Appendix A

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE.

STANDARD CLAUSES FOR NYS CONTRACTS

APPENDIXA

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STANDARD CLAUSES FOR NYS CONTRACTS

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

- **1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
- 2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
- 3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

- **4.** WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- 5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
- **6.** WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

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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.

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- 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

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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: <u>mwbebusinessdev@esd.ny.gov</u>

https://ny.newnycontracts.com/FrontEnd/searchcertifieddir

ectory.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).
- COMPLIANCE WITH **CONSULTANT** 23. 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.

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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. <u>CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.</u>

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.

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Appendix B-1

New York State Department of Civil Service August 2025

APPENDIX B-1 - STANDARD CLAUSES FOR APPLICATION MANAGEMENT IFB

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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 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.

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

such clauses:

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

- 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 is 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

Except as provide for in Appendix B-1, Sections 24 (a) and 24 (b) where liability is "without limitation", for all other claims against the Contractor, the 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 predefined 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: Contractor warrants that it will not intentionally or grossly negligently introduce any disabling features or computer code, including but not limited to, viruses, worms, trojan horses, or other malicious code in the Services designed to (a) interfere with, destroy, disrupt, disable, or otherwise harm or impede the State's hardware, software or network; or (b) permit unauthorized access to the State's hardware, software or network.

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.
- 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 (COTS products) 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 COTS products shall be licensed to the State per the terms of the approved ordering document up to the license capacity stated in the Contract or ordering document 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.

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. For purposes of clarification, all fees for subscription services, which invoice has been approved by the State and which subscription term has commenced would be due and payable to the Contractor if the State terminates for convenience.

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. As soon as possible but no more than 72 hours after 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:
 - 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, 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, , 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-1

APPENDIX C-1 - INFORMATION SECURITY REQUIREMENTS for Cloud Services

New York State Department of Civil Service June 2025

The following requirements shall be effective as of the date the Contractor or Contractor Staff first receives, maintains, transmits, accesses or otherwise comes into contact with Confidential Information. These requirements are intended to describe the minimum standard for physical, technical and administrative controls affecting Confidential Information in relation to the Services being provided under the Agreement.

The Department may suspend access to Department Systems or Data at any time if the Department, in its sole discretion, believes Contractor is not complying with any of its obligations herein.

Definitions

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, or if not defined therein will have the meaning as defined in 45 C.F.R. Parts 160-164.

1. Compliance

Contractor agrees to preserve the confidentiality, integrity and accessibility of 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 or exceed the requirements in all New York State Information Technology Cybersecurity Policies, Standards and Procedures which The Department is required to follow by law. The current versions of these policies and standards are located at https://its.ny.gov/policies. The list of applicable policies and standards is included in Table 1.

Contractor is responsible for assessing and monitoring Subcontractor control environments for compliance with the standards as documented herein. The Department reserves the right to immediately revoke system or access privileges where such privileges pose an undue risk to the State.

2. Acceptable Use of Information Technology Resources

Contractor, including all Contractor Staff, accessing the State's non-public Information Technology Resources in the course of their work for the Department are required to comply with New York State Information Technology Policy NYS-P14- 001 – Acceptable Use of Information Technology Resources, as amended from time to time, prior to accessing any non-public 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 Agreement with Department, and/or criminal and/or civil penalties.

3. Information Security Program

- 3.1. Contractor must maintain a written Information Security Program ("WISP") including documented policies, standards, and operational practices that meet or exceed the requirements and controls set forth herein to the extent applicable to the Project Services and identify an individual within the organization responsible for its enforcement. Contractor's WISP shall address, at a minimum, all security requirements as listed in these requirements, as amended from time to time, and comply with all state and federal data security and privacy laws applicable to the Department. This documentation will be reviewed by Contractor's security official, or its designee, at least annually and shall be updated periodically with changes to organization, technology, or Services. When implementing security controls Contractor shall take a risk-based approach. Any control exceptions which represent risk will be formally documented, monitored, and periodically reviewed.
- 3.2. Upon request by the Department, Contractor's WISP shall be made available to review by the Department or the Department's representative. Contractor shall apply appropriate sanctions against Contractor Staff who fail to comply with security policies and procedures.
- 3.3. Contractor shall have processes and procedures in place so that

Security Incidents will be reported through appropriate communications channels as quickly as possible. Contractor shall periodically test, review, and update such processes and procedures. All Contractor Staff shall be made aware of their responsibility to report any Events prior to being granted access to any Confidential Information. If at any time during the Agreement, Contractor becomes aware of an Event or that it or any of its Subcontractors will or do not meet the obligations described within these requirements, Contractor will immediately notify the Department.

- 3.4. Contractor shall periodically conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and Availability of Confidential Information. The assessment must be reviewed by Contractor's security official and used to inform the Contractor's information security program.
- 3.5. Upon request, the Contractor shall identify to the Department the security official who is responsible for the development and implementation of the Contractor's policies and procedures.

4. Right to Assess, Audit and Certify

- 4.1. Where the Contractor hosts, maintains, processes, or has access to Department Confidential Information, an independent SOC 2 Type 2 Attestation Report is required. The Department, at its discretion, may accept a comparable industry-recognized security certification or attestation in lieu of a SOC 2 Type 2 report. If an alternative security certification or attestation is accepted, then such certification shall be substituted for all references to SOC 2 within this Agreement.
 - If the Contractor possesses a SOC 2 Type 2 Attestation Report applicable to the Project Services and/or systems in scope as of the Effective Date of the Agreement and maintains it throughout the term of the Agreement, then such attestation report, at the Department's discretion, shall satisfy the requirement for a formal security controls assessment identified in Section 4.2. Documentary evidence of the SOC 2 Type 2 report must be provided upon request, including the auditor's opinion, management's assertion, description of the system, testing procedures and results across all Trust Services Criteria, and any corrective action plans. Possession of a SOC 2 Type 2 attestation report does not waive the Department's rights to perform audits or

assessments under Section 4.1 or other rights established in this Agreement.

- If the Contractor does not possess a SOC 2 Type 2
 Attestation Report or an approved alternative security certification as of the Effective Date of the Agreement, the Contractor shall:
 - Complete and submit a SOC 2 Readiness Assessment to the Department within 90 days of the Effective Date of the Agreement;
 - Obtain and provide a SOC 2 Type 2 Attestation Report from an independent CPA firm within 18 months of the Effective Date of the Agreement; and
 - Provide supporting documentation, including any management responses and corrective action plans, within 30 days of receipt of the attestation report.
- If the Contractor has initiated the process to obtain a SOC 2
 Type 2 Attestation Report prior to the Effective Date of the
 Agreement, the Contractor shall notify the Department in
 writing of any known gaps or exceptions identified in a
 readiness assessment or draft findings, along with associated
 remediation plans.
- Within 30 days of discovery, the Contractor shall report any security findings or incidents identified through SOC 2-related audits or assessments that materially impact the confidentiality, integrity, or availability of Department data. The Contractor shall also provide the Department with any related corrective actions or follow-up reports as requested.
- If at any time during the term of the Agreement the SOC 2
 Type 2 attestation is withdrawn, the Contractor shall notify the
 Department within 72 hours of learning of the issue and
 provide a written explanation and remediation plan.
- 4.2. 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.

5. Encryption

- Contractor shall apply encryption methodology that, at minimum, conforms to the New York State Encryption Standard (NYS-S14-007) or other industry comparable standard (ex. NIST).
- 5.2. Cryptographic key management procedures must be documented and include references to key lifecycle management (including provisioning, distribution, and revocation) and key expiration dates.
- 5.3. Access to encryption keys must be restricted to named administrators. Encryption keys must be protected in storage. For example, methods of acceptable key storage include encrypting keys or storing encryption keys within a hardware security module (HSM). Data-encrypting keys should not be stored on the same systems that perform encryption/decryption operations.
- 5.4. Except as otherwise agreed to in writing by the Contractor and Department, Confidential Information must be encrypted while in transit and at rest across at least the following types of assets:
 - Public shared Networks
 - Non-wired Networks
 - Cloud Services
 - Desktop and portable computing devices
 - Mobile devices
 - Portable media
 - Back-ups
 - Application or Network servers
 - 'Plug & play' storage devices

6. Network and Systems Security

- 6.1. Contractor shall utilize and maintain a commercially available, industry standard malware detection program which includes an automatic update function to ensure detection of new malware threats.
- 6.2. Contractor shall maintain an intrusion detection or prevention system that detects and/or prevents unauthorized activity traversing the Network.
- 6.3. Contractor shall have technical controls to detect, alert, and prevent the unauthorized movement of Data from Contractor's control (commonly referred to as Data Loss Prevention).
- 6.4. Networks or applications that contain Confidential Information must be separated from public Networks by a firewall to prevent unauthorized access from the public Network.
- 6.5. At managed interfaces, Network traffic is denied by default and allowed by exception (i.e., deny all, permit by exception).
- 6.6. Contractor shall establish security and hardening standards for Network devices, including Firewalls, Switches, Routers, Servers, and Wireless Access Points (baseline configuration, patching, passwords, and access control).
- 6.7. At a minimum, Contractor shall engage a qualified third party to perform annual penetration testing of all systems, infrastructure, and applications that are used to process, store, or transmit Confidential Data. Contractor must provide the Department with summary results and a remediation plan at the Department's request.
- 6.8. If Contractor provides products or Services related to the Agreement through a Department portal or mobile applications, especially those which are internet-facing, or use Department domains, the Department's portal, mobile applications and domain are subject to Department scanning and assessments. Contractor agrees to remediate vulnerabilities identified during this process in a manner and timeline acceptable to the Department.
- 6.9. Contractor shall ensure that no unencrypted Confidential Information is stored in any system that is internet facing.
- 6.10. Contractor shall use secure means (i.e., HTTPS, FTPS) for all electronic

transmission or exchange of System, user and application information with the Department.

