

**SECTION VI: CONTRACT PROVISIONS**

The Department has identified the following provisions for inclusion in the resulting agreement. Additional provisions will be developed based on the selected Offeror's proposal.

**1. AGREEMENT DURATION AND AMENDMENTS**

- 1.1.0** This Agreement is subject to the approval of the New York State Attorney General's Office ("AG") and the NYS Office of the State Comptroller ("OSC"). Upon approval by the New York State Comptroller, the term of the Contract shall be for the implementation period plus five (5) years.
- 1.2.0** The Agreement may be amended only upon mutual consent of the Parties, reduced to writing and approved by the AG and OSC.

**2. INTEGRATION**

- 2.1.0** This Agreement, including all Appendices and Exhibits, copies of which are attached hereto and incorporated by reference, constitutes the entire Agreement between the Parties. All prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.
- 2.2.0** All statements made by the Department shall be deemed to be representations and not warranties.

**3. DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE**

- 3.1.0** The Agreement consists of:
- 3.1.1** The body of the Agreement (that portion preceding the signatures of the Parties in execution), and any amendments thereto;
  - 3.1.2** Appendix A – Standard Clauses for All New York State Contracts;
  - 3.1.3** Appendix B – Standard Clauses for All Department Contracts;
  - 3.1.4** Appendix C – Third Party Connection and Data Sharing Agreement;
  - 3.1.5** Appendix C-1 - ITS-AGS: Information Security Standards;
  - 3.1.6** Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures;

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- 3.1.7** Appendix D-1 - Minority and Women-Owned Business Enterprises-Equal Employment Opportunity Policy Statement;
- 3.1.8** Appendix D-2 –MWBE Utilization Reporting Responsibilities under Article 15-A;
- 3.1.9** The following Exhibits attached and incorporated by reference to the body of the Agreement:
- 3.1.9a** Exhibit A: which includes: the MacBride Act Statement; and the Non-Collusive Bidding Certification;
  - 3.1.9b** Exhibit B: RFP Amendments and the Request for Proposals entitled “Family Paid Leave Program“ dated December 26, 2017 and Exhibit B-1, the official Department response to questions raised concerning the RFP;
  - 3.1.9c** Exhibit C: the Contractor's Proposal; and, Exhibit C-1: Written responses to the Management Interview and related materials clarifying the Contractor’s Proposal.
- 3.1.10** In the event of any inconsistency in, or conflict among, the document elements of the Agreement identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:
- 3.1.10a** First, Appendix A – Standard Clauses for All New York State Contracts;
  - 3.1.10b** Second, Appendix B – Standard Clauses for All Department of Civil Service Contracts;
  - 3.1.10c** Third, Appendix C –Third Party Data Connection and Data Exchange Agreement;
  - 3.1.10d** Fourth, Appendix C-1 - ITS-AGS: Information Security Standards;
  - 3.1.10e** Fifth, Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures;
  - 3.1.10f** Sixth, Appendix D-1 - Minority and Women-Owned Business Enterprises-Equal Employment Opportunity Policy Statement;
  - 3.1.10g** Seventh, Appendix D-2 –MWBE Utilization Reporting Responsibilities under Article 15-A;

- 3.1.10h** Eighth, any Amendments to the body of the Agreement;
- 3.1.10i** Ninth, the body of the Agreement;
- 3.1.10j** Tenth, MacBride Act Statement and Non-Collusive Bidding Certification;
- 3.1.10k** Eleventh, Exhibit B, RFP Amendments and the Request for Proposals entitled "Family Paid Leave Program" dated December 26, 2017 and Exhibit B-1, the official Department response to questions raised concerning the RFP;
- 3.1.10l** Twelfth, Exhibit C: the Contractor's Proposal; and, Exhibit C-1: Written responses to the Management Interview; Exhibit C-2: Related Materials Clarifying the Contractor's Proposal which includes the Contractor's responses to the Department's inquiries dated x.

**3.2.0** The terms, provisions, representations and warranties contained in the Agreement shall survive performance hereunder.

#### **4. LEGAL AUTHORITY TO PERFORM**

**4.1.0** 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 the Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Program Services are to be delivered.

