

Standard Contract Clauses

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SECTION 1 - TERMS AND CONDITIONS

The Procurement, the Bidder's Proposal, and the contract award that results from this Request for Proposal (RFP) are subject to and incorporate the following terms and conditions.

1.1 CONTRACT TERM

The term of the Contract shall be one (1) year. The Contract shall take effect and commence upon the approval of the Contract by the Office of the State Comptroller of the State of New York ("OSC" or "Comptroller"), as applicable.

1.2 MODIFICATION OF CONTRACT

The Contract may be amended only by mutual written consent of the parties, and approved by the State's Attorney General and Comptroller (OSC), if required.

1.3 EXECUTORY PROVISION/CONTRACT FORMATION

Pursuant to State Finance Law, Section 112, as applicable, this Contract must first be approved by the Comptroller before becoming effective.

1.4 INTEGRATION, MERGER, AND ORDER OF PRECEDENCE

The Contract shall be comprised solely of the following documents. In the event of an inconsistency or conflict in terms, precedence shall be given in the order indicated:

- Appendix A -Standard Clauses for New York State Contracts
- Any Amendments to the Contract
- The Contract and clarifying documents, if any, setting forth the final agreement between the Parties
- The Request for Proposal
- Contractor's Proposal
- Appendix B, if utilized

All prior agreements, representations, statements, negotiations, and undertakings are superseded.

1.5 CONTRACTOR RESPONSIBILITY AS DEFINED BY STATE FINANCE LAW

Contractor must remain responsible, as defined by State Finance Law, relevant case law and applicable guidelines, throughout the term of the Contract. Failure to do so may result in suspension or termination of the Contract.

Contractor must present evidence of its continuing legal authority to do business in NYS, its integrity, experience, ability, prior performance, and organizational and financial capacity, upon request by the State.

The State reserves the right to suspend any or all activities under this contract, at any time if it 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 and must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice lifting the suspension order.

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1.6 INDEPENDENT CONTRACTOR

Contractor is an independent contractor, and its officers, employees, subcontractors and agents are not and shall not act as State employees in the performance of the Contract. Contractor, its officers, employees, subcontractors and agents are not entitled to any of the benefits associated with employment by the State. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the State with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

1.7 CONTRACTOR PERSONNEL

All Contractor's officers, employees, subcontractors, or agents performing work under the Contract must meet or exceed the technical and training qualifications set forth in the Contract, and must comply with all security and administrative requirements of ITS, must possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services under the Contract on behalf of Contractor shall, in performing the Services, comply with all applicable Federal and State laws concerning employment in the United States.

ITS, in its sole discretion, may refuse access to State systems and facilities or require removal from any State facility any employee of Contractor or its subcontractors performing work under this Contract that ITS determines poses a security risk, has a work performance that ITS finds inadequate or unacceptable, or otherwise fails to meet ITS business requirements or expectations. Such action by ITS shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

1.8 BACKGROUND CHECKS

Contractor employees or subcontractors that perform services under this Contract may be required to undertake and complete a full New York State Police fingerprint background investigation process, which will include a federal criminal justice site security check, as required by ITS or NYS law, rules, regulations and policies prior to providing services. Any costs associated with the background checks, including related travel, will be borne by Contractor.

1.9 EMPLOYMENT REPORTING REQUIREMENTS

To the extent that this is a consulting services contract as described in §8(17)(f) of the New York State Finance Law, Contractor shall comply with all ITS requests and requirements related to reporting under §163(4)(g) of the New York State Finance Law. Furthermore, all subcontracts entered into by Contractor for purposes of performing the Contract shall contain a provision whereby subcontractors agree to comply with ITS requests and requirements related to reporting under §163(4)(g) of the New York State Finance Law. Reports and forms filed by Contractor pursuant to this section shall be available for public inspection and copying under the provisions of the Freedom of Information Law (FOIL).

1.10 COOPERATION WITH THIRD PARTIES

Upon request by the State, the Contractor shall fully cooperate with any third party designated by the State such as but not limited to other contractors or subcontractors retained by the State.

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1.11 COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS

Upon request by the State, the Contractor shall cooperate with the State in any investigation, audit, or other inquiry related to the Procurement or the resulting Contract or any related litigation, at no cost to the State. This provision shall survive the termination of the Contract.

1.12 WORK OUTSIDE THE SCOPE OF THE CONTRACT

The Contractor must not perform work outside the scope of the Contract unless such work is authorized by a properly executed, Comptroller-approved written amendment to the Contract. Work not so authorized will not be compensated.