7. System and Application Controls

- 7.1. All Confidential Information must be securely stored at all times to prevent loss and unauthorized access or disclosure.
- 7.2. Laptop and workstation systems that access Confidential Information remotely must utilize endpoint protection which includes a personal firewall and anti-malware protection.
- 7.3. Operating systems and application software used must be currently supported by the manufacturer.
- 7.4. Current versions of operating system and application software must be maintained, and patches applied in a timely manner for all systems and applications that receive, maintain, process, or otherwise access Confidential Information.
- 7.5. Confidential Information must not be used in any non-production environment such as testing or quality assurance unless deidentification of the Data has been performed. In the event that deidentification is not practical or feasible, compensating controls must be in place protecting the Data to the same level of protection as afforded to the production environment. Confidential Information must not be placed into a nonproduction cloud computing environment unless deidentified or compensating controls are in place protecting the Data to the same level of protection as afforded to the production environment.
- 7.6. Confidential Information must be segmented from non-Department Information so that appropriate controls are in place to identify the Data as Department's in all instances, including backup and removable media, and to appropriately restrict access only to users authorized to view the Data. Data must be deleted when it is no longer required.

8. Software Development Lifecycle

8.1. The Contractor shall agree to maximize the number of security features and controls of any software development throughout the term of this Contract according to general industry standards, including, but not be limited to, the following terms and conditions. These provisions apply to the base product as well as any customizations to the product under this Contract.

- 8.2. The development process must use either secure system development life cycle and secure coding practices standards as provided for in NYS-S13-001 Secure System Development Life Cycle Standard and the Secure Coding Standard NYS-S13-002, or comparable industry standard best practices.
- 8.3. Contractor must use both an automated and manual source code analysis tool to detect and remediate security defects in code prior to production deployment.
- 8.4. Contractor must have policies and procedures in place to triage and remedy reported bugs and security vulnerabilities for the Project Services it provides to Department.
- 8.5. Contractor must have controls in place to prevent unauthorized access to its or Department's application, program, or object source code and ensure that access is restricted to authorized personnel only.
- 8.6. National identifiers or Social Security Numbers must not be utilized as User IDs for logon to applications.

9. Physical Controls for the Protection of Confidential Information

- 9.1. All Confidential Information received or created in paper form must be protected from viewing by unauthorized persons.
- 9.2. A clean desk policy will be enforced to ensure proper safeguarding of all hard copy Confidential Information.
- 9.3. Visitor logs documenting all individuals who are not Contractor Staff who gain access to the facility where Confidential Information is processed will be maintained.
- 9.4. Confidential Information shall not leave control of the Contractor without the written approval of Department.
- 9.5. Servers, enterprise data storage devices, backup tapes and media, and other computing devices that contain Confidential Information used to support Network communications must be located in a secure and restricted access location.

10. Access Control Related to Project Services

- 10.1. Physical and logical access will be granted to the minimum Confidential Information necessary to meet the requirements of the user's scope of responsibilities.
- 10.2. Only those individuals providing Project Services to the Department, or those who are responsible for administering, managing, or working in systems that contain Confidential Information, shall be authorized to access systems containing Confidential Information.
- 10.3. All Contractor Staff that are no longer required or authorized to access Confidential Information or systems that contain Confidential Information must have access promptly disabled.
- 10.4. Access to Confidential Information and systems that contain Confidential Information must be access controlled through the use of individual user IDs and passwords that substantially meet the NYS Authentication Tokens Standard NYS-S14-006
- 10.5. Standard complexity rules and password lifetimes or similar industry standards.
- 10.6. If it is suspected that a password has been compromised, the password must be immediately changed or reset.
- 10.7. Processes must be in place to create audit trails capable of determining who has accessed Confidential Information and/or systems that contain Confidential Information.
- 10.8. Remote access to systems or Networks that contain Confidential Information must use multi-factor authentication and a connection with Approved Encryption as defined in Section 5 above.
- 10.9. The Department reserves the right to immediately terminate remote access connections to Department or State Networks and Systems.
- 10.10. Upon request, Contractor shall provide reports within 72 hours for:
 - List of all individuals with access to Confidential Information and/or systems that contain Confidential Information and the level of access granted;
 - List of activity associated with any user ID who has access to Confidential Information; and

 Account management capabilities, such as account lockouts for unsuccessful logon attempts, remote access allowances, specific success and failure events, and management of elevated privilege accounts must be enforced.

11. Data Protection

Contractor must protect Confidential Information from unauthorized access, use, alternation, disclosure, or dissemination. The Contractor must, in accordance with applicable law and the instructions of the Department, maintain such Data for the time period required by applicable law, exercise due care for the protection of Data, and maintain appropriate data integrity safeguards against the deletion or alteration of such Data. If any Data is lost or destroyed because of any act or omission of the Contractor or any non-compliance with the obligations of this Contract, then Contractor shall, at its own expense, use its best efforts to reconstruct such Data as soon as feasible. In such event, Contractor shall reimburse the Department for any costs incurred by the Department in correcting, recreating, restoring or reprocessing such Data or in providing assistance therewith.

12. Data Return and Destruction

At the expiration or termination of the Agreement, at the Department's option, the Contractor must provide the Department with a copy of the Data, including metadata and attachments, in a mutually agreed upon, commercially standard format. Thereafter, except for Data required to be maintained, shall destroy Data from its systems and wipe all its data storage devices to eliminate any and all Data from Contractor's systems. The sanitization process must comply with New York State Security Policy NYS-S13-003. If immediate purging of all data storage components is not possible, the Contractor will certify that any Data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. Contractor must then certify to the Department, in writing, that it has complied with the provisions of this paragraph.

13. Offshore Security Requirement

Confidential Information, including Protected Health Information, is not permitted to be hosted, maintained, stored, processed or otherwise accessed outside CONUS ("offshore").

14. Contingency Planning

Contractor will have documented Business Continuity and Disaster Recovery plans in place that include Information security controls. Such plans will be tested at least annually.

15. Incident Response

- 15.1. Contractor will have a documented Incident Response Plan. Such plan will be tested at least annually and documentation of said testing will be provided to the Department upon request.
- 15.2. Incident response roles and responsibilities must be clearly outlined between Contractor and Department as appropriate.

16. Payment Card Industry Data Security Standard

If, in performing Project Services to or on behalf of Department, Contractor 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.

17. Litigation Holds

The Contractor must provide a detailed mechanism for how litigation holds will be implemented. This description shall include how metadata will be created, accessed, and stored in a cloud environment.

18. Cloud Services

In addition to the above security requirements the following security provisions will apply to any State Data that is being hosted or maintained in a cloud environment (i.e., Cloud services). The provisions are related to security only and do not address maintenance and support or service levels.

18.1. FedRAMP and CAIQ

 All cloud services provided pursuant to this Contract shall comply with the standards set forth by the Cloud Security Alliance and/or Federal Risk and Authorization Management Program (FedRAMP) (https://www.fedramp.gov) for cloud services, and other applicable Federal and/or New York State laws, regulations, and requirements.

• The Contractor must follow the National Institute of Standards and Technology (NIST) 800-53 guidelines for implementing system security and privacy controls and provide results of the Cloud Security Alliance Consensus Assessments Initiative Questionnaire (CAIQ) survey within 30 days of Contract approval, for the State's review. Thereafter on an annual basis, on the anniversary of the Contract Award, Contractor will provide a current CAIQ for the States review. The form is available at Cloud Security Alliance (https://cloudsecurityalliance.org/). The completion of this requirement is at the Contractor's expense with no additional cost to the State.

18.2. General Cloud Security

- Contractor's and its Subcontractor(s)' cloud services environment and/or applications must be available on a 24 hours per day, 365 days per year basis, providing around-the- clock service to New York State users of such systems.
- Contractor and its Subcontractor(s) must provide the State with reasonable advance notice of any major upgrades or system changes that are being performed.
- The Contractor shall maintain an up-to-date system contingency plan and assign personnel to coordinate joint contingency planning, training, and testing activities. In addition, Contractor shall have, and produce upon request, appropriate disaster recovery plans or processes to respond to events.
- Contractor will provide to the State backup and recovery procedures, and disaster recovery plans to ensure State Data is protected and is recoverable in case of a system failure.
- The following requirements are applicable to Contractor's and its Subcontractor(s)' development, testing and live production environments, for the cloud services provided to the State under this Contract:
- Contractor and its Subcontractor(s) shall establish and maintain appropriate environmental, safety, and facility procedures, data security procedures, and other safeguards against the destruction, corruption, loss, or alteration of the cloud services and any State Data to prevent unauthorized access, alteration or interference by third parties of the same.

