Competitive Procurement for:

IFB-2017-091WJ-ONSITE CONFIDENTIAL DATA DESTRUCTION

Procurement Website: http://www.its.ny.gov/competitive-procurement-opportunities

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**DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS**

Dennis Quinn  
Contract Manager

IFB related questions must be submitted via electronic mail using the Vendor Questions Form (Attachment 1) to the designated contact for this IFB at its.sm.ITS_BIDS@its.ny.gov

No other method of inquires will be accepted. Administrative issues pertaining to sending/receiving email through the designated mailbox may be reported at (518) 402-0171.

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**ITS ADDRESS FOR PROPOSAL DELIVERIES**

- **Address to:**
  NYS OFFICE OF INFORMATION TECHNOLOGY SERVICES  
  PROCUREMENT AND CONTRACT SUPPORT UNIT

  **If US Post Office standard and US Post Office overnight mail, use:**
  ATTENTION: Dennis Quinn, PO BOX 2062, ALBANY, NY 12220

  **If UPS and FedEx express delivery overnight and ground service, use:**
  ATTENTION: Dennis Quinn, EMPIRE STATE PLAZA, SWAN STREET BUILDING, CORE 4, ALBANY, NY 12223

  **If Hand Delivery to front desk:**
  ATTENTION: Dennis Quinn, EMPIRE STATE PLAZA, SWAN STREET BUILDING, CORE 4, 1ST FLOOR LOBBY, ALBANY, NY 12223
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1. Introduction

1.1 Overview

The New York State Office of Information Technology Services (hereinafter "ITS" or "State") is requesting on-site destruction and sanitization of hard drives, thumb drives, personal digital assistants (PDA’s), magnetic tapes, magnetic disks, floppies, optical media and other media types.

Refer to “Section 4 - Scope of Work” for the specific requirements.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Dennis Quinn, ITS, Procurement and Contract Support has been designated the PRIMARY contact for this procurement solicitation and may be reached by email or voice for all inquiries regarding this solicitation.

Dennis Quinn, Contract Manager
NYS Office Information Technology Services – Procurement and Contract Support
P.O. Box 2062
Albany, New York 12220
Email: its.sm.ITS_bids@its.ny.gov

In the event the designated contact is not available, the ALTERNATE designated contacts are:

Warren Joscelyn, Contract Manager
NYS Office Information Technology Services – Procurement and Contract Support
P.O. Box 2062
Albany, New York 12220
Email: its.sm.ITS_bids@its.ny.gov

1.3 Minimum Bidder Qualifications

The following qualifications are considered a prerequisite to qualify to bid on this solicitation.

a. Bidders must maintain an organization which has been in continuous operation for at least one (1) year in the business of onsite confidential data destruction including, but not necessarily limited to, hard drive shredding and/or optical media destruction service.

b. Bidders must attest that they can meet a 15 business day or less onsite response time for service requests. Available service times are Monday –Friday, time range generally 9 a.m. to 5 p.m. Locations will be primarily located in and around Albany, NY, however additional on-site shredding may be needed in other locations of the state (Note: Other locations in NY State will be minimal).
c. Bidder must be a licensed Document Destruction Contractor by the New York State Department of State.


The State reserves the right to require the submittal of any documentation as it deems necessary in its sole discretion to verify a Bidder’s satisfaction of the minimum qualifications.

### 1.4 Key Events

The Table on the following page outlines the tentative schedule for important action dates.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>IFB Release Date</td>
<td>Monday, May 15, 2017</td>
</tr>
<tr>
<td>Deadline for Submission of Vendor Questions</td>
<td>May 31, 2017 4:00 P.M.</td>
</tr>
<tr>
<td>Issuance of Response to Submitted Questions</td>
<td>June 8, 2017</td>
</tr>
<tr>
<td><strong>BID DUE DATE</strong></td>
<td>June 15, 2017 4:00P.M.</td>
</tr>
<tr>
<td>Anticipated Notification of Award</td>
<td>July 14, 2017</td>
</tr>
<tr>
<td>Debriefing Request Deadline</td>
<td>No later than 15 calendar days from date of award announcement</td>
</tr>
<tr>
<td>Timeframe for Contract Negotiations</td>
<td>15 calendar days from date of award announcement</td>
</tr>
<tr>
<td>Timeframe for Contract Approval; Contract to Begin</td>
<td>Upon OSC approval</td>
</tr>
</tbody>
</table>
1.5 Glossary of Terms

“Issuing Office” shall mean the Office of Information Technology Services.