1.13 NOTICE OF SUBSTANTIAL CHANGE IN CONTRACTOR STATUS

In addition to the requirements of NYS Finance Law §138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the State of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries or divisions, or partners, in writing immediately upon occurrence. "Substantial change" means: (i) sales, acquisitions, mergers or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid; (ii) entry of an order for relief under Title 11 of the United States Code; (iii) the making of a general assignment for the benefit of creditors; (iv) the appointment of a receiver of Contractor's business or property or that of its Affiliates, subsidiaries or divisions, or partners; or action by Contractor, its Affiliates, subsidiaries or divisions, or partners under any State insolvency or similar law for the purposes of its bankruptcy, reorganization, or liquidation; or (v) court ordered liquidation of Contractor, its Affiliates, subsidiaries or divisions, or partners.

Upon the State's receipt of such notice, the State shall have thirty (30) business days from the date of notice to review the information. The Contractor may not transfer the Contract to or among Affiliates, subsidiaries or divisions, or partners, or to any other person or entity, without the express written consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to cancel the Contract, in whole or in part, for cause, if it finds, in its sole judgment, that such substantial change adversely affects the delivery of Services or is otherwise not in the best interests of the State.

1.14 NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE

The Contractor shall immediately notify ITS upon learning of any situation that can reasonably be expected to adversely affect the delivery of Services under the Contract. If such notification is verbal, the Contractor shall follow such initial verbal notice with a written notice to ITS which shall include a description of the situation and a recommendation of a resolution within three (3) calendar days of Contractor's becoming aware of the situation.

1.15 NOTICE

All notices given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered. Such notices shall be addressed as set forth below, or to such different addresses as the parties may from time-to-time specify by written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

For the NYS Office of Information Technology Services:

Procurement and Contract Support Unit
NYS Office of Information Technology Services
Empire State Plaza, PO Box 2062

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Albany, NY 12220-0062

For Contractor:

[Name]

[Title]

[Street Address]

[City, State, Zip code]

Telephone Number: ()

Additional individuals may be designated, in writing, by the parties for purposes of communications related to administration/billing, problem resolution, and/or for dispute resolution.

1.16 PAYMENT

Payments for Services rendered shall be as specified in the Contract. The State's payment obligations shall be governed by the provisions of the New York State Finance Law ("SFL").

1.17 ELECTRONIC PAYMENT REQUIREMENT

Contractor shall provide complete and accurate billing invoices to ITS in order to be eligible for payment. Billing invoices submitted to ITS must contain all information and supporting documentation required by the Contract, ITS, and the State Comptroller. Payment for invoices submitted by the Contractor shall be rendered electronically, unless payment by paper check is expressly authorized by ITS, in its sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not be eligible for payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Director of ITS has expressly authorized payment by paper checks as set forth above.

1.18 WARRANTIES AND GUARANTEES

- a. **Contract Deliverables.** Contractor warrants and represents that the Services required by the RFP and the Contract shall be performed or provided in accordance with all the terms and conditions, covenants, statements, and representations contained in this Contract. Contractor's failure to meet pre-defined service levels may result in a credit or chargeback in an amount pre-determined by the parties.
- b. **Compliance with laws.** Contractor warrants and represents that, throughout the term of the Contract, in the performance of its obligations under the Contract, it will: (i) comply with all applicable laws, ordinances, rules and regulations of any governmental entity; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.
- c. **Workmanship Warranty.** Contractor warrants and represents that all services and deliverables shall meet the completion criteria set forth in the Contract, and that services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards.
- d. **Personnel Eligible for Employment.** Contractor warrants and represents that all personnel performing Services under this Contract are qualified to provide Services and eligible for employment in the United States and shall remain so throughout the term of the Contract. Contractor shall provide such proof of compliance as is required by ITS.

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- e. **Survival of Warranties.** All warranties contained in the Contract shall survive termination of the Contract.

1.19 INDEMNIFICATION, LIMITATION OF LIABILITY

a. **Indemnification**

Contractor shall be fully liable for the actions of its agents, officers, employees, partners, or subcontractors, and shall fully indemnify and save harmless the State from suits, actions, damages, and costs of every name and description relating to personal injury and damage to real or personal property caused by Contractor, its agents, officers, employees, partners, or subcontractors, 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 and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its agents, officers, employees, partners and subcontractors of State and ITS security procedures or policies resulting from any criminal acts committed by Contractor's officers, agents, employees, and subcontractors while providing Services under the Contract.

