Appendix C-1 - Contractor's Insurance Requirements

During the term of this Contract, the Contractor shall maintain in force, at its sole cost and expense policies of insurance as required by this section. All insurance required by this section shall be 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 should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. ITS 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.

Acceptance and/or approval by ITS does not, and shall not be construed to, relieve the Contractor of any obligations, responsibilities or liabilities under this Contract.

The Contractor 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 the Contract.

A. General Conditions Applicable to Insurance. All policies of insurance required by this section shall comply with the following requirements:

1. ***Coverage Types and Policy Limits.*** The types of coverage and policy limits required from the Contractor are specified in Section B-*Insurance Requirements.*

2. ***Policy Forms.*** Except as otherwise specifically provided herein, or agreed to in the Contract, all policies of insurance required by this section shall be written on an occurrence basis.

3. ***Certificate of Insurance/Notices.*** The Contractor shall provide ITS with a Certificate or Certificates of Insurance, in a form satisfactory to ITS (e.g., an ACORD certificate), after renewal or upon request. Certificates shall reference the Contract number and shall name the New York State Office of Information Technology Services, Empire State Plaza, Swan Street, Core 4, Albany New York, 12220 as the certificate holder.

   Certificates of Insurance shall:

   - Be in the form acceptable to ITS and in accordance with the New York State Insurance Law (e.g., an ACORD Certificate);
   - Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Contract;
   - Refer to this Contract by number;
   - Be signed by an authorized representative of the referenced insurance carriers; and
   - Contain the following language in the Description of Operations / Locations / Vehicles section: The State of New York, the New York State Office of Information Technology Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage, such as the combination of CG 20 10 04 13 (covering ongoing operations) and CG 20 37 04 13 (covering completed operations)), and General liability coverage is provided on the current edition of Commercial General Liability Coverage Form CG 00 01 (or a form that provides equivalent coverage). Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (Certificates 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.

Except for (i) Data Breach and Privacy/Cyber Liability coverage, (ii) Technology Errors and Omissions, and (iii) Crime insurance coverages, ITS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although ITS reserves the right to request other proof of insurance. Contractors are requested to refrain from submitting entire insurance policies, unless specifically requested by ITS. If an entire insurance policy is submitted but not requested, ITS 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 ITS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. ***Forms and Endorsements.*** For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Contractor shall provide ITS, after renewal or upon request, with a Schedule of Forms and Endorsements and, upon request, all Forms and Endorsements, unless otherwise agreed to in the Contract. The Forms and Endorsements shall provide evidence of compliance with the requirements of this Contract. Only original documents 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.

5. ***Primary Coverage.*** All **liability** insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State, ITS, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the State, ITS, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

6. ***Breach for Lack of Proof of Coverage.*** The failure to comply with the requirements of this section at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the State, ITS, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

7. ***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 ITS. Such approval shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions. If the Contractor 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.

8. ***Subcontractors.*** Prior to the commencement of any work by a subcontractor, the Contractor 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.

9. ***Waiver of Subrogation.*** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the State, ITS, and any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be

provided to ITS upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

10. ***Additional Insured.*** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor (and subcontractor, if applicable) shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insureds: The State of New York, the New York State Office of Information Technology Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to ITS after renewal and/or upon request. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Contractor would have been required to pursuant to this section had Contractor obtained such insurance policies.

11. ***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 after renewal and/or upon request.

12. ***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 Contractor shall provide ITS 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 Contract.

13. ***Policy Renewal/Expiration.*** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Contract shall be delivered to ITS. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to ITS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by ITS.

14. ***Deadlines for Providing Insurance Documents after Renewal or Upon Request.*** As set forth herein, certain insurance documents must be provided to the ITS Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to ITS as soon as possible but in no event later than the following time periods:

    - For certificates of insurance: 5 business days
    - For information on self-insurance or self-retention programs: 15 calendar days
    - For additional insured and waiver of subrogation endorsements: 30 calendar days
    - For schedules of forms and endorsements and all forms and endorsements: 60 calendar days

    Notwithstanding the foregoing, if the Contractor 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 ITS, ITS shall extend the time

period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. ***Insurance Requirements:*** Throughout the term of this Contract, the Contractor shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater.

1. **Commercial General Liability Insurance:** Commercial General Liability Insurance with a limit of not less than $2,000,000 each occurrence. Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage.