“Contractor” shall mean a successful company awarded a contract pursuant to this IFB.

“Invitation for Bid” or “IFB” shall mean this document.

The “State” shall mean The People of the State of New York, which shall also mean the New York State Office of Information Technology Services.

“CIO” shall mean the Chief Information Officer or duly authorized representative.

“Offeror”, “Proposer”, or “Bidder” shall mean any person, partnership, firm, corporation or other authorized entity submitting a bid to the State pursuant to this IFB.

END OF INTRODUCTION SECTION
2. Bid Submission

2.1 IFB Questions and Clarifications

Questions and requests for clarification regarding this IFB shall only be directed in writing to:

Dennis Quinn

ITS NYS Office Information Technology Services
Finance – Procurement and Contract Support
Swan Street Building, Core 4, Floor 2

e-mail: its.sm.ITS_BIDS@its.ny.gov

Administrative issues pertaining to sending/receiving email through the designated mailbox may be reported at (518) 402-0171.

Questions and requests for clarification are only accepted via e-mail or in writing. Official answers to questions will be provided via addendum. Bid addenda will be provided via e-mail to all Bidders.

Deadline for submission of questions will be as stated in Section 1.4 (Key Events). Any questions received after the due date and time in Section 1.4 (Key Events) will not be addressed.

2.2 Bid Format and Content

In order for the State to evaluate bids fairly and completely, bidders must follow the format set forth herein and must provide all of the information requested. All items identified in the following list must be addressed as concisely as possible in order for a bid to be considered complete. Failure to conform to the stated requirements may necessitate rejection of the bid.

1. **Cover Letter.** The cover letter must confirm that the bidder understands all the terms and conditions contained in this IFB and will comply with all the provisions of this IFB. Further, should the contract be awarded to your company, you must state that would be prepared to begin services following approval by the NYS Office of the State Comptroller. The cover letter must include:
   a. Full contact information of the person(s) ITS shall contact regarding the bid.
   b. Name(s) of principal(s) of the company responsible for this contract, their function, title and number of years of service with company.
   c. Must be signed by a bidder representative authorized to make contractual obligations.

2. **Qualifications**
   a. Information confirming the minimum qualifications in Section 1.3 are met.

3. **Pricing. Attachment 10 - Bid Proposal Form.**

4. All other required completed forms from Attachments (2-14)
Important Notes:

a. Document Consistency - An award will only be made to the entity which has submitted the bid. All submitted documents must be consistent with official name of bidding entity, FEIN and NYS Vendor ID number.

b. Bidders are reminded of the vendor responsibility requirement as described in Section 5.14, and are requested to complete the online questionnaire prior to bid submission. If the vendor has previously certified responsibility online, it shall ensure that the questionnaire was recertified in the last 6 months.

c. Bidders are reminded of the Contractor’s Insurance Requirements - Appendix C-1. Prior to the commencement of the work to be performed by the awarded Contractor hereunder, the awarded Contractor shall file with The People of the State of New York, Office of Information Technology Services (hereinafter referred to as “ITS”), Certificates of Insurance (hereinafter referred to as “Certificates”), evidencing compliance with all requirements contained in Appendix C-1.

d. EEO Requirements- Proposers are reminded of the requirements as described in Section 5.17.

e. A bidder shall be registered with the NYS Department of State as an entity authorized to conduct business in New York State.

f. Bidders are reminded that access to ITS site locations are restricted. Bidder’s personnel shall be escorted by ITS staff when at such sites

Note: ITS reserves the right to request any additional information deemed necessary to ensure that the bidder is able to fulfill the requirements of the contract.

2.3 Bid Preparation

All bids must be completed in ink or machine produced. Bids submitted handwritten in pencil will be disqualified.

2.4 Packaging of IFB Response

Please submit four (4) originals of the Bid Proposal Form (Attachment 10) along with four (4) Originals of documents listed in this IFB; four (4) Originals of information listed in Section 2.2 items 1 and 2, and four (4) original signed bid addenda, if applicable.

The bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- Bidder's complete name and address
- Solicitation Number – ITS-IFB-2017-091WJ (this document)
- Bid Due Date and Time: (as indicated in Section 1.4, Key Events)
- Bid for Onsite Confidential Data Destruction, Albany, NY

Failure to complete all information on the bid envelope and / or packages may necessitate the premature opening of the bid and may compromise confidentiality.
2.5 Instructions for Bid Submission

Only those Bidders who furnish all required information and meet the mandatory requirements will be considered.