This section is not subject to the limitation of liability provisions of the Contract.

b. **Indemnification for Intellectual Property Infringement**

Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees and legal fees), claims, judgments, liabilities, and costs which may be assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the services, products, documentation or deliverables furnished or utilized by Contractor under this Contract, 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 State shall require. This paragraph shall not apply to that portion of any infringement claim which results from a material modification by the State, without Contractor's approval, of any products, documentation or deliverables furnished or utilized by Contractor pursuant to this Contract. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest. This section is not subject to the limitation of liability provisions of the Contract.

c. **Limitation of Liability**

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 (One Million Dollars); or (ii) two (2) times the amounts paid to the Contractor under the Contract during the twelve (12) months of the contract term which precedes 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 for any incidental, punitive, consequential, indirect or special damages of any kind which may result directly or indirectly from the performance of this contract, including, without limitation, damages resulting from loss of use or loss of profit by the state, the contractor, or by others, however caused and regardless of the theory of liability even if such party has been informed of the possibility of such damages. The limitations of liabilities, disclaimers of warranties, exclusivity of remedies, and other limitations are an essential element of the bargain between the parties

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(without which the transactions contemplated by this agreement would not occur) and will apply even if a remedy fails in its essential purpose.

d. No Indemnification by the State

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

1.20 FEDERAL FUNDING CLAUSES

To the extent that any of the goods or services provided under this Contract may be funded in whole or in part by federal funds, Contractor agrees to comply with all applicable federal laws, rules and regulations required for the receipt and/or expenditure of such funds pertaining to the following areas as further set forth at Chapters II and XXX of 7 CFR and 45 CFR Parts 74 and 95 and described below:

- a. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375 as supplemented by 41 CFR 60, and the nondiscrimination requirements of 45 CFR Parts 80, 84 and 90, and 7 CFR Parts 15, 15b and 15d.
- b. Copeland "Anti-Kickback Act" (18 USC 874 and 40 USC 276c) which provides that all contracts/sub-grants greater than \$2,000 for construction or repair must have a provision requiring compliance with 18 USC 874 as supplemented by 29 CFR Part 3, which prohibit Contractors or sub-recipients from inducing by any means any person employed in construction, completion or repair of public work to give up any part of compensation to which they are otherwise entitled and that the recipient shall report all suspected/reported violations to the Federal awarding agency.
- c. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) which requires all construction contracts awarded by recipients of more than \$2000 to comply with the Act as supplemented by USDOL Regulations 29 CFR Part 5 requiring all Contractors to pay wages to laborers and mechanics at a rate not less than the minimum wage specified by the Federal Secretary of Labor, which wages shall be paid not less than once a week. The recipient shall place a copy of the federally specified wage (the "prevailing wage") in each solicitation and the award of a contract shall be conditioned upon acceptance of such a determination. The recipient must report all suspected/reported violations to the Federal awarding agency.
- d. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) which requires, where applicable, that all construction contracts and other contracts involving employment of mechanics and laborers require compliance with 40 U.S.C. 327-333 as supplemented by USDOL Regulations 29 CFR 5 when said contracts exceed \$100,000, which references require that work in excess of 40 hours/week be recompensed at a rate at least 50% greater than the basic pay rate and that no work be required in unsanitary, hazardous, or dangerous conditions. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
- e. Rights to Inventions Made under a Contract or Agreement- Contracts or Agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR Part 401 and any further implementing regulations issued by USDHHS or USDA.
- f. Ownership Rights in Software or Modifications Thereof – The State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation, and the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation, provided, however, that this sentence shall not apply to 'proprietary operating/vendor software packages' within the meaning of 45 CFR 95.617(c) and 7 CFR 277.18(l)(1)(iii).