**4.2.0** Contractor agrees that it shall perform its obligations under this Agreement in accordance with all applicable federal and NYS laws, rules and regulations, policies and/or guidelines now or hereafter in effect, including but not limited to the requirements set forth in NYS Workers' Compensation Law Article 9.

**4.3.0** The Contractor shall provide the Department with immediate notice in writing of the initiation of any legal action or suit which relates in any way to the Agreement, or which may affect the performance of Contractor's duties under the Agreement.

#### **5. PROGRAM SERVICES**

**5.1.0** The Contractor shall provide the Program Services for the entire term of the Agreement in accordance NYS and Federal Law as applicable. In addition, the Contractor shall deliver the Paid Family Leave Program RFP

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Program Services in compliance with all provisions of this Agreement. While the Contractor may provide certain services through Key Subcontractors or Affiliates with the prior review and approval of the Department, the Contractor retains sole responsibility for performance. Each subcontract entered into with a corporate entity separate from the Contractor for the purpose of delivering Program Services must be maintained throughout the term of the Agreement unless such change is approved in writing by the Department. All Key Subcontracts shall expressly name the State of New York, through the Department, as the sole intended beneficiary of any such Key Subcontract. The Contractor must maintain significant financial, legal, and audit oversight of any of its Key Subcontractors or Affiliates. The Contractor remains fully responsible for all services and actions performed under this Agreement. The Contractor shall submit all Key Subcontracts to the Department for its approval. The Contractor shall submit all such Key Subcontracts with no redactions to the Department before execution for its review and approval.

**5.1.1** Costs/Fees for all services required under this Agreement shall be included in the employee contributions remitted to the Contractor.

## **6. DATA SHARING AND OWNERSHIP**

**6.1.0** Upon the request of the Department, the Contractor will provide claims data to the Department in the format requested, subject to an appropriate authorization and applicable privacy laws.

**6.2.0** Notwithstanding anything to the contrary, the Contractor may use non-individually and non-State identifiable information obtained from claims data for the purposes of data compilation, statistical analysis and other studies, and the Department recognizes that such compilations, analyses and studies are the exclusive property of Contractor and may be used in any way by The Contractor.

## **7. CONFIDENTIALITY**

In addition to the Confidentiality requirements specified in Appendices A and B to this Agreement, the following provisions shall apply:

**7.1.0** The Contractor may be provided with confidential information, which may include but is not limited to, personal, private or sensitive information (such a social security numbers or home addresses), or information pertinent to an Employee or family member's personal or medical information.

**7.2.0** All claims and enrollment records relating to such confidential information and processed in accordance with the Agreement (hereinafter "Records") are confidential and subject to all applicable federal and state laws, rules and regulations regarding the limitation of disclosure

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on confidential information and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Agreement, for measuring the performance of the Contractor, and for providing the Department with material and information as may be specified elsewhere in this Agreement.

**7.3.0** Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or Federal law, or with the written consent of the Employee/family member, no Records may be otherwise used or released to any party other than the Department by the Contractor, its officers, employees, agents, consultants, subcontractors or affiliates either during the term of the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement.

**7.4.0** The Contractor, its officers, employees, agents, consultants and/or any Key Subcontractors or Affiliates agree to comply, during the performance of the Agreement, with all applicable Federal and State privacy, security and confidentiality statutes, including but not limited to the Personal Privacy Protection Law (New York Public Officer's Law Article 6-A, as amended), and its implementing regulations, policies and requirements, for all material and information obtained by the Contractor through its performance under the Agreement, with particular emphasis on such information relating to Employees;

**7.5.0** The Contractor shall be responsible for assuring that any of its officers, employees, agents, consultants and/or subcontractors or affiliates comply with the various confidentiality provisions of this Agreement; and

## **8. BREACH NOTIFICATION FOR PERSONAL INFORMATION**

### **8.1.0 *Breach Notification:***

**8.1.1 *Reporting:*** The Contractor shall report to the Department any breach of unsecured personal information. "Personal information" is defined as any information concerning a natural person which, because of name, number, symbol, mark or other identifier, can be used to identify that natural person, including any use or disclosure of the personal information other than as provided for by this Agreement, of which the Contractor becomes aware. Further, the Contractor shall report to the Department any security incident of which it becomes aware. "Security Incident" shall mean the successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the Department within five (5)

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Business Days of the date upon which the Contractor becomes aware of the Security Incident.