- Contractor and its Subcontractor(s) shall utilize industry best practices and technology (including appropriate firewall protection, intrusion prevention tools, and intrusion detection tools) to protect, safeguard, and secure their cloud services systems and State Data against unauthorized access, use, and disclosure. Contractor and its Subcontractor(s) shall constantly monitor for any attempted unauthorized access to, or use or disclosure of, any of such materials and shall immediately take all necessary and appropriate action in the event any such attempt is discovered, within 72 hours after the discovery, or as agreed to by the State, notifying the State of any material or significant breach of security with respect to any such materials which impacts State Data.
- When software vulnerabilities are revealed and addressed by a Contractor patch, Contractor will obtain the patch from the applicable entity and categorize the urgency of applying the patch as either "critical" or "non-critical" in nature.
- The determination of the critical versus non-critical nature of patches is solely at the reasonable discretion of the Contractor in consultation with the State.
- Contractor will apply all critical security patches, hot fixes, or service packs as they are tested and determined safe for installation.
- Contractor and its Subcontractor(s) shall maintain and implement procedures to logically segregate State Data from Contractor's data and data belonging to Contractor's other customers.
- Security for any State Data hosted by is the responsibility of Contractor and will not require customization by the State.
- Contractor shall ensure that a sufficient number of personnel of suitable experience, training, and skills are assigned in accordance with the cloud services. Contractor shall have general control and discretion to determine the methods by which Contractor performs and maintains its hosting or other cloud services; provided however, that Contractor shall comply with all terms and conditions herein and that Contractor shall be fully responsive regarding all State requests regarding all operational methods regarding Contractor's cloud services as they relate to the State.
- Contractor and its Subcontractor(s) must track and control all access entering and exiting its facilities used to provide the State with cloud services under this Contract.

 Contractor and its Subcontractor(s) must apply standard software and hardware maintenance to its equipment as needed to address anomalies and security concerns, including software hot-fixes and service packs, third-party software used by Contractor, and its Subcontractor(s) including operating system, backups, antivirus software, and any application software, hardware firmware, and BIOS updates with updates tested internally prior to install.

18.3. Data Backup and Storage Management Services

- Contractor shall backup State Data for data recovery purposes.
- Contractor shall backup all State Data to a location at a separate and distinct datacenter for disaster recovery purposes. Failover to an alternate site is to be available at all times with little or no notice.
- In order to maintain uptime, critical services must be transferred in the event of a prolonged outage at the primary site. The alternate site must be located geographically separated from the primary site. Contractor's production facility and disaster recovery facility shall be located within the contiguous 48 states of the United States (CONUS) and no State Data shall be hosted outside of this geographic area. State Data shall be stored at the Contractor's production facility and at the disaster recovery facility for a number of specific days mutually agreed to by the Parties in a specific Transaction Document.
- Contractor will assist the State, at no cost to the State, in the restoration of State Data that has been deleted or corrupted.

18.4. Audit Report

Within 30 days of Contract approval, Contractor will provide, at Contractor's expense, an independent third-party audit of controls related to the security, availability, or processing integrity of a system or the confidentiality or privacy of the information processed by that system for all systems used to perform the services under the resulting Contract showing no deficiencies. Thereafter on an annual basis, at the Contractor's expense. A full version of the audit report will be provided to the State, within 30 days of the anniversary date of the Contract. A Service Organization Control (SOC) 2 Type 2 audit report or approved equivalent sets the minimum level of a third-party audit. Any deficiencies identified in

the audit report or where the Contractor is found to be noncompliant with Contract safeguards, must be remedied, within 90 days of the issue date of the audit report with proof of remediation provided to the State. The completion of this requirement is at the Contractor's expense with no additional cost to the State.

18.5. Development, Testing and Live Production Environments

All requirements are applicable to the Development, Testing, and Live Production Environments. Development and testing environments may be a scaled version of production if appropriate to the testing and development being performed.

18.6. Audit Logs

- Audit logs must capture all access to State Data (log information to include username, event type, event operation, event details, successful/unsuccessful authentication events, system start/stop, hardware attachment/detachment, system alerts and error messages, and other security events, unsuccessful attempts to access/modify/delete data being logged, or data in the event table). A minimum of 92 days of Audit logs must be retained.
- The technical and professional activities required for establishing, managing, and maintaining the environment are the responsibilities of the Contractor.

18.7. Hosting Requirements

Contractor agrees that it shall perform the hosting services in a manner consistent with the following requirements:

- Host all State Data and maintain and implement procedures to logically segregate and secure State Data from Contractor's data and data belonging to Contractor's other customers, including other governmental entities.
- Establish and maintain appropriate environmental, safety, and facility procedures; data security procedures; and other safeguards against the destruction, corruption, loss, or alteration of the hosting Services and any State Data, and to prevent unauthorized access, alteration, or interference by third parties of the same.

• Utilize industry best practices and technology (including appropriate firewall protection, intrusion prevention tools, and intrusion detection tools) to protect, safeguard, and secure the System and State Data against unauthorized access, use, and disclosure. Contractor shall constantly monitor for any attempted unauthorized access to, or use or disclosure of, any of such materials and shall immediately take all necessary and appropriate action in the event any such attempt is discovered, promptly notifying the State of any material or significant breach of security with respect to any such materials.

18.8. Vulnerability Scanning

The State will also have the option to request a third-party perform vulnerability scanning. Contractor must address all critical or severe (priority and secondary level) vulnerabilities found during scanning in a reasonable timeframe as agreed upon with the State.

Table 1

	1410	_
Policy / Standard	Policy No.	Section 3.0 Scope
		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Advertisements, Endorsements and Sponsorships on State Entity Websites	NYS-G24-002	vendors, and contractors) Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Information Security	NYS-P03-002	vendors, and contractors)
,		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Plan to Procure	NYS-P08-001	vendors, and contractors)
Authority to Establish Enterprise Information Technology Policies, Standards, and Guidelines	NYS-P08-002	Employees of SE (State Entities) and all third parties (such as local governments, consultants, vendors, and contractors)
Guidetiles	N13-P06-002	Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Domain Names for State Government Agencies	NYS-P08-003	vendors, and contractors)
		Employees of SE (State Entities) and ITS, and all third parties (such as local governments,
Accessibility of Information Communication Technology	NYS-P08-005	consultants, vendors, and contractors) Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Guidance for the Use of SSNs by State Government Entities	NYS-P10-004	vendors, and contractors)
		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Use of Social Media Technology	NYS-P11-001	vendors, and contractors)
Information Security Exception Policy	NYS-P13-001	Employees of SE (State Entities) and all third parties (such as consultants, vendors, and contractors)
information occurry Exception Folicy	1410 1 10 001	Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Acceptable Use of Information Technology Resources	NYS-P14-001	vendors, and contractors)
Divisal Idensits	NIVO DOG 004	Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Digital Identity	NYS-P20-001	vendors, and contractors) Employees of SE (State Entities) and all third parties (such as local governments, consultants,
International Access to NYS Systems or Data	NYS-P23-001	vendors, and contractors)
		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Technology Exceptions	NYS-P23-002	vendors, and contractors)
Acceptable Use of Artificial Intelligence Technologies	NYS-P24-001	Employees of SE (State Entities) and all third parties (such as local governments, consultants, vendors, and contractors)
		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Contact Web Page	NYS-S05-002	vendors, and contractors)
Canalinating Designation of Education Descriptions and for Information Countil, Designation	NIVC C10 001	Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Continuing Professional Education Requirements for Information Security Professionals	NYS-S10-001	vendors, and contractors) Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Secure System Development Life Cycle	NYS-S13-001	vendors, and contractors)
		Employees of SE (State Entities) and ITS, and all third parties (such as local governments,
Secure Coding	NYS-S13-002	consultants, vendors, and contractors)
Sanitization/Secure Disposal	NYS-S13-003	Employees of SE (State Entities) and all third parties (such as local governments, consultants, vendors, and contractors)
		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Cyber Incident Response	NYS-S13-005	vendors, and contractors)
Information Security Risk Management	NYS-S14-001	Employees of SE (State Entities) and all third parties (such as local governments, consultants, vendors, and contractors)
Information Security Risk Management	1113-314-001	Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Information Classification Standard	NYS-S14-002	vendors, and contractors)
		Employees of SE (State Entities) and ITS, and all third parties (such as local governments,
Security Logging Security Logging	NYS-S14-005	consultants, vendors, and contractors) Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Authentication Tokens	NYS-S14-006	vendors, and contractors)
		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Encryption	NYS-S14-007	vendors, and contractors)
Secure Configuration	NYS-S14-008	Employees of SE (State Entities) and all third parties (such as local governments, consultants, vendors, and contractors)
Source Soringulation	1110 021 000	Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Mobile Device Security	NYS-S14-009	vendors, and contractors)
Damete Access	NIVE 614 010	Employees of SE (State Entities) and all third parties (such as local governments, consultants, vendors, and contractors)
Remote Access	NYS-S14-010	Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Enterprise Mobile Management Technical Standard	NYS-S14-011	vendors, and contractors)
		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Bring Your Own Device (BYOD)	NYS-S14-012	vendors, and contractors) Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Account Management/Access Control	NYS-S14-013	vendors, and contractors)
		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Patch Management	NYS-S15-001	vendors, and contractors)
Vulnerahility Management	NYS-S15-002	Employees of SE (State Entities) and all third parties (such as local governments, consultants, vendors, and contractors)
Vulnerability Management	1410-313-002	Employees of SE (State Entities) and all third parties (such as local governments, consultants,
802.11 Wireless Network Security	NYS-S15-003	vendors, and contractors)
		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
New York State Universal Web Navigation	NYS-S16-001	vendors, and contractors) Employees of SE (State Entities) and all third parties (such as consultants, vendors, and
Notification Standard for Certain Types of Regulated Data	NYS-S17-003	contractors)
		Employees of SE (State Entities) and all third parties (such as local governments, consultants,
Digital Identity	NYS-S20-001	vendors, and contractors)
Establishing Tochnology Solutions 9 Standards	NVC COO 004	Employees of SE (State Entities) and all third parties (such as local governments, consultants, vendors, and contractors)
Establishing Technology Solutions & Standards	NYS-S23-001	venuors, and contractors)



MWBE/EEO/SDVOB Requirements

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 This solicitation has 0% Goals, the services are on the 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



MWBE/EEO/SDVOB Requirements

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,



MWBE/EEO/SDVOB Requirements

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.