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- g. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.), which require Contracts and sub-grants in excess of \$100,000 shall require the recipient to comply with the Acts recited herein and that violations must be reported to USDHHS and the appropriate Regional Office of the Federal Environmental Protection Agency.
- h. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- which requires that every Contractor under a contract for more than \$100,000 and every tier of Contractors or subcontractors thereunder shall file certification, as required, that said Contractor will not and has not used any Federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or award covered by such Amendment. A Contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93)
- i. Debarment and Suspension. (Federal E.O.s 12549 and 12689)- Certain contracts shall not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with E.O.s 12549 and 12689. (See 45 CFR 76.) Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- j. Contractor shall make positive efforts to assure that small businesses and minority and women owned business enterprises (M/WBEs) are utilized when possible as sources of supplies, equipment, construction and services. If any subcontracts are to be let, Contractor shall (1) include qualified small businesses and M/WBEs on solicitation lists; (2) assure that they are solicited whenever they are potential sources; (3) when economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small business and M/WBE participation; (4) where the requirement permits, establish delivery schedules which will encourage participation by small businesses and M/WBEs, and; (5) use the services and assistance of the New York State Department of Economic Development [(518) 292-5100 or Web Site www.empire.state.ny.us], the US Small Business Administration, the Office of Minority Business Enterprise of the US Department of Commerce and the US Community Services Administration, as appropriate.

1.21 SUSPENSION OF WORK

The State reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reasons for such suspension include but are not limited to, a budget freeze on State spending or declaration of emergency. Upon issuance of such notice, the Contractor shall comply with the suspension order. Contractor shall be paid for services performed prior to suspension in accordance with the Contract. Such suspension will be lifted upon written notice to Contractor.

1.22 TERMINATION

a. For Convenience

By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this paragraph, the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.

b. For Cause

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For a material breach that remains uncured for more than thirty (30) days from the date of written notice to the Contractor, the Contract or Purchase Order may be terminated by the State at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible or for any of the other reasons stated in this section with the exception of termination for convenience. Such termination shall be upon written notice to the Contractor. In such event, the State may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

c. For Suspension or Delisting of Contractor's Securities

If the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable, if the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Contract or exercise such other remedies as shall be available under the Contract, at law and/or equity.

d. For Vendor Responsibility Related Findings

ITS may, in its sole discretion, terminate the Contract if it finds at any time during the term of the Contract that the Contractor is non-responsible, or that any information provided in the Vendor Responsibility Questionnaire submitted with Contractor's Bid was materially false or incomplete, or if the Contractor fails to timely or truthfully comply with ITS's request to update its Vendor Responsibility Questionnaire.

e. Mitigation of Costs

The Contractor shall not undertake any additional or new contractual obligations on or after the receipt of notice of termination without the prior written approval of the State. On or after the receipt of a notice of termination and during the termination notice period, as applicable, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

1.23 DEFAULT

- a. If either party breaches a material provision of this Contract, which breach remains uncured for a period of thirty (30) days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the thirty (30) day period, such longer period of time provided that the breaching party proceeds with reasonable diligence to completely cure the breach) or if Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, the other party may, at its option, terminate this Contract upon ten (10) days written notice and exercise such other remedies as shall be available under this Contract, at law and/or equity.
- b. No delay or omission to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- c. If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under this Contract, the State shall thereafter be released from

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all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Services provided prior to any such date, and if any lump-sum payment has been made, the State shall be entitled to a pro-rata refund of such payment.

1.24 TRANSITION

The State may require the Contractor to provide uninterrupted Services after Contract termination/expiration ("Transition Services") as the State deems reasonable and necessary for the State to comply with all the legal requirements for establishing a new contract and transitioning to a replacement Contractor.

a. Transition Period

The State shall determine the transition period in consultation with the Contractor and shall notify the Contractor in writing. The State reserves the right to amend the transition period subsequently, upon thirty (30) days' advance written notice to the Contractor.

b. No Interruption in Service

At all times during the transition period, and unless directed otherwise in writing by the State, the Contractor shall continue its contractual obligations set forth in the Contract until such time as the services provided under the contract has been transitioned to a successor contractor, the State, or a third party designated by the State. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.

c. Transition Plan

Within fifteen (15) days of receipt of a notice of termination or three (3) months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall submit to the State for the State's review and approval a detailed written plan for transition (Transition Plan) that outlines, at a minimum, the tasks, milestones, and deliverables associated with a smooth transition of Services.

d. Contractor Transition Services

Transition Services shall include the performance of Contractor's responsibilities as outlined in the Contract, and also the transferring of those responsibilities to a successor contractor, the State, or a third party designated by the State in accordance with the Transition Plan agreed upon by the Parties. Contractor shall maintain the same level of service during the transition period as is set forth in the Contract until specific tasks or services are transitioned to or assumed by a successor contractor, the State, or a third party designated by the State.

e. Compensation for Transition Services

Contractor shall be reimbursed for Transition Services performed at the rates set forth in the Contract.

f. Cooperation

Contractor shall cooperate with the State to facilitate a smooth and orderly transition. Periodic project review meetings shall be held with representatives of the Contractor, a successor contractor, the State, or a third party designated by the State.