Submit all required bid documents to ITS at the following address:

<table>
<thead>
<tr>
<th>Method of Submission</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>US Post Office Mailings</td>
<td>ITS NYS Office Information Technology Services</td>
</tr>
<tr>
<td></td>
<td>PO Box 2062, Albany, NY 12220</td>
</tr>
<tr>
<td></td>
<td><strong>Attn:</strong> Dennis Quinn</td>
</tr>
<tr>
<td></td>
<td><strong>Bid # ITS-IFB-2017-091WJ</strong></td>
</tr>
<tr>
<td>UPS and FedEx express delivery overnight and ground service</td>
<td>ITS NYS Office Information Technology Services</td>
</tr>
<tr>
<td></td>
<td>Finance – Procurement and Contract Support</td>
</tr>
<tr>
<td></td>
<td>Empire State Plaza, Swan Street Building, Core 4</td>
</tr>
<tr>
<td></td>
<td>Albany, NY 12223</td>
</tr>
<tr>
<td></td>
<td><strong>Attn:</strong> Dennis Quinn</td>
</tr>
<tr>
<td></td>
<td><strong>Bid # ITS-IFB-2017-091WJ</strong></td>
</tr>
<tr>
<td>Hand Deliveries to Front Desk</td>
<td>ITS NYS Office Information Technology Services</td>
</tr>
<tr>
<td></td>
<td>Finance – Procurement and Contract Support</td>
</tr>
<tr>
<td></td>
<td>Empire State Plaza, Swan Street Building, Core 4</td>
</tr>
<tr>
<td></td>
<td>Core 4, First Floor Lobby</td>
</tr>
<tr>
<td></td>
<td>Albany, NY 12223</td>
</tr>
<tr>
<td></td>
<td><strong>Attn:</strong> Dennis Quinn</td>
</tr>
<tr>
<td></td>
<td><strong>Bid # ITS-IFB-2017-091WJ</strong></td>
</tr>
</tbody>
</table>

**E-MAIL OR FAX BID SUBMISSIONS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED.**

Bids must be received in the above office on or before **4:00 PM on the date indicated in Section 1.4 (Key Events).**

The received time of bids will be determined by the clock at the above noted location.

**NO CONSIDERATION WILL BE GIVEN TO BIDS RECEIVED AFTER THE STATED DATE AND TIME.**

Bidders mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the bidding entity shall not excuse late bid submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and building admittance shall not excuse late bid submissions.
To access the ITS office building, all visitors must present photo identification at the Security Desk and comply with other requirements. Bidders who intend to hand-deliver Proposals or utilize independent courier services should allow extra time to comply with these procedures. Bidders hand-delivering their Proposals should ask the security personnel at the security desk to call the Designated Contact(s) indicated in this IFB or the Procurement and Contracts Support Unit. Building Access procedures may change or be modified at any time. Bidders assume all risks for timely, properly submitted hand deliveries.

Bids must remain open and valid for 180 days from the due date, unless the time for awarding the contract is extended by mutual consent of ITS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 180 day period until either tentative award of the contract(s) by the Issuing Office is made or withdrawal of the bid in writing by Bidder. Tentative award of the contract(s) shall consist of written notice to that effect by the Issuing Office to the successful Bidder. This IFB remains the property of the State at all times, and all responses to this IFB, once delivered, become the property of the State.

END OF BID SUBMISSION SECTION
3. Administrative Information

3.1 Issuing Office
This IFB is being released by the New York State Office of Information Technology Services.

3.2 Method of Award
Award shall be made to the vendor who has the lowest responsive and responsible bid based on the grand total on Attachment 10 - Bid Proposal Form. The Grand Total bid amount of the successful bidder shall be used to establish the contract value. The established contract value shall not be exceeded.

3.3 Price
The Bid amounts shall be inclusive of all costs including administrative, delivery, profit and other ancillary costs. Bidders must submit pricing using the Bid Proposal Form (Attachment 10) contained in this document. Any changes made to the Bid Proposal Form may result in rejection of the bid. Bidders must provide pricing for all items on the Bid Proposal Form. Prices bid shall be firm for the term of the contract regardless of actual usage. Travel to and from the Capital Region is included in the pricing proposed on the Bid Proposal Form (Attachment 10). Travel to locations more than 35 miles from Albany, NY, will be reimbursable for actual mileage utilizing the applicable mileage reimbursement rates.

The contractor agrees that from the effective date of the contract until contract termination, the rates charged by the contractor and paid for by ITS will be equal to or lower than any rates provided by the contractor to other clients for like services.