STAFFING PLAN Submit with Bid or Proposal – Instructions on page 2

Solicitation No.:			Repo	Reporting Entity:					Report includes Contractor's/Subcontractor's: Under Work force to be utilized on this contract Under Total work force																
Offeror's Name:								□ Offeror □ Subcontractor																	
Offeror's Address:																or's n	name_								
Enter the total number	of empl	oyees	for each o	classific	ation	in ea	ch of	the E	EO-	lob C	atego	ries i	dentif	fied											
											_	k forc													
		Work	force by G	Sender						Rac	e/Ethr	nic Ide	entifica	ation											
EEO-Job Category	Total Work force	Total	Total	Total																					
		Male	Female	Х		White	;		Black		Н	ispan	spanic Asian Native American				Disabled			Veteran					
		(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)		an (X)	(M)	(F)	(X)	(M)	(F)	(X)
Officials/Administrators																									
Professionals																									
Technicians																									
Sales Workers																									
Office/Clerical																									
Craft Workers																									
Laborers																									
Service Workers																									
Temporary /Apprentices																									
Totals																									
PREPARED BY (Signatur		D /Dwit	ou Tunch								EPHO		SS:	mais co		40 d	.i4b b:	d au			ATE:	104 /5	ov 03/1	14)	



				Reporting Period - Select C	ne	
Reporting Entity	Contractor	Subcontractor		January 1 - March 31		April 1 - June 30
			-	Usual July 1 - September 30		October 1 - December 31
FEIN				Reporting Month - Select (One	
Contractor Name				January	February	March
			_	April	☐ May	☐ June
Contractor Address				July	August	September
				October	November	December
Project Name/Number or Contract Number				Workforce Identified in Re Workforce Utilized in Perfore Contractor/Subcontractor's T	nance of Contract	
Preparer's Name]	Date		
Preparer's Title]	like legal force and effect as	if I had physically signed at the material included	herein be withheld from disclosure pursuant to

Occupation Classifications (SOC Major Group)	SOC Job Title	EEO Job Title	SOC Job Code	Race/Ethnicity	Gender	No. of Employees	No. of Hours Worked	Total Compensation
					Select One:			
				Select One:	Select One:			
				Select One:	Select One:			
				Select One:	Select One:			
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				Select One:	Select One:			
				Select One:	Select One:			
				Select One:	Select One:			
				Select One:	Select One:			
				Select One:	Select One:			

Field	Instructions
Reporting Entity	Select either contractor or subcontractor
Contractor Name	Name of contractor performing the work on the contract for which this report is being completed
Contractor Address	Address of the contractor indicated in the Contractor Name field
	Indicate one of the following:
	1. Name of the project for which this report is being submitted
Project Name/Number or	2. Number of the project for which this report is being submitted
Contract Number	3. Number of the NYSHCR contract for which this report is being submitted
Panarting Pariod Salact One	Select the guarter for which this report is being submitted
Reporting Period - Select One	Select the quarter for which this report is being submitted This field is applicable to <u>construction</u> projects only. Indicate the month for which this report is being
Paparting Month Salast One	submitted
Reporting Month - Select One	
	If this form is being submitted during the performance of a contract, check the box marked "Workforce Utilized in Performance of Contract". If this form is being submitted prior to the performance of a contract,
Morleforce Identified in Benert	
Workforce Identified in Report	indicate "Contractor/Subcontractor's Total Workforce".
Preparer's Name	Indicate the name of the person who prepared this form
Preparer's Title	Indicate the title of the person who prepared this form
Date Chariffy 1606	Indicate the date this form was prepared
Occupation Classifications (SOC	
Major Group)	Using the provided dropdown, indicate the occupation type.
	Select the job title for which you are providing demographic information. Some titles may not be in the
COC Inh Title	occupation classification expected. For example, if you are looking for a title relating to excavation, this is
SOC Job Title	classified as "Transportation and Material Moving" instead of "Construction and Extraction".
EEO Job Title	This field fills in automatically. No entry is required.
SOC Job Code	This field fills in automatically. No entry is required.
Dana (Ethaniaita)	Select the race/ethnicity of the employee(s) for which you are providing information. A subcategory selection
Race/Ethnicity	is required for Asian and Pacific Islander ethnicities.
Gender	Select the gender of the employee(s) for which you are providing information.
Number of Francisco	Indicate the number of employees you are providing information for during the reporting period based on the
Number of Employees	previously selected demographic and job title information.
Normalis and Allacons March and	Indicate the total number of hours worked during the reporting period for the employees indicated in the
Number of Hours Worked	"Number of Employees" field.
Gross Wages	Indicate the total amount employees indicated in the previous fields were paid for the reporting period.
Cross wages	malicate the total amount employees malicated in the previous helds were paid for the reporting period.

Appendix E

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 IFB, 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 IFB and any Contract resulting from this IFB 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 IFB or any Contract resulting from this IFB.

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 IFB.

1. General Conditions

- a. All policies of insurance required by this Solicitation or any Contract resulting from this IFB shall comply with the following requirements:
 - 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 IFB, 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

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

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 abovenamed additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would

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

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.

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. <u>Deadlines for Providing Insurance Documents after Renewal or Upon</u> 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

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

Insurance Ty _l	Proof of Coverage is Due					
Commercial General Liability Insurance	\$1,000,000 each occurrence	Upon notification of tentative of award and				
General Aggregate	\$2,000,000	updated in accordance with Contract				
Products/Completed Operations	\$2,000,000					
Personal and Advertising Injury	\$1,000,000					
Medical Expense	\$5,000					
Business Automobile Liability Insurance	\$1,000,000 each accident					
Professional Liability Insurance (Errors and Omissions)	\$2,000,000 each claim					
Technology Errors & Omissions Insurance	\$2,000,000 each claim					
Data Breach/Cyber Liability Insurance	\$5,000,000 each claim					
Crime	\$50,000					
Workers' Compensation	With bid submission					
Disability Benefits						

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 \$1,000,000.00
- 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:
- 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 Contractor shall carry and maintain applicable coverage in the amount of at least \$1,000,000.00 per occurrence.

Such insurance shall cover liability arising out of automobiles used in connection with performance under this Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

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

3. Professional Liability Insurance (Errors and Omissions)

The Offeror shall maintain Professional Errors and Omissions (Professional Liability) in the amount of at least \$2,000,000.00 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.

- 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 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.

4. 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.

5. 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 \$5,000,000.00 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:

- 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).

6. Crime Insurance

If, during the term of any Contract resulting from this Solicitation, the Contractor plans to enter the premises of an Authorized User to fulfill its obligations under this Solicitation or any Contract resulting from this Solicitation, the Contractor is required to fulfill the Crime Insurance requirements herein and shall be required to provide proof of compliance with the requirements. The Contractor shall maintain, during the term of the Contract, Crime Insurance on a "loss sustained form" or "loss discovered form," and coverage must include the following:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Contractor's insurer as a result of any Contract resulting from this Solicitation must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor as a result of any Contract resulting from this Solicitation.
- The policy shall include coverage for third-party fidelity and name "The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation as an Authorized User and their officers, agents, and employees" as "Loss Payees" for all third-party coverage secured. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.
- The policy shall include coverage for, but is not limited to, employee theft, forgery or alteration, inside the premises-theft of money and securities, inside the premises-robbery or safe burglary of other property, outside the premises computer crime/fraud, and money orders and counterfeit paper currency.

If coverage is provided as underlying coverage of another policy, all requirements must be met within the primary policy.

13. Insurance Requirements

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and

renewals. Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to New York State Department of Civil Service. Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to New York State Department of Civil Service at the time of notification of tentative award, policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.

- a. The following forms meet the Departments requirements for proof of New York State Workers' Compensation
 - 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, www.businessexpress.ny.gov under the heading "Top Requests" on the home page. 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).
- b. The following forms meet the Departments requirements for proof of New York State Workers' Compensation

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.

