form for the contractor's total work force. Subcontractors awarded a subcontract over \$25,000 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 must complete this form upon request of NYSDOL. Contact the Designated Contact(s) for the solicitation if you have any questions.

Instructions for completing:

1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading "Work force by Gender."
6. Break down the total work force by race/ethnic background and enter under the heading "Work force by Race/Ethnic Identification." Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

Race/Ethnic Identification

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **White:** (Not of Hispanic origin) all persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **Black:** A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **Hispanic:** A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **Asian & Pacific Islander:** A person having origins in any of the Far East countries, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **Native Indian (Native American/Alaskan Native):** A person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

Other Categories

- **Disabled Individual** any person who:
 - Has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - Has a record of such an impairment; or
 - Is regarded as having such an impairment.
- **Veteran:** An individual who served in the military during time of war.
- **Gender:** Indicate whether male or female.



Appendix D Form EEO 101 WORKFORCE UTILIZATION REPORT

WORKFORCE UTILIZATION REPORT

Reporting Entity	<input type="checkbox"/> Contractor	<input type="checkbox"/> Subcontractor
FEIN		
Contractor Name		
Contractor Address		
Contract Number		

Reporting Period - Select One		
<input type="checkbox"/> January 1 - March 31	<input type="checkbox"/> April 1 - June 30	
<input type="checkbox"/> July 1 - September 30	<input type="checkbox"/> October 1 - December 31	
Reporting Month - Select One		
<input type="checkbox"/> January	<input type="checkbox"/> February	<input type="checkbox"/> March
<input type="checkbox"/> April	<input type="checkbox"/> May	<input type="checkbox"/> June
<input type="checkbox"/> July	<input type="checkbox"/> August	<input type="checkbox"/> September
<input type="checkbox"/> October	<input type="checkbox"/> November	<input type="checkbox"/> December
Workforce Identified in Report		
<input type="checkbox"/> Workforce Utilized in Performance of Contract		
<input type="checkbox"/> Contractor/Subcontractor's Total Workforce		

Preparer's Name:	
Preparer's Title:	
Date:	

EEO101

Appendix E Insurance Requirements

Prior to the start of work the Offeror shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this RFP, policies of insurance as required by this section, 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 Section 4.7 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. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

An Offeror shall deliver to the Department evidence of the insurance required by this RFP and any Contract resulting from this RFP 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 an Offeror of any obligations, responsibilities or liabilities under this RFP or any Contract resulting from this RFP.

The Offeror 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 RFP.

1. General Conditions

- a. All policies of insurance required by this Solicitation or any Contract resulting from this RFP shall comply with the following requirements:
 - i. Coverage Types and Policy Limits. The types of coverage and policy limits required from the selected Offeror are specified in paragraph 12. Specific Coverages and Limits below.
 - ii. Policy Forms. Except as may be otherwise specifically provided herein, or agreed to in any Contract resulting from this RFP, all policies of insurance shall be written on an occurrence basis.
 - iii. Certificates of Insurance/Notices. The selected Offeror 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 paragraph 11 below. Certificates should reference the Solicitation or award

Appendix E Insurance Requirements

number and shall name the New York State Department of Civil Service, Agency Building 1, Empire State Plaza, Albany, NY 12239, as the certificate holder.

- b. Certificates of Insurance shall:
 - i. Be in the form acceptable to the Department and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
 - ii. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
 - iii. Be signed by an authorized representative of the insurance carrier of the referenced insurance carriers; and
 - iv. Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement as applicable: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.
- c. 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 generally requires an Offeror to submit only certificates of insurance and additional insured endorsements, although the Department reserves the right to request other proof of insurance. An Offeror should refrain from submitting entire insurance policies, unless specifically requested by the Department. If an entire insurance policy is submitted but not requested, the Department shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, 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 an Offeror from submitting the requested insurance documentation.

2. Primary Coverage

All liability insurance policies where the Department is required to be included as an additional insured, shall provide that the required coverage shall be primary and non-contributory to other insurance available to the Department and their

Appendix E Insurance Requirements

officers, agents, and employees. Any other insurance maintained by the Department and their officers, agents, and employees shall be excess of and shall not contribute with the Offeror's insurance. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as generally stated in Section V, Number 9, Item f in the Insurance Services Offices (ISO) Commercial General Liability (CGL) policy) so as to limit coverage against Claims that arise out of the work, or that remove or modify the "insured contract" exception to the employers liability exclusion, or that do not cover the Additional Insured for Claims involving injury to employees of the Named Insured or subcontractors, are not acceptable.