3.4 Term of Contract
This contract will commence upon OSC approval, and will be in effect for three (3) years with the option of two (2) one (1) year extensions.

The State of New York retains the right to cancel this contract for convenience, provided that the Contractor is given at least Sixty (60) days written notice of ITS’ intent to cancel. Any cancellation by ITS under this section shall in no event constitute or be deemed a breach of any contract resulting from this IFB and no liability shall be incurred by or arise against ITS, its agents and employees therefore for lost profits or any other damages resulting there from. This provision should not be understood as waiving the State’s right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. See “Section 5.12 – Termination”.

3.5 Method of Payment
Invoices for payment shall be submitted no more frequently than monthly, commencing one month after services rendered.

Invoices will be processed in accordance with established procedures of ITS and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law. Each invoice must contain the Contract ID number (i.e.: C00XXXX).
Invoices without the above stated information will be returned to Contractor to be completed. Payment will not be due or owing until a corrected invoice is received and approved by ITS.

All invoices must be submitted for payment to either:

accountspayable@ogs.ny.gov

Email submission of invoices is strongly suggested.

Or

NYS Office of Information Technology Services
c/o NYS OGS BCS Accounts Payable
Building 5, 5th Floor
1220 Washington Avenue
Albany, New York 12226-1900

END ADMINISTRATION SECTION
4. Scope of Work

4.1 Onsite Confidential Data Destruction

4.1.1 Overview

The NYS Office of Information Technology Services (ITS) is requesting services for on-site hard drive and other media destruction generally in Albany, NY.

Bidders shall consider the following:

A. Total amount of media to be destroyed immediately is estimated at a quantity of 5,200 items and includes hard disk, thumb drives, personal digital assistants (PDAs), tapes and optical media.

B. It is anticipated that a minimum of 100 hard drives or 100 tapes will be destroyed at any 1 of these sites during any 1 visit.

C. Destruction shall be witnessed by a designated ITS employee.

D. The destruction shall occur on an as needed basis.

E. The location for destruction will be primarily centralized to Albany, NY, however, additional on-site shredding may be needed in other locations of the State. (Note: Areas outside of Albany, NY are expected to be minimal)

Note: Please see Section 3.3 Price.

4.1.2 General Specifications

The contractor’s equipment must be onsite and be able to provide the following destruction services when servicing NYS ITS:

A. Hard drive, SCSI Solid State/ATA solid State/eSATA destruction via shred, disintegrate, pulverize to NIST 800.88 Standard. Hard drives may have cases still attached and the contractor will be responsible for removal as needed.

B. The contractor shall utilize a method of sanitizing media, defined as the act of cutting or tearing into small particles. Also the method of destruction shall render the target data recovery infeasible, utilizing state of the art laboratory techniques and resultant in the subsequent inability to use the media for storage of data.

C. The contractor shall conduct optical media destruction (CD, DVD, BD) to NIST 800.88 standard.

D. The contractor will use optical disk media shredders or disintegrator devices to reduce to particles that have nominal edge dimensions of 0.5 mm and surface area of 0.25 mm2 or smaller.

E. The contractor will destroy reel & cassette format magnetic tapes, magnetic disks and floppies.

F. Combustion engines shall not be kept running in the loading dock area or near an inhabited building due to the exhaust/fumes.

G. A certificate document will be provided at the time of service completion and the certificate should record at least the following details:
For Destruction; Name of Person, Position/Title of Person, Date, Location, Phone or Other Contact, Signature, Serial Number (when available on media); Media Type (i.e., tape, hard drive, CD, etc.) and count of media destroyed by type.

END SCOPE OF WORK SECTION
5. Contract Clauses and Requirements

5.1 General Requirements

1. The Bidder agrees to adhere to all State and Federal laws and regulations in connection with the contract.

2. The Bidder agrees to notify ITS of any changes in the legal status or principal ownership of the firm, forty-five (45) days in advance of said change.

3. The Bidder agrees that in any contract resulting from this IFB it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.

4. The Bidder agrees that any contract resulting from this IFB may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the Director of ITS.

5. For reasons of safety and public policy, in any contract resulting from this IFB, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

6. For purposes of any contract resulting from this IFB, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

7. The Director of ITS’s interpretation of specifications shall be final and binding upon the Contractor.

8. The Director of ITS will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.

9. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with the Director of ITS.

10. INSPECTION – For purposes of any contract(s) resulting from this IFB, the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, the Director of ITS may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.