• General Aggregate	$2,000,000
• Products – Completed Operations Aggregate	$2,000,000
• Personal and Advertising Injury	$1,000,000
• Each Occurrence	$2,000,000
• Damage to Rented Premises	$50,000
• Medical Expenses	$5,000

Aggregate limits shall apply on a per location basis, or as otherwise agreed to in the Contract. This aggregate limit applies separately to each location at which the insured works.

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

- Bodily injury;
- Premises operations;
- Independent contractors;
- Products-completed operations;
- Broad form property damage;
- Personal & advertising injury;
- Blanket contractual liability, including tort liability of another assumed in any Contract resulting from this Solicitation;
- Defense and/or indemnification obligations, including obligations assumed under this Contract;
- Cross liability for additional insureds; and
- Explosion, collapse and underground hazards.

2. ***Comprehensive Business Automobile Liability Insurance*** covering liability arising out of any automobile used in connection with performance under the 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. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least $2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.

   In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Comprehensive 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 ITS. 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 Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to ITS in accordance with the insurance requirements of the Contract.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Comprehensive Business Automobile Liability Insurance as required by this Contract, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by ITS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to ITS in accordance with the insurance requirements of the Contract.

3. ***Data Breach and Privacy/Cyber Liability:*** Contractors are required to maintain during the term of this Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Authorized Users' systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data. Said insurance shall be maintained in the following limits, as applicable:

Data Breach and Privacy/Cyber Liability		
Software		$1,000,000
Hardware		$1,000,000
Cloud *	Low Risk	$2,000,000
	Moderate Risk	$5,000,000
	High Risk	$10,000,000
Implementation		$1,000,000
* See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories. Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.		

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

If the policy is written on a claims made basis, Contractor must submit to ITS an Endorsement providing 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.

4. ***Technology Errors and Omissions:*** Contractors are required to maintain during the term of the Contract and as otherwise required herein, Technology Errors and Omissions Insurance. Said insurance shall be maintained in the following limits, as applicable:

Technology Errors and Omissions		
Software		$1,000,000
Hardware		$1,000,000
Cloud *	Low Risk	$2,000,000
	Moderate Risk	$5,000,000
	High Risk	$10,000,000
Implementation		$1,000,000
*See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories. Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.		

Said insurance shall provide coverage for damages arising from computer related services including but not limited to the following:

1. Consulting;
2. Data processing;
3. Programming;
4. System integration;
5. Hardware or software development;
6. Installation;
7. Distribution or maintenance;
8. Systems analysis or design;
9. Training;
10. Staffing or other support services; and
11. Manufactured, distributed, licensed, marketed or sold cloud computing services.

The policy shall include coverage for third party fidelity including cyber theft.

If the policy is written on a claims made basis, Contractor must submit to ITS an Endorsement providing 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.

5. ***Crime Insurance:*** Contractors are required to maintain during the term of the Contract and as otherwise required herein, Crime Insurance. Said insurance shall be maintained in the following limits:

Crime Insurance		
Software		$2,000,000
Hardware		$2,000,000
Cloud *	Low Risk	$2,000,000

	Moderate Risk	$5,000,000
	High Risk	$10,000,000
Implementation		$2,000,000
*See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories. Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.		

Crime Insurance on a "loss sustained form" or "loss discovered form" must provide coverage for Third Party Fidelity.

In addition to the coverage above:

- 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 Vendor's and Contractor's insurer as a result of this Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Vendor and Contractor as a result of this Contract.
- The policy shall include coverage for third party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the State of New York, the New York State Office of Information Technology Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees as "Loss Payees" for all Third Party coverage secured. An Endorsement naming as Loss Payees "The State of New York, the New York State Office of Information Technology Services, any entity authorized by law or regulation to use this Contract and their officers, agents and employees" shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

6. ***Workers' Compensation Insurance & Disability Benefits Coverage:*** 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 any contract renewal.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to ITS at the time of 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.**

   Proof of Compliance with the Workers' Compensation Coverage Requirements:

   - Form 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*, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov);

- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to ITS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to ITS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

- Form 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*, which is available on the New York State Workers' Compensation Board's website (www.wcb.ny.gov);
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to ITS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, http://www.wcb.ny.gov. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

~~***7. Environmental Liability:*** The Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the Contract, and for two years after completion hereof, pollution legal liability insurance with limits of not less than $2,000,000.00, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against ITS arising from the Contractor's work. The State of New York and ITS shall be named as additional insureds and coverage shall be primary.~~

~~This requirement applies to mold as well, if excluded in the Commercial General Liability policy.~~

~~If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48 03 06 or CA 01 12 03 06) as well as proof of MCS 90.~~