1.25 ADDITIONAL TECHNOLOGY PROVISIONS

a. Permitted License Transfers

Should the State's business operations be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies, as applicable ("permitted

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license transfers”). The State may make such permitted license transfers without the need to secure the approval of Contractor but must give thirty (30) days prior written notice to Contractor of such transfer. There shall be no additional license or other transfer fees due Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to licensed capacity. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the new site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

b. Restricted Use By Outsourcers, Service Bureaus, or Other Third Parties

Outsourcers, facilities management or service bureaus retained by the State shall have the right to use the licensed product to maintain the State’s business operations, including data processing, provided that: (i) Licensee gives notice to Contractor of such intended use and means of access; and (ii) if required by Contractor, such third party agrees to the Contractor’s standard nondisclosure or restricted use agreement; and (iii) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that solely necessary to provide contracted services to the State. In no event shall the State assume any liability for a third party’s compliance with the terms of a non-Disclosure Agreement, nor shall the non-Disclosure Agreement create or impose any liabilities on the State.

c. No Hardstop/Passive License Monitoring

Contractor hereby warrants and represents that the licensed product and all upgrades do not and will not contain any computer code that would disable or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the licensed product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision the State User shall not have an adequate remedy at law, including monetary damages, and shall consequently therefore be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which the State shall be entitled.

d. Source Code Escrow for Licensed Product

If source code or source code escrow is offered by either Contractor or the manufacturer or developer of the licensed product to any other commercial customers, Contractor shall: (i) provide the State with the source code for the licensed product; or (ii) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to the State; or (iii) certify to the State that the licensed product manufacturer/developer has named the State, acting by and through ITS, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited source code in accordance with the terms of escrow. source code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the licensed product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

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e. Ownership of and Title to Contract Deliverables

Contractor acknowledges that it is commissioned by the State to perform the services detailed in the RFP which may include the development of intellectual property by Contractor, its Subcontractors, partners, employees or agents for the State ("Custom Products"). Unless otherwise specified in writing in the RFP, upon the creation of such Custom Products, Contractor hereby conveys, assigns and transfers to the State the sole and exclusive rights, title and interest in the Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in performing services under the Contract in the course of Contractor's business. The State may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, the State shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in the RFP.

f. Ownership of and Title to Existing Software

Title and ownership to existing software delivered by Contractor under the Contract that is normally commercially distributed by the Contractor or a third party proprietary owner, whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products shall remain with Contractor or the third party. Effective upon acceptance, such existing software shall be licensed to the State and must, at a minimum grant the State a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the State as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the State's satisfaction) and distribute existing software to the State up to the license capacity stated in the Contract with all license rights necessary to fully effect the general business purposes stated in the RFP. With regards to third party software, the Contractor shall be responsible for obtaining these rights at its sole cost and expense.

g. Data Ownership

All State data is owned exclusively by the State and will remain the property of the State. Contractor is permitted to use data solely for the purposes set forth in the RFP and the Contract, and for no other purpose. At no time shall the Contractor access, use, or disclose any confidential information (including personal, financial, health, or criminal history record information or other sensitive criminal justice information) for any other purpose. The Contractor is strictly prohibited from releasing or using data or information for any purposes other than those purposes specifically authorized by the State. Contractor agrees that State data shall not be distributed, used, repurposed, transmitted, exchanged or shared across other applications, environments, or business units of the contractor or otherwise passed to other contractors, agents, subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by the State.

h. Data Protection and Transmission

Contractor shall use appropriate means to preserve and protect State data. This includes, but is not limited to, use of stable storage media, regular data backups and archiving, password protection of volumes, and data encryption. Contractor must, in accordance with applicable law and the instructions of the State, maintain such data for the time period required by applicable law, exercise due care for the protection of data, and maintain appropriate data integrity safeguards against the deletion or alteration of such data. In the event that any data is lost or destroyed because of any

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act or omission of the Contractor or any non-compliance with the obligations of this Contract, then Contractor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, Contractor shall reimburse the State for any costs incurred by the State in correcting, recreating, restoring or reprocessing such data or in providing assistance therewith.