11. STOP WORK ORDER - The Director of ITS reserves the right to stop the work covered by this IFB and any contract(s) resulting therefrom at any time that it is deemed the successful Bidder is unable or incapable of performing the work to the State’s satisfaction. In the event of such stopping, ITS shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the successful Bidder shall be liable to the State of New York for any such costs on account thereof. In the event that ITS issues a stop work order for the work as provided herein, the Contractor shall have ten (10) business days to respond thereto before any such stop work order shall become effective.

12. It is the Contractor’s responsibility to maintain the equipment and materials provided for the work consistent with applicable safety and health codes.
13. ITS reserves the right to reject and bar from the facility any employee hired by the Contractor.

5.2 Contract Terms

All provisions and requirements of Appendix A Standard Clauses for New York State Contracts, which is attached hereto and forms a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.

All provisions and requirements, which are attached hereto and form a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.

It is stipulated and agreed by the parties that the laws of the State of New York shall solely and in all respects govern with relation to any dispute, litigation, or interpretation arising out of or connected with any contract resulting from this IFB.

Any contract resulting from this IFB shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the Comptroller of the State of New York, if applicable.

5.3 Subcontractors

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation and the contract resulting from the solicitation. When bidding, any known / planned use of subcontractors must be disclosed in detail with bid submission. If subcontractors are to be used for base scope services, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this IFB or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor/subcontractor’s employee(s) who carry out any of the provisions of any contract resulting from this IFB.

The Contractor’s use of subcontractors shall not diminish the Contractor’s obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the contract documents.

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the Director of ITS or their designee, Empire State Plaza, P.O. Box 2062, Albany, New York 12220-0062, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as the Director, or their designee, may require concerning the proposed subcontractor’s ability and qualifications.

5.4 Debriefings

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing., ITS shall, upon request, provide a debriefing to any bidder that responded to the IFB, regarding the reason that the bid or bid submitted
by the unsuccessful bidder was not selected for a contract award. The debriefing should be requested by the bidder within fifteen (15) calendar days of notification by ITS that the Bid submitted by the Bidder was unsuccessful.

5.5 Right to Know

In accordance with the New York State Toxic Substance Act (Right-to-Know Law) and the United States Occupational Safety and Health Administration’s Hazard Communication Standard, ITS has established and implemented a Right-to-Know/Hazard Communication Program. It is the policy of ITS to provide information and training to advise employees of potentially hazardous substances known to be in the workplace. Part of this information is a collection of Material Safety Data Sheets for all chemicals used at State Office Buildings by contract vendors. Before any chemical product is used on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Facility Manager before the chemical is applied.

5.6 Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

5.7 Mercury-Added Consumer Products

Bidders are advised that effective January 1, 2005, Article 27, Title 21 of the Environmental Conservation Law bans the sale or distribution free of charge of fever thermometers containing mercury except by prescription written by a physician and bans the sale or distribution free of charge of elemental mercury other than for medical pre-encapsulated dental amalgam, research, or manufacturing purposes due to the hazardous waste concerns of mercury. The law further states that effective July 12, 2005, manufacturers are required to label mercury-added consumer products that are sold or offered for sale in New York State by a distributor or retailer. The label is intended to inform consumers of the
presence of mercury in such products and of the proper disposal or recycling of mercury-added consumer products. Offerors are encouraged to contact the Department of Environmental Conservation, Bureau of Solid Waste, Reduction & Recycling at (518) 402-8705 or the Bureau of Hazardous Waste Regulation at 1-800-462-6553 for questions relating to the law. Offerors may also visit the Department's web site for additional information:

http://www.dec.ny.gov/chemical/41186.html

5.8 Diesel Emissions

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the “Law”). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law (“NYECL”) it is now a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. They need to be operated exclusively on ULSD by February 12, 2007. It also requires that such vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

As a contract vendor the Law may be applicable to vehicles used by contract vendors “on behalf of” State agencies and public authorities. Thirty-three percent (33%) of affected vehicles must have BART by December 31, 2008, sixty-six percent (66%) by December 31, 2009 and one-hundred percent (100%) by December 31, 2010. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State.

The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, the bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder.

5.9 Past Practice

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of this Agreement shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived. No waiver of any breach of the Agreement at any time in the past shall constitute a waiver of subsequent breach.

5.10 Examination of Contract Documents

A. Each Bidder is under an affirmative duty to inform itself by personal examination of the specifications of the proposed work and by such other means as it may select, of the character, quality and extent of the work to be performed and the conditions under which the contract is to be executed.
B. Each Bidder shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the contract will be accepted by the state as an excuse for any failure or omission on the part of the Bidder to fulfill every detail of all the requirements of the documents governing the work. The Bidder, if awarded the contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such Bidder might have fully informed itself prior to bidding.

