

4.1 Insurance Requirements

Prior to the start of work the Offeror shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from these Specifications, 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 Contract 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.

[HealthNow New York Inc.’s Errors & Omissions carrier, TDC Specialty Insurance Co., is licensed and authorized as a “Non-Admitted” carrier in New York State. It would be subject to the referenced ELANY regulations. ELANY, however, does not attest to the financial stability of a carrier.](#)

An Offeror shall deliver to the Department evidence of the insurance required by these Specifications and any Contract resulting from these Specifications 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 these Specifications or any Contract resulting from these Specifications.

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 these Specifications.

1. General Conditions

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

- i. Coverage Types and Policy Limits. The types of coverage and policy limits required from the selected Offeror are specified in paragraph 12. Specific Coverages and Limits below.
 - ii. Policy Forms. Except as may be otherwise specifically provided herein or agreed to in any Contract resulting from these Specifications, 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 Section 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: 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 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 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.

Please note that HealthNow New York Inc.'s Hartford General Liability policy defines "insured contract" under Section V, Paragraph 12, not 9.

3. Breach for Lack of Proof of Coverage

The failure to comply with the insurance requirements 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.

HealthNow New York Inc.'s Professional Liability (E&O) and Cyber/Privacy policies have retentions (deductibles) of \$1,000,000. This will be reflected in the certificate provided once requested.

5. Subcontractors

Prior to the commencement of any work by a Subcontractor, the Offeror shall require such Subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement (ISO coverage form CG 20 38 04 13), or the equivalent, evidencing such coverage shall be provided to the Offeror prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section 4.7(11), as applicable, and shall be provided to the Department upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

6. Waiver of Subrogation

For all liability policies, 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 Contract 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.

Please note that Waiver of Subrogation does not pertain to our Professional Liability or Cyber/Privacy Liability policies so it would not apply to "all liability policies".

7. Additional Insured

The Offeror shall cause to be included in each of the liability policies 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.

Please note additional insured language cannot be included in Professional Liability 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.

9. Notice of Cancellation or Non-Renewal

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

10. Policy Renewal/Expiration

Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered

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

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

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

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

- a. Commercial General Liability

Commercial General Liability Insurance, (CGL) shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form

providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract). Policy shall include bodily injury, property damage, and broad form contractual liability coverage. The limits under such policy shall not be less than the following:

- i. Each Occurrence – \$2,000,000

Please note HealthNow New York Inc.'s General Liability policy has a \$1,000,000 per occurrence limit but we can achieve the \$2,000,000 by including our Umbrella.

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

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; and
- 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.

b. Business Automobile Liability Insurance

The Offeror shall maintain Business Automobile Liability Insurance in the amount of at least \$2,000,000 each occurrence, covering liability arising out of any automobile used in connection with performance under any Contract resulting from these Specifications, 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.

HealthNow New York Inc. confirms this can be achieved in concert with our Umbrella policy.

c. Professional Errors and Omissions Insurance

The Offeror shall maintain Professional Errors and Omissions (Professional Liability) in the amount of at least \$1,000,000 each occurrence, for claims arising out of but not limited to delay or failure in diagnosing a disease or condition and 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.

Please note HealthNow New York Inc.'s policy is written on a "claims-made" basis. Our policy has no coverage for medical malpractice.

- i. Such insurance shall include coverage of all professionals and technical personnel whose actions could be considered "professional services" arising out of the scope of services as additional named insureds.
- ii. If coverage is written on a claims-made policy, the Offeror warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under any Contract resulting from this Solicitation is completed. Written proof of this extended reporting period must be provided to the Department upon request.
- iii. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of any Contract resulting from this Solicitation.

d. Technology Errors & Omissions Insurance

The Offeror shall maintain, during the term of any Contract, Technology Errors and Omissions Insurance in the amount of at least \$10,000,000 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.

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 cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

Please note that this is not included in our Cyber/Privacy Liability policy as we are not a Technology Company.

e. Data Breach/Cyber Liability Insurance

An Offeror is required to maintain during the term of any Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance in the amount of at least \$10,000,000 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.

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

- i. Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;

- ii. Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- iii. Privacy notification costs;
- iv. Regulatory defense and penalties;
- v. Website media liability; and
- vi. Cyber theft of customer's property, including but not limited to money and securities.

Coverage for customer's property, including money and securities, is not included under our Cyber/Privacy Insurance program but is included in our Insurance Company Fidelity Bond subject to a limit of \$7,500,000 per loss.