 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, www.businessexpress.ny.gov under the heading "Top Requests" on the home page. 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-

businessesapplying-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.



Offeror's Certification Form IFB Entitled: "Application Management System"

MANDATORY SUBMISSION: to be completed, signed, and return prior to execution of offer.

SECTION ONE: Information Regarding the Offeror	
A. Provide the Offeror's authorized signatory information and identification numbers.	
Name:	
Signature:	
Organization:	
Address:	
City, State, and ZIP Code:	
Telephone Number (include area code):	
Email Address:	
Taxpayer Identification Number:	
NYS Vendor Identification Number, if available:	
B. Provide the contact information of the <u>Offeror's primary contact with DCS</u> regarding this Proposal. (If different from A.)	
Name:	
Title:	
Address:	
City, State, and ZIP Code:	
Telephone Number (include area code):	
Email Address:	
SECTION TWO: Offeror's Certifications	
Any Offeror's Proposal constitutes a firm and irrevocable offer for a period of one hundred eighty (180) days from the date of submission to DCS.	
The Offeror certifies they are authorized to submit a proposal on behalf of the company.	
3. By submission of a Proposal, the Offeror agrees not to make any claims for or have a right to any damages because of any misrepresentations or misunderstanding of the specifications or because of any errors or omissions or lack of information.	
4. The Offeror agrees to fully comply with the Procurement Lobbying Law Sections 139-j and 139-k of the New York State Finance Law.	



		Application Management)
5.	The Offeror certifies that all information proposal is true and accurate.	ovided in connection with its	
6.	The Offeror has read, understands, and Appendix A Standard Clauses for All New Y		
7.	Bidder attests they meet the mandatory submit a proposal found in the solicitatio requirements found in section 3 of the Solicitation	n, and they can meet all the	
8.	The Offeror has read, understands, and Appendix A Standard Clauses for New York		
9.	EXECUTIVE ORDER NO. 177 CERTIFICATI 177 CERTIFICATION	ON EXECUTIVE ORDER NO.	
	The New York State Human Rights Law, Art prohibits discrimination and harassment color, national origin, sex, pregnancy or p sexual orientation, gender identity, disabstatus, domestic violence victim status, prio military status or predisposing genetic cha	based on age, race, creed, regnancy-related conditions, bility, marital status, familial or arrest or conviction record,	
	The Human Rights Law may also require repersons with disabilities and pregnareasonable accommodation is an adjust environment that enables a person with essential functions of a job in a reasonable Law may also require reasonable accommobasis of Sabbath observance or religious p	ancy-related conditions. A stment to a job or work a disability to perform the manner. The Human Rights odation in employment on the	
	Generally, the Human Rights Law applies to	o:	
	A. all employers of four or more per labor organizations and apprentic instances of discrimination or har	eship training programs in all	
	B. employers with fewer than for involving sexual harassment; and		
	 c. any employer of domestic worke harassment or harassment based national origin. 		
	In accordance with Executive Order No. 177 that it does not have institutional policies of the harassment and discrimination of indiage, race, creed, color, national origin, selidentity, disability, marital status, military s status under the Human Rights Law.	r practices that fail to address viduals on the basis of their x, sexual orientation, gender	



Offeror's Certification Form IFB Entitled: "Application Management System"

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

10. PUBLIC OFFICER LAW REQUIREMENTS AND CONFLICT OF INTEREST DISCLOSURE

The New York State Public Officers Law ("POL"), particularly POL Sections 73 and 74, as well as all other provisions of New York State law, rules and regulations, and policy establish ethical standards for current and former State employees. In submitting its Proposal, the Offeror must guarantee knowledge and full compliance with such provisions for purposes of this RFP and any other activities including, but not limited to, offers, Proposals, offers, and negotiations. Failure to comply with these provisions may result in disqualification from the procurement process, termination, suspension or cancellation of the offer and criminal proceedings as may be required by law.

The Offeror hereby submits its affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror because of prior, current, or proposed offers, engagements, or affiliations.

Please provide below an affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror because of prior, current, or proposed offers, engagements, or affiliations. Please attach additional pieces of paper as necessary.



\		
11.	The Offeror certifies under penalty of perjury that they are not a Russian entity or Russia supporting entity as those terms are defined in Executive Order No. 14 dated February 27, 2022.	
12.	The Offeror certifies under penalty of perjury that your organization is not conducting business operations in Russia, as those terms are defined in Executive Order No. 16 dated March 17, 2022.	
13.	NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND MACBRIDE FAIR EMPLOYMENT PRINCIPLES	
	In accordance with Chapter 807 of the Laws of 1992 the Offeror, by submission of this Certification, certifies that it or any individual or legal entity in which the Offeror holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Offeror, either (answer "yes" or "no" to one or both of the following, as applicable):	
	Have business operations in Northern Ireland. If yes:	
	Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland and shall permit independent monitoring of their compliance with such Principles.	
14.	NON-COLLUSIVE BIDDING CERTIFICATION	
	By submission of this Certification, the Offeror and each person signing on behalf of the Offeror certifies, under penalty of perjury, that to the best of his knowledge and belief:	
	1. The prices in this Agreement have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other competitor;	
	2. Unless otherwise required by law, the prices which have been quoted in this Agreement have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to offer approval, directly or indirectly, to any other competitor; and	
	3. No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not to submit a price quote for the purpose of restricting competition.	
15.	An Offeror is encouraged to use New York State businesses in the performance of Project Services. Please use the below to identify the Offeror's proposed utilization of New York State businesses.	



Names of NY Subcontractor and/or Suppliers	Address: City, State, & Zip Code	Description of Services or Supplies Provided	Estimated Value Over 1- Yr Offer Period for Services Directly Related to this Offer	Identify if Subcontractor and/or Supplier



CORPORATION ACKNOWLEDGMEN	lT
STATE OF	} SS.:
COUNTY OF	}
On the day of personally appeared to be the person who executed the for did depose and say that they maintain . State of	in the year 202, before me, known to me, known to me, known by me an office at Town of, County of; and further that: they (are) the f, the corporation
, State 61	f, the corporation
described in and which executed the a Directors of said corporation, they are behalf of the corporation for purposes s	bove instrument; that, by authority of the Board of authorized to execute the foregoing instrument on et forth therein; and that, pursuant to that authority, t in the name of and on behalf of said corporation
Notary Public:	



Formal Offer Letter

IFB entitled: "Application Management System"

[TO BE COMPLETED ON OFFEROR'S LETTERHEAD]

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NYS Department of Civil Service Empire State Plaza, Swan Street Building, Core 1 Albany, NY 12239

RE: IFB entitled: "Application Management System"

Firm Offer to the State of New York

[INSERT OFFEROR NAME] hereby submits this firm and binding offer ("Proposal") to the State of New York in response to New York State Department of Civil Service IFB entitled "Application Management System" (IFB). The Proposal hereby submitted meets or exceeds all terms, conditions, and requirements set forth in the above-referenced IFB and in the manner set forth in the IFB.

[INSERT OFFEROR NAME] accepts the terms and conditions as set forth in IFB; as well as the terms and conditions set forth in IFB Appendices A through E and agrees to satisfy the comprehensive programmatic duties and responsibilities outlined in the IFB as set forth in the IFB for the Project Services as bid.

[INSERT OFFEROR NAME] agrees to execute a standardized contractual agreement and accepts as non-negotiable the terms and conditions set forth in Appendix A.

[INSERT OFFEROR NAME] further agrees, if selected, to comply with the provisions of 1) the Tax Law Section 5-a, Certification Regarding Sales and Compensating Use Tax; and 2) Sections 57 and 220 of the New York State Workers' Compensation Law.

This formal offer will remain firm and non-revocable for a minimum period of 180 days from the Proposal Due Date and Time as set forth in the IFB. In the event that a contract is not approved by the NYS Comptroller within the 180 day period, this offer shall remain firm and binding beyond such until a contract is approved by the NYS Comptroller, unless **[INSERT OFFEROR NAME]** serves the New York State Department of Civil Service "Department" with written notice of its Proposal withdrawal.

Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Address Street City State Zip:	
NYS Vendor Identification Number (see NYS vendor file registration clause):	
Federal Tax Identification Number (do not use social security number):	
If applicable, place an "x" next to each that apply:	
NYS Small Business:	
Vendor Responsibility Questionnaire Filed Online: Yes No	
Minority-owned Business Enterprise (MBE):	
Woman-owned Business Enterprise (WBE):	
Service-Disabled Veteran-Owned Business (SDVOB):	



Notary Public:

Formal Offer Letter

IFB entitled: "Application Management System"

Date:

The undersigned affirms and swears as to the truth and veracity of all documents included in the bid submission. ______Title: _____ Signature: ____ PRINT SIGNATORY'S NAME: Date: INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT **STATE OF** } **Sworn Statement: COUNTY OF** } On the _____ day of _____ in the year 20____, before me personally appeared , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that they maintain an office at Town of , State of ; and further that: County of (If an individual): they executed the foregoing instrument in his/her name and on his/her own behalf. (If a corporation): they are the the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, they are authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, they executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation. ____(If a partnership): they are the ______, the partnership described in said instrument; that, by the terms of said partnership, they are authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, they executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership. (If a limited liability company): they are a duly authorized member of , LLC, the limited liability company described in said instrument; that, they are authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, they executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.