C. Any addendum issued prior to the bid due date must be acknowledged by signature, dated and be submitted on or before the bid due date. In awarding a contract any written addenda will become a part thereof.

Any verbal information obtained from, or statements made by, representatives of ITS shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, shall become a part of the contract.

5.11 Integration, Merger and Order of Precedence

The Contract shall be comprised solely of the following documents

a. The Contract, Appendix C “ITS Standard Contract Clauses,” and any amendments thereto or clarifying documents, if any, setting forth the final agreement between the Parties;

b. Appendix A. “Standard Clauses for all NYS Contracts;”

c. Appendix B. “New York State Office of General Services: General Specifications;”

d. The Invitation for Bids; and

e. Contractor’s Proposal

In the event of an inconsistency in or conflict among the documents, such inconsistency or conflict shall be resolved by giving precedence to the documents in the order indicated:

1. Appendix A. “Standard Clauses for all NYS Contracts;”

2. Any amendments to the Contract;

3. The Contract, Appendix C “ITS Standard Contract Clauses,” and any amendments thereto or clarifying documents, if any, setting forth the final agreement between the Parties;

4. Appendix B;

5. The Invitation for Bids; and


Only documents expressly enumerated above shall be deemed a part of the Contract, and references contained in those documents to additional Contractor documents not enumerated above, shall be of no force and effect.

All prior agreements, representations, statements, negotiations, and undertakings are superseded. All statements made by the State shall be deemed to be representations and not warranties.

The terms, provisions, representations, and warranties contained in the Contract shall survive performance hereunder.
5.12 Termination

A. Termination

ITS may, upon thirty (30) days’ notice, terminate the contract resulting from this solicitation in the event of the awarded Bidder’s failure to comply with any of the proposal’s requirements unless the awarded Bidder obtained a waiver of the requirement.

In addition, ITS may also terminate any contract resulting from this solicitation upon ten (10) days written notice if the Contractor makes any arrangement or assignment for the benefit of the creditors.

Furthermore, ITS shall have the right, in its sole discretion, at any time to terminate a contract resulting from this solicitation, or any unit portion thereof, with or without cause, by giving Sixty (60) days written notice of termination to the Contractor.

Any termination by ITS under this Section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against ITS, its agents and/or employees therefore for lost profits or any other damages.

B. Procurement Lobbying Termination

ITS reserves the right to terminate this Contract in the event it is found that the certification filed by the Contractor in accordance with the New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, ITS may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

5.13 Contractor Responsibility

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Director of ITS or her 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.

The Director of ITS or her designee, in her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Director of ITS or her designee issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate ITS officials or staff, the Contract may be terminated by the Director of ITS or her designee at the Contractor’s expense where the Contractor is determined by the Director of ITS or her designee to be non-responsible. In such event, Director of ITS or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.
5.14 New York State Vendor Responsibility Questionnaire for Profit Business Entity

The State conducts a review of prospective contractors (“Bidders”) and Subcontractors with anticipated expenditures at $100K or more to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter “Questionnaire”) is used for non-construction contracts and is designed to provide information to assess a Bidder’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Bidder is responsible and that the State will be relying upon the Bidder’s responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

The State recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller’s (OSC) website, http://www.osc.state.ny.us/vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at https://portal.osc.state.ny.us. Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

5.15 Procurement Lobbying Requirement

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between ITS and a Proposer during the procurement process. A Proposer is restricted from making contacts from the earliest notice of intent to solicit bids through final award and approval of the contract by ITS 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). Designated staff, as of the date hereof, is identified on the first page of this solicitation. ITS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Proposer pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the Proposer is debarred from obtaining governmental contracts. Further information about these requirements can be found on the ITS website:

http://www.ITS.state.ny.us/aboutITS/regulations/defaultAdvisoryCouncil.html

5.16 Indemnification

Neither party shall be liable for any delay nor failure in performance resulting from a Force Majeure Event, as defined in Appendix C. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the Contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors, if any, and shall fully indemnify and save harmless the State and ITS from suits, actions, damages and costs of every name and description
relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, 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 and against any and all damages, expenses (including reasonable attorneys’ fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or other third party proprietary right in relation to the Products furnished or utilized, 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 its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Director shall require. This paragraph shall not apply to that portion of any infringement claim which results from a material modification by ITS, without Contractor’s approval, of any Product provided by Contractor pursuant to this Contract.