3. 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 shall be considered a breach of the terms of any Contract resulting from this Solicitation and shall allow the Department 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.

4. 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. An Offeror shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Offeror 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.

5. Subcontractors

Prior to the commencement of any work by a Subcontractor, the Offeror shall require such Subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement (ISO coverage form CG 20 38 04 13), or the equivalent, evidencing such coverage shall be provided to the Offeror prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section 4.7(11), 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

Appendix E Insurance Requirements

have been required to pursuant to this section had the subcontractor obtained such insurance policies.

6. Waiver of Subrogation

For all liability policies (except Professional Liability and Date Breach/Cyber Liability), the Offeror 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 Department 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 Offeror waives or has waived before the casualty, the right of recovery against the Department and their officers, agents, and employees or (ii) any other form of permission for the release of the Department any entity authorized by law or regulation to use any Contract resulting from this Solicitation 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.

7. Additional Insured

The Offeror shall cause to be included in each of the liability policies (except Professional Liability and Date Breach/Cyber Liability) required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or 20 38 04 13 and CG 20 37 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): the Department and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the Department pursuant to the timelines set forth in Section 11 below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Offerors who are self-insured, the Offeror 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 Offeror would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

8. 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. Unrelated underlying policies included in the Schedule that are not required to meet the insurance requirements may be redacted from the Schedule.

Appendix E Insurance Requirements

9. 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 Offeror shall provide the Department 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.

10. 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 shall be delivered to the Department. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Solicitation and any Contract resulting from this Solicitation, or proof thereof is not provided to the Department, the Offeror shall immediately cease work. The Offeror shall not resume work until authorized to do so by the Department.

11. Deadlines for Providing Insurance Documents after Renewal or Upon Request

As set forth herein, certain insurance documents must be provided to the Department contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Offeror shall provide the applicable insurance document to the Department as soon as possible but in no event later than the following time periods:

- a. For certificates of insurance: 5 Business Days from request or renewal, whichever is later;
- b. For information on self-insurance or self-retention programs: 15 Calendar Days from request or renewal, whichever is later;
- c. For other requested documentation evidencing coverage: 15 Calendar Days from request or renewal, whichever is later;
- d. For additional insured and waiver of subrogation endorsements: 30 Calendar Days from request or renewal, whichever is later; and

Appendix E Insurance Requirements

- e. 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, whichever is later.

Notwithstanding the foregoing, if the Offeror 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.

12. Specific Coverage and Limits

1. Commercial General Liability

Commercial General Liability Insurance, (CGL) 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, and liability assumed in a contract (including the tort liability of another assumed in a contract).

Policy shall include bodily injury, property damage, and broad form contractual liability coverage. The limits under such policy shall not be less than the following:

- i. Each Occurrence – \$2,000,000.00
- ii. General Aggregate – \$2,000,000.00
- iii. Products/Completed Operations – \$2,000,000.00
- iv. Personal Advertising Injury – \$1,000,000.00
- v. Medical Expense – \$5,000.00

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

- i. Premises liability;
- ii. Independent contractors/subcontractors;
- iii. Blanket contractual liability, including tort liability of another assumed in a contract;

Appendix E Insurance Requirements

- iv. Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation;
- v. Cross liability for additional insureds;
- vi. Products/completed operations for a term of no less than 1 year, commencing upon acceptance of the work, as required by the Contract;

The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respect to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Department. Any other insurance maintained by the Department shall be excess of and shall not contribute with the Contractor’s or Subcontractor’s insurance, regardless of the “Other Insurance” clause contained in either party’s policy(ies) of insurance, if applicable.

2. Business Automobile Liability Insurance

The Offeror shall maintain Business Automobile Liability Insurance in the amount of at least \$1,000,000.00 each occurrence, covering liability arising out of any automobile used in connection with performance under any Contract resulting from this RFP, 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.

c. Professional Errors and Omissions Insurance

The Offeror shall maintain Professional Errors and Omissions (Professional Liability) in the amount of at least \$1,000,000.00 each occurrence, for claims arising out of but not limited to alleged wrongful acts, including breach of contract, bad faith and negligence. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services.

- i. Such insurance shall include coverage of all professionals and technical personnel whose actions could be considered “professional services” arising out of the scope of services as additional named insureds.
- ii. If coverage is written on a claims-made policy, the Offeror warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an

Appendix E Insurance Requirements

extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under any Contract resulting from this Solicitation is completed. Written proof of this extended reporting period must be provided to the Department upon request.