Questions Template

IFB entitled: "Application Management System"

Question Number	IFB Page #	Section Reference	Question

An Offeror is required to use the **Questions Template** table above when submitting questions. Offeror's questions must be submitted to the Designated Contact found in Section 2.1.1 of the IFB.



Bid Deviations Template

IFB entitled: "Application Management System"

Offeror Name:		

Deviation Number	IFB Page #	Section Reference	Proposed Deviation with Detailed Explanation

An Offeror is required to use this **Bid Deviations Template** when submitting any proposed non-material deviations and/or alternates. Offeror's proposed deviations must be submitted with its Administrative Bid Submission.



Freedom of Information Law (FOIL) Redaction Chart

IFB entitled: "Application Management System"

Offe	eror Name:
In re	esponse to the Invitation for Bids entitled Application Management System (AMS):
	Offeror asserts that the information noted in the table below constitutes proprietary and/or trade secret information or critical infrastructure information or otherwise falls within one of the statutory exemptions pursuant the New York State Freedom of Information Law, Article 6 of the Public Officers Law (FOIL); and the Offeror desires that such information not be disclosed if requested pursuant to FOIL.
	Offeror makes NO assertion that any information in its Bid Submission, in whole or in part, should be protected from FOIL disclosure.

REDACTION CHART

Specific justification for each item for which you seek protection from FOIL disclosure must be provided in the above chart. An appropriate justification may be any one or more of the following considerations by which to demonstrate reasonably whether the item for which you seek protection may be excepted from disclosure:

- a. The confidential nature of the specific item, including a description of the nature and extent of the injury to the Offeror's competitive position, such as unfair economic or competitive damage, which would be incurred were the information/record to be disclosed;
- b. Whether the specific information/record is treated as confidential by the Offeror, including whether it ever has been made available to any person or entity;
- c. Whether any patent, copyright, or similar legal protection exists for the specific item of information;
- d. Whether the public disclosure of the information/record is otherwise restricted by law, and the specific source and content of such restriction;
- e. The date upon which the information/record no longer will need to be kept confidential, if applicable;
- f. Whether the item of information is known by anyone outside the Offeror's business or organization;
- g. The extent to which the information is known by Offeror's employees and others involved in the Offeror's business;
- h. The value of the specific information/record to the Offeror and to its competitors:
- i. The amount of effort or money expended by the Offeror in developing the information/record; and
- The ease or difficulty with which the information could be properly acquired or duplicated (not merely copied) for use by others.



Freedom of Information Law (FOIL) Redaction Chart

IFB entitled: "Application Management System"

Bid Submission:		
Requested Redaction Page #s and Sections or Attachment #	Description	Offeror Rationale for Proposed Redaction



NYS Consultant Services Contractor's Planned Employment

IFB entitled: "Application Management System"

AC 3271-S (Effective 4/12)

FORM A

New York State Consultant Services Contractor's Planned Employment

From Contract Start Date Through the End of the Contract Term

State Agency N	Name:
----------------	-------

State Agency Department ID: Agency Business Unit:
Contractor Name: Contract Number:

Contract Start Date: / / Contract End Date: / /

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
	0.00	0.00	\$0.00
Total this Page	0.00	0.00	\$0.00
Grand Total			

Name of person who prepared this report:	
Title:	Phone #:
Preparer's Signature:	_
Date Prepared: / /	
(Lise additional nages, if necessary)	



Key Subcontractors or Affiliates

IFB entitled: "Application Management System"

INSTRUCTION:	Prepare this form for each Key Subcontractor
Offeror's Name:	
The Offeror:	
□ is	
□ is not	
proposing to utilize t	the services of a subcontractor(s) to provide Project Services
1 1 0	,,,,
Subcontractor's Legal	
Name:	
Subcontractor's NYS SFS	
Vendor ID	
Subcontractor's Legal	
Business Address:	
0 1	Componention Deuteromekin Colo December
Subcontractor's Legal Form:	☐ Corporation ☐ Partnership ☐ Sole Proprietorship
FORM:	Other
As of the date of the Offeror's P	ronosal a subcontract:
	Toposal, a subcontract.
☐ has	
☐ has not	
	veen the Offeror and the subcontractor(s) for services to be
provided by such su	bcontractor(s) relating to the Project.
In the space provided below, de	escribe the Subcontractor's role(s) and responsibilities regarding
Project Services to be provided	
items 1 through 5 for each clien	and Subcontractor for Current Engagements: (Complete
1. Client:	t engagement identified)
Client Reference Name	
and Phone #:	
3. Project Title:	
4. Project Start Date:	
5. In the space provided below	, Project Status:



Key Subcontractors or Affiliates

IFB entitled: "Application Management System"

6.	In the space provided below, describe the roles and responsibilities of the Offeror and Subcontractor in regard to the project identified in 3, above:



Technical Requirements Chart

IFB entitled:
"Application Management System"

Offeror Name:	
_	

Requirement No.	Requirement Type	Technical Requirements	Requirement Necessity	This Requirement Can Be Met	"Or Equivalent" Describe How Your Solution Meets the Functionality	"Or Equivalent" How is Solution Offered (e.g., COTS, Configuration)?
1.	Technical	Eightfold Talent Intelligence Platform	Mandatory			
2.	Technical	Eightfold Talent Acquisition	Mandatory			
3.	Technical	Eightfold Talent Acquisition CRM	Mandatory			
4.	Technical	Eightfold Talent Acquisition Candidate Experience	Mandatory			
5.	Technical	Eightfold Talent Acquisition Talent Tracking	Mandatory			
6.	Technical	Additional Sandbox environment	Mandatory			
7.	Technical	Eightfold Elevate Success Plan	Mandatory			
8.	Technical	Eightfold Talent Management Core and Leadership Experience	Mandatory			

Exhibit 1

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

and

[Contractor]

AGREEMENT NO. C000770

This Agreement ("Agreement" or "Contract") is entered into by and between New York State Department of Civil Service ("Department" or "DCS"), having its principal office at the Empire State Plaza Agency Building #1, Albany, NY 12239 and [contractor], a corporation authorized to do business in the State of New York with a principal place of business located at . The foregoing is collectively referred to as "the Parties."

WITNESSETH

WHEREAS, the Strategic Planning and Innovation (SPI) Unit of the Department requires an enterprise-wide Applicant Management System (AMS) able to support a minimum of 350,000 users; and

WHEREAS, on August 8, 2025, the Department issued an Invitation For Bids (IFB), entitled "Application Management System (AMS) IFB" to seek bid submissions from responsive and responsible Bidders who were authorized to resell Eightfold AI Inc. (Eightfold) or equivalent software products and services AND were certified as a New York State Service-Disabled Veteran-Owned Business (SDVOB); and

WHEREAS, the Department established the procurement as a set aside contract pursuant to 9 NYCRR § 252.2(j); and

WHEREAS, the Contractor is an SDVOB and authorized reseller of Eightfold software products and services or equivalent and submitted a quote ("Schedule of Fees") in response to the IFB, for the aforementioned Services; and

WHEREAS, after thorough review and evaluation by the Department of the proposals received in response to the IFB, the Department has accepted the Contractor's quote for the Services outlined in the Schedule of Fees; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver the required products and services for the implementation, configuration and support of the AMS, pursuant to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, the Parties agree as follows:

SECTION I: CONTRACTOR RESPONSIBILITIES AND QUALIFICATIONS

- 1.1 The Contractor is responsible for providing Project Services as set forth in Section 5 (Project Services) of this Agreement, in such a manner to comply with the requirements in this Agreement and for meeting all contractual obligations in this Agreement, including all attachments, and any subsequent amendments mutually agreed to in writing between the Parties.
- 1.2 The Contractor's obligations to perform under this Agreement shall not be affected or impaired by any reorganization, consolidation or merger to which the Contractor is, or may become, a party to. In any such event, the Contractor shall continue to be bound by, and shall perform under, all terms and conditions set forth herein.
- 1.3 The vendor will report to ITS and SPI and take direction from ITS and SPI on the implementation of the product.

SECTION II: AGREEMENT TERM AND AMENDMENTS

- 2.1 The term of this Agreement shall be for a period commencing as of the date approved by the New York State Office of the State Comptroller (OSC) Bureau of Contracts and shall continue for a period of up to five (5) years.
 - In accordance with New York State policy and New York State Finance Law section112(2), the resulting contract is deemed executory until it has been approved by the New York State Attorney General's Office (AG) and approved and filed by the New York State Office of the State Comptroller (OSC).
- 2.2 The Not-to-Exceed value for the term of this Agreement is \$, subject to any amendments made pursuant to the terms of this Agreement.
- 2.3 The Agreement is subject to amendment(s) only upon consent of the Parties, reduced to writing.