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being “without limitation,” and regardless of the basis on which the claim is made, Contractor’s liability under the Contract for direct damages shall be limited to the greater of the following: (i) $1,000,000 or (ii) two (2) times the amounts paid to the Contractor under the Contract during the 12 months of the contract term which precede 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 to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the Party has been advised of the possibility of such damages. Neither Party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State may, in addition to other remedies at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against the State.

The State does not agree to any indemnification provisions that require the State to indemnify or save harmless Contractor or third parties.
5.17 MWBE and EEO Requirements

Portions of the following provisions may not apply where the contract goals for MWBE participation is set at 0%.

New York State Law

ITS is obligated under New York State Executive Law Article 15-A and 5 NYCRR 140-145 to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises (MWBEs) and the employment of minority group members and women in the performance of its contracts.

In 2006, the State commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ITS establishes goals for maximum feasible participation of State Certified minority- and women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ITS hereby establishes an overall contract goal of 30% for MWBE participation: 15% for State certified minority-owned business enterprises (“MBE”) participation and 15% for State certified women-owned business enterprises (“WBE”) participation.

Equal Employment Opportunity Requirements

Bidders (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, must undertake or continue programs to ensure that minority group members and women are afforded equal employment 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.

Bidders must submit Equal Employment Opportunity Policy Statement, Form # 4, to ITS with their bid/proposal.

For Contracts with a value in excess of $250,000, Bidders must also submit an Equal Employment Opportunity Staffing Plan (Form EEO 100) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report to ITS identifying the workforce actually utilized on the Contract, if known.

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, or prior criminal conviction and prior arrest.

Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

5.18 Security, Non-Disclosure/Confidentiality, Press Releases

The Contract may be terminated by the State for cause for a material breach of this section by Contractor.

1. Security Procedures

   Contractor shall comply fully with all security procedures and policies of the State, including but not limited to fingerprinting and background check procedures, which are communicated to the Contractor by the State during the performance of the Contract.

2. Nondisclosure & 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. For purposes of the Contract, all State information of which Contractor, its officers, agents, employees, and subcontractors, if any, becomes aware during the course of performing services for the State shall be deemed to be Confidential Information (oral, auditory, visual, written, printed, copied, or recorded). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

   1. information that is previously rightfully known to the receiving party without restriction on disclosure;

   2. 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

   3. information that is independently developed by Contractor without use of Confidential Information of the State.

   Contractor shall indemnify, save and hold harmless, and defend the State from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such Confidential Information.

   Contractor employees and subcontractors shall be required to sign Confidentiality and Non-Disclosure Agreements either before or upon arrival at the work site or prior to providing services under the Contract.

3. Press Releases

   Contractor agrees that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding the Contract shall be disseminated in any way to the public, nor shall any presentation be given regarding the Contract without the prior written approval by the Director of ITS or his/her designee, which written approval shall not be unreasonably withheld or delayed provided, however, that
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.

4. Federal or State Requirements

Contractor will comply with Federal and State law and regulations regarding personal, private and sensitive data.

In the event that it becomes necessary for Contractor to receive Confidential Information, which Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees to return or destroy all such Confidential Information that has been received from the State when the purpose that necessitated its receipt by Contractor has been completed. In addition, Contractor agrees not to retain any Confidential Information which Federal or State statute or regulation prohibits from disclosure after termination of the Contract.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify the State accordingly. Contractor agrees that it will 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 State the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information of any State Agency information directly to that Agency. The State may terminate the Contract if it determines that Contractor has violated a material term of this section. The terms of this section shall apply equally to Contractor, its officers, agents, employees, and subcontractors, if any. Contractor agrees that all subcontractors, if any and agents shall be made aware of and shall agree to the terms of this section.

5. Off Shore restrictions

Confidential Information accessed by or provided to Contractor during the course of performing services for the State must not be stored or accessed outside of the continental United States.

6. Access to Regulated Data

New York State considers the protection of sensitive and confidential information and business systems to be of the upmost importance. The information collected and maintained by state and local government agencies is protected by a myriad of Federal and State laws and regulations. Access to and use of sensitive and confidential information is limited to authorized government employees and legally designated agents, for authorized purposes only.