- iii. 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.

d. Technology Errors & Omissions Insurance

The Offeror shall maintain, during the term of any Contract, Technology Errors and Omissions Insurance in the amount of at least \$2,000,000.00 each occurrence, 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, any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. The policy shall include coverage for third party fidelity including cyber theft if coverage is not met in a Data Breach and Privacy/Cyber Liability policy or a Fidelity/Employee Dishonesty policy.

If the policy is written on a claims-made basis, the Offeror must provide to the Department proof that the policy provides the option to purchase an Extended Reporting Period (tail coverage) providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

e. Data Breach/Privacy/Cyber Liability Insurance

An Offeror is required to maintain during the term of any Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance in the amount of at least \$10,000,000.00 each occurrence, including coverage for failure to protect confidential information and failure of the security of the Offeror's computer systems or the Department systems due to the actions of the Offeror which results in unauthorized access to the Department or their data. Coverage may be satisfied through alternative insurance policies.

Said insurance shall provide coverage for damages arising from, but not limited to the following:

Appendix E Insurance Requirements

- i. Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- ii. Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- iii. Privacy notification costs;
- iv. Regulatory defense and penalties;
- v. Website media liability; and
- vi. Cyber theft of customer's property, including but not limited to money and securities, unless coverage is provided under a Fidelity/Employee Dishonesty policy or bond (subject to verification by the State).

Appendix E
Insurance Requirements

approved form will be grounds for disqualification of an otherwise successful Bid submission. An ACORD form is not acceptable proof of New York State Workers' Compensation or Disability Benefits Insurance coverage.

- f. The following forms meet the Departments requirements for proof of New York State Workers' Compensation

- i. 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:

Form CE-200 can be filled out electronically on the New York State Workers Compensation Board's website, <http://www.wcb.ny.gov/>, under the heading "Forms." Applicants filling electronically are able to print a finished Form CE-200 immediately upon, completion of the electronic application. Applicants without access to a computer may obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers Compensation Board. Applicants using the manual process may wait up to four (4) weeks before receiving a CE-200.

- ii. C-105.2 Certificate of Workers' Compensation Insurance (the contractor's insurance carrier provides this form) PLEASE NOTE: The New York State Insurance Fund provides its own version of this form, the U-26.3

- iii. SI-12 Certificate of Workers' Compensation Self-Insurance (To obtain this form, the contractor needs to call the New York State Workers' Compensation Board, Self-Insurance Office at 518-402-0247), OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self- Insurance (The Contractors Group Self-Insurer will provide this form).

- g. New York State Disability Benefits Insurance Coverage:

Section 220(8) of the New York State Workers' Compensation Law (WCL) requires that State and municipal entities prior to entering into a contract must ensure that the contractor applying for that contract has appropriate New York State disability benefits insurance. All bidders receiving a conditional award must submit one of the following forms in order to meet this requirement.

- i. CE-200 Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That New York State

Appendix E
Insurance Requirements

**Workers' Compensation and/or Disability Benefits Insurance
Coverage Is Not Required:**

Form CE-200 can be filled out electronically on the New York State Workers Compensation Board's website, <http://www.wcb.ny.gov/>, under the heading "Forms." Applicants filling electronically are able to print a finished Form CE-200 immediately upon completion of the electronic application. Applicants without access to a computer may obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers Compensation Board. Applicants using the manual process may wait up to four (4) weeks before receiving a CE-200.

- ii. DB-120.1 Certificate of Disability Benefits Insurance (the contractor's insurance carrier provides this form)
- iii. DB-155 Certificate of Disability Benefits Self-Insurance (To obtain this form the contractor needs to call the New York State Workers Compensation Board's Self-Insurance Office at 518-402-0247).

Prior to entering into a Contract with the Department, the selected Offeror and Subcontractor(s) or Affiliates, with more than \$100,000 in expected expenses over the life of the Contract, if any, will be required to verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The above forms to be used to show compliance with the WCL are listed in Compliance with NYS Workers' Compensation Law. An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.

Any questions relating to either workers' compensation or disability benefits coverage should be directed to the New York State Workers' Compensation Board, Bureau of Compliance at 518-486-6307. Information on the requirements of the New York State Workers' Compensation Law is available at <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>

To the extent that the Offeror is proposing the use of Subcontractors or Affiliates, the Offeror must verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that the Subcontractors or Affiliates are properly insured or are otherwise in compliance with the insurance provisions of the WCL.