SECTION III: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

- 3.1 This Agreement shall be composed solely of the following documents which, in the event of an inconsistency or conflicting terms, shall be given precedence in the order indicated:
 - 3.1.1 Appendix A (Standard Clauses for All New York State Contracts), dated June 2023, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein;
 - 3.1.2 Any Amendments to the body of this Agreement;

- 3.1.3 The Contract body and other writing(s) setting forth the final agreements, clarifications and terms between the IFB and Contractor's Bid;
- 3.1.4 Appendix B (Standard Clauses for all Department Contracts), dated August 2025, attached hereto, is hereby expressly made a part of this Contract as if fully set forth herein;
- 3.1.5 Appendix C-1 (Information Security Requirements for Cloud Services), dated June 2025, attached hereto, is hereby expressly made a part of this Contract as if fully set forth herein;
- 3.1.7 Appendix D (MWBE/EEO/SDVOB Requirements), as amended on June 25, 2025, attached hereto, is hereby expressly made a part of this Contract as if fully set forth herein:
- 3.1.8 Appendix E (Insurance Requirements), attached hereto, is hereby expressly made a part of this Contract as if fully set forth herein;
- 3.1.9 Appendix F (Schedule of Fees), attached hereto, is hereby expressly made a part of this Contract as if fully set forth herein;
- 3.1.10 Attachment 1: Master Subscription Agreement for proposed software as amended by the parties
- 3.2 Only documents expressly enumerated above shall be deemed a part of this Agreement, and references contained in those documents to additional Contractor documents not enumerated above shall be of no force and effect.
- 3.3 All prior agreements, representations, statements, negotiations, and undertakings are superseded. All statements made by the Department shall be deemed to be representations and not warranties.
- 3.4 Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation, or other entity, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of this Agreement.
- 3.5 The terms, provisions, representations, and warranties contained in this Agreement shall survive performance hereunder.

SECTION IV: LEGAL AUTHORITY TO PERFORM

4.1 The Contractor represents that it possesses the legal authority to perform Project Services in accordance with the terms and conditions of this Agreement.

- 4.2 The Contractor shall maintain appropriate corporate and/or legal authority, which shall include, but is not limited to, the maintenance of an administrative organization capable of delivering Project Services in accordance with this Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Project Services are to be delivered.
- 4.3 The Contractor shall, to the extent legally permissible, provide the Department with prompt notice in writing of the initiation of any legal action or suit which relates in any way to this Agreement, or which may affect performance of the Contractor's duties under this Agreement.

SECTION V: PROJECT SERVICES

During the term of the Agreement, the Contractor will be responsible for providing all of the services provided in Contractor's Schedule of Fees as ordered and authorized by the Department (attached hereto as Appendix F).

5.1 Subscription Services

- 5.1.1 Contractor shall provide Eightfold or equivalent subscription services selected by the Department, which may include the following products:
 - Talent Intelligence Platform ("TIP") or equivalent to enable integration with existing systems with artificial intelligence insights, encryption of data and enterprise level security and privacy;
 - Talent Acquisition ("TA") Core or equivalent to streamline hiring agencies' ability recruit and extend offers to candidates and elevate the candidate experience;
 - Talent Acquisition CRM or equivalent to provide additional communication and recruitment options for hiring agencies through talent communities and recruitment events;
 - d. Talent Acquisition Candidate Experience or equivalent to further improve the candidate experience through a candidate portal and personalized career site;
 - e. Talent Acquisition Talent Tracking or equivalent to provide additional efficiencies in requisition and offer management;
 - f. Additional Sandbox environment;
 - g. Elevate Success Plan or equivalent to provide technical expertise and guidance on best practices; and

h. Talent Management Core and Leadership Experience, or equivalent, to improve agencies' ability to develop and retain employees. DCS shall order Subscription Services from Contractor using a Transaction Document in a form agreed to and executed by authorized signatories of the Parties adhering to their respective Party's internal approval processes, with such Transaction Document or equivalent delineating the Subscription Service being ordered. No verbal orders shall be valid.

5.2 Professional Services

5.2.1 Contractor shall provide Professional Services in connection with Department's decision to implement any of the selected subscription services and to provide functional consulting and systems integration services relating to the implementation or configuration of those services.

In connection with the Project, the Contractor, upon the Department's request, shall provide, the following Professional Services:

- To help establish a full range of additions, modifications, customizations, and enhancements to design and implement the enterprise-wide applicant management system;
- b. DCS shall order Professional Services from Contractor using a written Statement of Work (SOW) or other Transaction Document in a form agreed to and executed by authorized signatories of the Parties adhering to their respective Party's internal approval processes, with such Transaction Document delineating the services, Deliverable schedule(s), DCS and Contractor responsibilities, specifics of the engagement, and change in scope procedures. No verbal orders shall be valid; and
- c. Professional services may be provided on an hourly or on a Deliverable fixed price basis, as described further below.

5.2.2 Hourly Professional Services

As described in the IFB and in Contractor's Bid, such services consist of but are not limited to installation, implementation, systems integration, design, architecture, customization, project management, ongoing support, maintenance, general systems/business consulting, systems programming, business continuity and other information technology related services as required.

a. Skill Descriptions

These shall be as described in the IFB and in Contractor's Bid and revised by mutual agreement of the Parties in any particular Transaction Document. Contractor will provide an hourly rate chart with job title, pricing for that resource, and any discount(s).

b. Hourly Rates

Hourly rates for Professional Services must be as set forth Appendix F (Schedule of Fees),.

c. Discounts

During the term of this Contract, Contractor may propose discounts or special offers to DCS.

5.3 Deliverable-Based Professional Services

The time frame for completion of a specific Deliverable, for Deliverable acceptance testing criteria, and for DCS review and approval of any particular Deliverable in a specific Deliverables-based engagement may be further described and modified in a particular Transaction Document/SOW. The Parties agree that a Transaction Document/SOW may also provide terms relating to DCS's right to withhold retainage or payment for non-performance that vary from any withholding terms stated elsewhere in this Contract. A Deliverable based payment structure, acceptable to the Department, will be detailed in the Transaction Document/SOW. All fees for Deliverable-Based Professional Services Professional Services must be as set forth in Appendix F (Schedule of Fees),

5.4 Eightfold or Equivalent Products and Services

All Contractor employees, Subcontractors or agents performing Professional Services work under this Contract must be trained professional service providers who meet or exceed the technical and training qualifications, if any, set forth in the relevant Transaction Document.

5.5 Operational and Administrative Service Requirements

a. Staffing Requirements

The Contractor must designate a single account executive ("Project Manager") accountable to the State and responsible for ensuring that the needs of the State are met. These activities include scheduling clients, coordinating activities with DCS, and Resolving contractual or administrative issues, including but not limited to billing and scheduling problems. The Project Manager shall also notify the Department of any actual or anticipated events impacting the delivery of Project Services and present options available to minimize or eliminate the impact of those events on the delivery of services.

b. Key Staff

Throughout the term of the Contract, the Contractor 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 in a timely manner.

- i. The Key Staff must be comprised of qualified and experienced individuals who are acceptable to the Department and who are responsible for ensuring that resources are in place to operate the Project in a timely and efficient manner.
- ii. The Contractor must ensure that there is a process in place for the Key Staff 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.
- iii. The Contractor's Key Staff must be experienced, accessible and able to:
 - Provide timely responses within one (1) business day to administrative concerns and inquiries posed by the Department;
 - 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;
 - 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
 - 4) Ensure that the Project is in compliance with all legislative and statutory requirements. If the Contractor is unable to comply with any legislative or statutory requirements, the Department must be notified in writing immediately.

5.6 Travel and Lodging

Travel and lodging associated with required onsite staffing during deployment, configuration and/or modification of the Eightfold or equivalent products is allowable and will be in accordance with the Travel and Expense Policy All Travel and Lodging must be pre-approved in writing by the Department. Subject to Contract modification, compensation for such travel will be provided at the same or below rates as established by the Office of the State Comptroller in the State of New York Office of the State Comptroller Travel Manual (https://www.osc.state.ny.us/agencies/travel/manual.pdf).

Current rates are identified at the following website: https://www.gsa.gov/travel/plan-book/perdiem-Rates.

5.7 Security

All products and services procured through the Contract and all associated support processes and procedures must comply with DCS Appendix C-1, Information Security Requirements, and all applicable Federal and State laws and regulations concerning data security and personal privacy protection.

The Contractor shall be responsible for maintaining all NYS ingested Data in a secure and confidential manner and in accordance with the requirements of the Contract including Appendix C-1, Information Security Requirements.

5.8 Transition Period

At the expiration or termination of the Agreement, at the Department's option, the Contractor must provide the Department with a copy of the Data, including metadata and attachments, in readily-available, commercially standard, format. The Contractor must provide the Department continued access to the Data beyond the expiration or termination of the Agreement for the period designated in the Contract. Thereafter, except for Data required to be maintained by law or this Agreement, Contractor shall destroy Data from its systems and wipe all its data storage devices to eliminate any and all Data from Contractor's systems. The sanitization process must comply with New York State Security Policy NYS-S13-003. If immediate purging of all data storage components is not possible, the Contractor will certify that any Data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. Contractor must then certify to the Department, in writing, that it has complied with the provisions of this paragraph.