The chart in Appendix D - PRIMARY SECURITY AND PRIVACY MANDATES, reflects several significant federal
and state laws, rules and regulations, policies, standards and guidelines that providers doing business with the State must be aware of and comply with if applicable to the services being provided. Links to further guidance are included in the Appendix. The list is intentionally US-centric, and is not intended to be all-inclusive. Further, since laws, regulations, requirements and industry guidelines change, consulting definitive sources to assure a clear understanding of compliance requirements is critical. Many NYS agencies may have additional program compliance requirements that must be considered in addressing compliance. (e.g., DMV Privacy Act, Public Service Law, etc.).

To the extent that Contractor, its employees, agents or subcontractors have access to Federal, State or Local government regulated data pursuant to their responsibilities under the Contract, Contractor agrees that it will abide by, and will require in writing its employees, agents or subcontractors to similarly abide by any such requirements including the execution of any documents certifying there compliance with such requirements.


Contractor shall comply fully with all information security procedures and policies of the State including but not limited to the following:

• Acceptable Use of Information Technology Resources Policy
• Information Security Policy
• Security Logging Standard
• Information Security Risk Management Standard
• Information Security Controls Standard
• Sanitization/Secure Disposal Standard
• Mobile Device Security Standard
• Remote Access Standard
• Secure System Development Life Cycle Standard
• Secure Configuration Standard
• Secure Coding Standard

ITS Security Policies and Standards may be found at http://www.its.ny.gov/tables/technologypolicyindex.htm/security
Contractor shall comply fully with all NYS/ITS fingerprinting and background check procedures, which are communicated to the Contractor by the State during the performance of the Contract.

Contractor warrants its employees, agents and subcontractors are properly informed and trained regarding generally accepted information security practices and NYS information security policies and standards [https://www.its.ny.gov/tables/technologypolicyindex](https://www.its.ny.gov/tables/technologypolicyindex) and are prohibited from disclosing confidential information to any persons without a need to know.

Contractor shall also comply fully with all requirements of this Contract pertaining to security requirements specific to the Services Contractor is providing to ITS under this Contract. If any software application or vulnerability security scanning undertaken hereunder reveals vulnerabilities or any other security risks attendant to the provided solution Contractor is responsible for ensuring those vulnerabilities and risks are promptly remediated to ITS's reasonable satisfaction.

In addition to the specific security provisions required herein, Contractor shall also use commercially reasonable best efforts to address and remediate any vulnerabilities associated with the types of configuration services it is providing under this Contract which appear, as of the date any modification or upgrade request is made by ITS, on the CWE/SANS list of the "TOP 25 Most Dangerous Programming Errors." See: [http://www.sans.org/top25errors/](http://www.sans.org/top25errors/).

8. Information Security Breach and Notification Act

In accordance with the Information and Security Breach Notification Act (ISBNA) (Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005), a Contractor with ITS shall be responsible for all applicable provisions of the ISBNA and the following terms herein with respect to any “private information” (as defined in the ISBNA) received by or on behalf of ITS under this Contract.

1. Contractor shall supply ITS with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as ITS’s notification policy.

2. Contractor must encrypt any database fields and backup tapes that contain private information, as set forth in the ISBNA.

3. Contractor must ensure that private information is encrypted in transit to/from their systems.

4. In general, contractor must ensure that private information are not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.

5. Contractor must monitor for breaches of security to any of its systems that store or process private information owned by ITS.
6. Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from ITS.

7. In the event a security breach occurs as defined by ISBNA Contractor shall notify ITS within 4 hours of becoming aware of the breach and commence an investigation in cooperation with ITS to determine the scope of the breach pursuant to the Notice requirements in Section 24 below.

8. Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.

9. Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from ITS prior to notifying the individuals whose personal identity information was compromised by the breach of security, the New York Attorney General; the NYS Division of State Police; and the Department of State’s Division of Consumer Protection or any consuming reporting agencies of a breach of the information security system or concerning any determination to delay notification for law enforcement investigations.

10. Contractor shall be responsible for providing all notices required by the ISBNA and for all costs associated with providing said notices.

Data Breach - Required Contractor Actions

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

1. Notify the ITS EISO by telephone as soon as possible, but in no event more than two (2) hours from the time the Contractor either has knowledge of a Data Breach;

2. Consult with and receive authorization from the ITS as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required;

3. Coordinate all communication regarding the Data Breach with the ITS EISO and Authorized User(s);

4. Cooperate with ITS in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and

5. Take corrective action in the timeframe required by the ITS. If Contractor is unable complete the corrective action within the required timeframe, in addition to any other remedies available, ITS may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the ITS, or until the ITS has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period.

Nothing herein shall in any way (a) impair the authority of the OAG to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor’s liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.