

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 _____, 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 Unit of the Department requires an Application Management System (AMS); and

WHEREAS, the Contractor is in the business of providing the Services and has submitted a quote ("Schedule of Fees") for the aforementioned Services; and

WHEREAS, the Department has accepted the Contractor's quote for the Services outlined in the Schedule of Fees; and

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 take direction from ITS on the implementation of the product.

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SECTION II: AGREEMENT TERM AND AMENDMENTS

- 2.1 This Agreement shall be in effect from _____ and shall terminate on _____.
- 2.2 The Department shall have the option to renew this Agreement for _____ renewal subject to the parties mutual execution of a new fee schedule.
- 2.3 The Not-to-Exceed value for the term of this Agreement is _____, subject to any amendments made pursuant to the terms of this Agreement.
- 2.4 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 body of this Agreement;
 - 3.1.4 Appendix B – Standard Clauses for all Department Contracts;
 - 3.1.5 Appendix C – Information Security Requirements;
 - 3.1.7 Appendix D – MWBE Requirements;
 - 3.1.8 Appendix E – Insurance Requirements;
 - 3.1.9
 - 3.1.10 Attachment 1 – Schedule of Fees;
 - 3.1.11 Attachment 2 – Vendor Certification

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- 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 (attached hereto as Attachment 1).

SECTION VI: PAYMENT FOR SERVICES

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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 (Attachment 1).

6.2 Fees set forth in Attachment 1 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, travel, 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 Attachment 1 for the entire Contract Term, unless amended in writing by the Parties.

6.4 The Contractor shall only invoice the Department frequency of billing (i.e., on a monthly basis) after the services have been rendered and in accordance with the provisions set forth herein. The invoice shall be emailed to accountspayable@ogs.ny.gov. The subject line should include the Invoice Number and the term "Department of Civil Service". Such invoice must include:

6.4.1 Vendor Name;

6.4.2 Name of Agency that ordered the goods or services;

6.4.3 Description of goods or services payment is being requested for (may be in narrative or code values format;

6.4.4 Quantity of goods, property or services delivered or rendered;

6.4.5 Amount requested; and

6.4.6 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 (Attachment 2). This fee is all inclusive and the Contractor will not be reimbursed for any collateral expenses (i.e., travel, lodging meals, parking etc.) associated with performing the Project Services unless specifically agreed to in the Contract, including travel time to and from a New York State facility.

6.4.7 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,

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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:

Contractor

Name:

Title:

Address:

Telephone Number:

E-Mail Address:

State of New York Department of Civil Service

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.

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SECTION VIII: ADDITIONAL PROVISIONS

- 8.1 Work in The Continental United States of America: All work performed by Contractor personnel under this Contract must be performed within the Continental United States of America (CONUS).
- 8.2 Change Requests may be used for enhancements or modifications that had neither (i) been included in the Deliverables identified in this Agreement, nor (ii) been included in the Proposal, but which pertains to the scope of work. Total cost of any Change Requests will be limited to 10% of the not-to-exceed amount of the Agreement. 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.

8.2.1 Change Requests:

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

- A. Fees for the development and implementation of enhancements or modifications shall be negotiated by the Department and Contractor as soon as feasible prior to commencement of work by Contractor;
- B. 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;
- C. Contractor will use its best efforts to promptly develop a requested enhancement or modification; and
- D. 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

This Agreement and the appendices and attachments hereto constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the Parties hereto.

(Remainder of this page intentionally left blank)

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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.

CONTRACTOR

**NEW YORK STATE
DEPARTMENT OF CIVIL SERVICE**

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

Date: _____

Date: _____

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CORPORATION ACKNOWLEDGMENT

STATE OF _____ }

SS.:

COUNTY OF _____ }

On the _____ day of _____ in the year 202____, 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 he/she/they maintains an office at Town of _____ County of _____, State of _____; and further that: he/she/they is (are) the _____ of _____, the corporation described in and which executed the above instrument; that, by authority of the Board of Directors of said corporation, he/she/they is (are) authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he/she/they executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

Notary Public: _____

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Attachment 1

“SCHEDULE OF FEES”

Additional attachments/Exhibits as necessary

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