SECTION VI: PAYMENT FOR SERVICES

- 6.1 The Department agrees to reimburse the Contractor for Project Services over the term of this agreement based on the fees set forth in Contractor's Schedule of Fees (Appendix F).
- 6.2 Fees set forth in Appendix F Schedule of Fees, represent the charges to the Department to cover the Project Services required of the Contractor.
 - The Contract fees are inclusive of any and all direct and indirect costs including contract administration, clerical personnel, computer charges, postage and all other expenses related to the engagement. The State's payment obligations shall be governed by the provisions of the New York State Finance Law ("SFL").
- 6.3 The Contractor is bound by the Fees identified in Appendix F for the entire Contract Term, unless amended in writing by the Parties.

- 6.4 For Monthly Project Services, the Contractor shall invoice the Department monthly. For Annual Subscription Services, the Contractor shall invoice the Department annually. However, if any lump-sum payment has been made, the State shall be entitled to a prorata refund of such payment if services are terminated early for any reason. All invoice(s) shall be submitted to accountspayable@ogs.ny.gov. together with full supporting detail(s) to the State's satisfaction. The subject line should include the Invoice Number and the term "Department of Civil Service. The invoice must include:
 - 6.4.1 Name of the NYS Agency being billed;
 - 6.4.2 Name of the vendor and NYS Statewide Financial System (SFS) Vendor Number; and
 - 6.4.3 Contract number.
- 6.5 Purchase order (PO) number if applicable as provided by ordering agency. The Contractor will be paid only for actual work performed and in accordance with the fees set forth in Contractor's Fees for Project Services (Appendix F). This fee is all inclusive and the Contractor will not be reimbursed for any collateral expenses (i.e., profit, overhead, printing, etc.) associated with performing the Project Services unless specifically agreed to in the Contract.
- 6.6 After the Department approves the Contractor's invoice, the Department shall process the Contractor's invoice to the New York State Office of the State Comptroller (OSC) for payment. OSC shall render payment for invoices under this Agreement in accordance with ordinary State procedures and practices. The Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of Agreement. The Contractor acknowledges that timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law. Submission of an invoice and payment thereof shall not preclude the Department, as applicable, from reimbursement or demanding a price adjustment in any case where Project Services as delivered are found to deviate from the terms and conditions of this Agreement.

SECTION VII: NOTICES

- 7.1 The Contractor shall promptly notify the Department upon learning of any situation that can reasonably be expected to adversely affect Project Services being rendered.
- 7.2 All notices permitted or required hereunder shall be in writing and shall be transmitted via certified or registered United States mail, return receipt requested; by hand delivery; by expedited delivery service. Such notification must be sent to:

State of New York Department of Civil Service

Name: Heather Orth

Title: Director of Strategic Planning and Innovation

Address: Empire State Plaza, Agency Building 1, Albany, NY 12239

Telephone Number: 518-486-4575

E-Mail Address: <u>Heather.Orth@cs.ny.gov</u>

Contractor

Name: Title: Address:

Telephone Number: E-Mail Address:

- 7.3 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of email, upon receipt.
- 7.4 The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

SECTION VIII: ADDITIONAL PROVISIONS

- 8.1 All State Data provided to the contractor during the term of the resulting contract must be hosted and maintained within the Continental United States of America (CONUS).
- 8.2 Enhancements and Modifications: Change Requests

Change Requests may be used for enhancements or modifications that had neither (i) been included in the Project Services identified in this IFB, nor (ii) been included in the Proposal, but which pertains to the scope of this Contract. Total cost of any 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 is approved by the Department. In addition, any one Change Request over \$50,000 requires prior approval by OSC. All hourly rates for Change Requests must not exceed the rates as set forth in Appendix F (Schedule of Fees),

8.2.1 Change Requests:

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

- a. Develop and/or implement enhancements or modifications internally:
- Obtain a third party to perform such work. The Contractor 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;
- 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;
- d. 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;
- e. The Contractor will use its best efforts to promptly develop a requested enhancement or modification; and
- f. The Contractor shall not implement a Department-directed enhancement or modification into "live" production until the enhancement or modification has been accepted by the Department.

SECTION IX: ENTIRE AGREEMENT

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.

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto have hereunto signed this AGREEMENT on the day and year appearing opposite their respective signatures.

Agency Certification: "In addition to the acceptance of this Agreement, I also certify that original copies of this signature page will be attached to all exact copies of this Agreement."

Contractor Certification: By signing I certify my express authority to sign on behalf of myself, my company, or other entity and full knowledge and acceptance of this Agreement and all appendices. By signing, I affirm my understanding of and agreement to comply with the Department's procedures relative to the Procurement Lobbying Law as required by State Finance Law §139-j and §139-k.

FEIN:	NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
Name:	Name:
Title:	Title:
By:	Ву:
Date:	Date:
Approved as to form:	Approved:
Letitia James ATTORNEY GENERAL	Thomas P. DiNapoli STATE COMPTROLLER
By: Date:	By: Date:

CORPORATION ACKNOWLEDGMENT

STATE OF	_ }
COUNTY OF	_
On the day of personally appeared	in the year 202, before me , known to
me to be the person who execut me did depose and say that he/s	ted the foregoing instrument, who, being duly sworn by she/they maintains an office at Town of
he/she/they is (are) the	, State of; and further that: of corporation described in and which executed the above
instrument; that, by authority of to (are) authorized to execute the fourposes set forth therein; and t	the Board of Directors of said corporation, he/she/they is foregoing instrument on behalf of the corporation for hat, pursuant to that authority, he/she/they executed the e of and on behalf of said corporation as the act and deed
Notary Public:	

Appendix F

"SCHEDULE OF FEES"

Additional attachments/Exhibits as necessary



Exhibit 2



Bid Submission Checklist

IFB entitled: "Application Management System"

DCS reserves the right to disqualify any bids that do not contain the **mandatory items** as specified for this Solicitation. Bidders should use the following checklist when submitting bids and include all required documents with bid proposals (*mark the box to indicate inclusion of the documents*).

BID SUBMISSION CHECKLIST				
Requirement	Reference	Bidder's Action		
Administrative Proposal Mandatory Submission Requirements		Mandatory to be included on your USB in a file named Administrative Proposal		
Offeror's Certification Form – IFB Section 4.1	ATTACHMENT 1, IFB SECTION 4.1	Mandatory Submission with Administrative Proposal		
Formal Offer Letter - IFB Section 4.2	ATTACHMENT 2, IFB SECTION 4.2	Mandatory Submission with Administrative Proposal		
Bid Deviations Template - IFB Section 4.3	ATTACHMENT 4, IFB SECTION 4.3	Required Submission with Administrative Proposal if any proposed Bid Deviations.		
FOIL Redaction Chart - IFB Section 4.4	ATTACHMENT 5, IFB SECTION 4.4	Required Submission with Administrative Proposals if any redactions requested for FOIL requests.		
Key Subcontractors or Affiliates - IFB Section 4.5	ATTACHMENT 7, IFB SECTION 4.5	Mandatory Submission with Administrative Proposal		
Vendor Responsibility Questionnaire - IFB Section 4.6	IFB SECTION 4.6	Vendor Responsibility Questionnaire Certification is required for bidder and all subcontractor's receiving more than \$100,000 over the life of the Contract.		
Eightfold or Equivalent Master Subscription Agreement – IFB Section 4.7	IFB SECTION 4.7	Mandatory Submission with Administrative Proposal		
Administrative Proposal Optional Submission Documents. Documents are optional with submission but are mandatory prior to contract execution.	Include on your Administrative USB if submitting.	If submitting, include on your USB in a file named Administrative Proposal		
MWBE/EEO/SDVOB Requirements	APPENDIX D	Submission required prior to contract execution.		
NYS Consultant Services Contractor's Planned Employment	ATTACHMENT 6, IFB SECTION 2.2.5	Submission required prior to contract execution.		
NYS Tax Law Section 5-a Forms ST-220CA	IFB SECTION 2.2.6	Submission required prior to contract execution.		
Insurance Requirements. NYS Workers' Comp, NYS Disability, Liability Acord form	APPENDIX E	Submission required prior to contract execution.		



Bid Submission Checklist

IFB entitled: "Application Management System"

BID SUBMISSION CHECKLIST				
Requirement	Reference	Bidder's Action		
Mandatory Financial Submission Requirements		Mandatory to be included on your USB i file named Financial Proposal		
Schedule of Fees - ATTACHMENT 8 or 8A	ATTACHMENT 8 or 8A - IFB SECTION 6	Mandatory Submission with Financial Proposal		
Mandatory Technical Submission Requirements		Mandatory to be included on your USB i file named Technical Proposal		
Proof the Eightfold or equivalent products being proposed by the Offeror currently support single sign-on via the NY.GOV Authentication System-IFB Section 5.1.1	IFB SECTION 5.1.1	Mandatory Submission with Technical Proposal		
For submission of Technical Requirements Chart (ATTACHMENT 9). All Offeror's must complete Attachment 9. If an Offeror is proposing an "Or Equivalent" solution, additionally, the last two columns must be completed. Section 5.1.2	ATTACHMENT 9- IFB SECTION 5.1.2	Mandatory Submission with Technical Proposal		
Documentation confirming the Offeror is an authorized reseller or actively in the process of becoming an authorized reseller of Eightfold or equivalent software products and services. Section 5.1.3	IFB SECTION 5.1.3	Mandatory Submission with Technical Proposal		