**8.1.2 *Required Information:*** The Contractor shall provide the following information to the Department within ten (10) Business Days of discovery except when, despite all reasonable efforts by the Contractor to obtain the information required, circumstances beyond the control of the Contractor necessitate additional time. Under such circumstances, the Contractor shall provide to the Department the following information as soon as possible and without unreasonable delay, but in no event later than twenty (20) Business Days from the date of discovery:

**8.1.2a** the date of the breach incident;

**8.1.2b** the date of the discovery of the breach;

**8.1.2c** a brief description of what happened;

**8.1.2d** a description of the types of unsecured personal information that were involved;

**8.1.2e** identification of each individual whose unsecured personal information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

**8.1.2f** A brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals and to protect against any further breaches; and

**8.1.2g** any other details necessary to complete an assessment of the risk of harm to the individual.

**8.1.3** The Contractor will be responsible for providing notification to Employees and family members whose unsecured protected personal information has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a breach.

**8.1.4** The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request; provided that such findings shall be treated as confidential by the Department

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and its officers, employees and agents to the extent permitted by State law or as ordered by a court of competent jurisdiction.

**8.1.5** For purposes of this Agreement, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on the Contractor’s firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of electronic personal information.

**8.1.6** The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of personal information by the Contractor not permitted by this Agreement.

## **9. INDEMNIFICATION**

**9.1.0 *Indemnification:*** The Contractor agrees to indemnify, defend and hold harmless the State, the Department and Department’s respective employees, officers, agents or other members of its workforce (each of the foregoing hereinafter referred to as “Indemnified Party”) against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by the Contractor or its employees, officers, subcontractors or affiliates, agents or other members of its workforce. Accordingly, the Contractor shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Contractor’s acts or omissions hereunder. The Contractor’s obligation to indemnify any Indemnified Party under this Section shall survive the expiration or termination of this Agreement.

## **10. NOTICES**

**10.1.0** All notices permitted or required hereunder shall be in writing and shall be transmitted either:

**10.1.1** via certified or registered United States mail, return receipt requested;

**10.1.2** by facsimile transmission;

**10.1.3** by personal delivery;

**10.1.4** by expedited delivery service; or

**10.1.5** by e-mail.

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Such notices shall be addressed as follows or to such different addresses as the Parties may from time-to-time designate:

**State of New York**

Name: James DeWan  
Title: Acting Director, Employee Benefits Division  
Address: Employee Benefits Division, Room 1106, Albany, NY 12239  
Telephone Number: 518-473-4106  
Facsimile Number: 518-473-3292  
E-Mail Address: James.DeWan@cs.ny.gov

[Contractor Name]

Name: (TBD)  
Title: (TBD)  
Address: (TBD)  
Telephone Number: (TBD)  
Facsimile Number: (TBD)  
E-Mail Address: (TBD)

**10.2.0** 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 facsimile transmission or email, upon receipt.

**10.3.0** 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.

**11. VENDOR RESPONSIBILITY**

**11.1.0** The Contractor is required to provide the Department with an updated Vendor Responsibility Questionnaire when requested to do so by the Department throughout the term of the Agreement. In addition, the Contractor is required to report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.

**11.2.0** The Contractor shall remain responsible during the Agreement term. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its



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continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

- 11.3.0** Suspension of Work for Non-Responsibility: The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that call into question the responsibility of the Contractor. In the event of such suspension, the Contractor must comply with the terms of the suspension order. Agreement activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.
- 11.4.0** Termination for Non-Responsibility: Upon written notice to the Contractor, a reasonable opportunity to be heard with the appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of the Department or his or her designee to be non-responsible. In such an event, the Commissioner or his or her designee may complete the requirements of the Agreement in any manner he or she may deem advisable and pursue legal or equitable remedies for breach.