Contractor agrees that any and all State data will be stored, processed and maintained solely on designated target devices, and that no State data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the contract/agreement and or any addendum thereof, or the Contractor's designated backup and recovery processes, and is encrypted in accordance with all current federal and State statutes, regulations and requirements, to include requirements for data defined as confidential, financial information, personal private and sensitive information (PPSI), personally identifying information (PII) or personal health information (PHI) by statute or regulations. The Contractor shall encrypt data at rest, on file storage, database storage, or on back-up media, and in transit in accordance with state and federal law, rules, regulations, and requirements. The solution shall provide the ability to encrypt data in motion and at rest in compliance with state or federal law. Contractor shall use secure means (HTTPS) for all electronic transmission or exchange of system, user and application data with the State.

i. Data Return and/or Destruction

At the expiration or termination of the Contract, at the State's option, the Contractor must provide ITS with a copy of the State data, including metadata and attachments, in a mutually agreed upon, commercially standard format and give the State continued access to State data for no less than ninety (90) days beyond the expiration or termination of the Contract.

Thereafter, except for data required to be maintained by law or this contract, Contractor shall destroy State data from its systems and wipe all its data storage devices to eliminate any and all State data from Contractor's systems. The sanitization process must be in compliance NYS Security Policy NYS-S13-003, <https://www.its.ny.gov/document/sanitizationsecure-disposal-standard>, and, where required, CJIS sanitization and disposal standards. If immediate purging of all data storage components is not possible, the Contractor will certify that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. Contractor must then certify to ITS, in writing, that it has complied with the provisions of this paragraph. The State may withhold payment to Contractor if State data is not released to ITS in accordance with the preceding sections.

1.26 FORCE MAJEURE

In the event that either Party is unable to perform any of its obligations under the Contract because of natural disaster, any act of God, war, civil disturbance, court order, or labor dispute, or any other acts beyond the reasonable control of either Party (hereinafter referred to as a "Force Majeure Event"), the Party that has been so affected shall immediately give notice to the other Party, and shall exercise every commercially reasonable effort to resume performance, and an extension of the time for performance shall be granted for a period to be agreed to in writing by the Parties. Any delay in performance by either Party resulting from a Force Majeure Event shall not be considered a breach or default under the Contract.

1.27 DISPUTE RESOLUTION

The Parties agree to resolve any disputes regarding the performance of Services or otherwise arising under the Contract, expeditiously through an escalation process to be agreed upon by the Parties. Senior management representatives of the Parties shall meet within three (3) business days in the event a dispute threatens the performance of a material portion of the Service. During the course of a dispute, Contractor shall continue to provide Services according to the Contract until such dispute is resolved.

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Nothing in this paragraph shall diminish the State's right to terminate the Contract as provided in the Contract.

1.28 GENERAL PROVISION AS TO REMEDIES

a. The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, an event otherwise constituting a breach or default under the Contract.

b. In addition to any other remedies available to the State under the Contract and state and federal law for Contractor's default, the State may choose to exercise some or all of the following:

- Suspend, in whole or in part, payments due to Contractor under this Contract;
- Pursue equitable remedies to compel Contractor to perform;
- Apply Service Credits against amounts due and owing by the State under the Contract;
- Require Contractor to cure deficient performance or perform the requirements of the RFP at no charge to the State.

1.29 INSURANCE

Contractor must comply with the Insurance provisions set forth in Appendix ___, which is attached hereto and incorporated into this Contract.

1.30 TAXES

a. ITS represents that the purchases on behalf of the State of New York are not subject to any state or local sales or use taxes, or to federal excise taxes.

b. Contractor remains liable and solely responsible without exemption for social security, unemployment insurance, workers' compensation and other taxes and obligations to which Contractor may be subject to by law.

c. Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State Agency shall not be valid, effective, or binding against the Agency unless the Contractor certifies to the Department of Taxation and Finance that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Department of Taxation and Finance that each affiliate and subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, "affiliate" means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The Contractor also must certify to the procuring state entity that it filed the certification with the Department of Taxation and Finance and that the certification is correct and complete. Accordingly, in the event the value of this Contract exceeds \$100,000 and Contractor's sales delivered by any means to locations within New York State of tangible personal property or taxable services have a cumulative value in excess of \$300,000, measured over a specific period, the Contractor must file a properly completed Form ST-220-CA with ITS and a properly completed Form ST-220-TD with the Department of Taxation and Finance before the Contract may take

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effect. In addition, after the Contract has taken effect, the Contractor must file a properly completed Form ST-220-CA with ITS if the Contract's term is renewed. Further, a new Form ST-220-TD must be filed with the Department of Taxation and Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete. Further information about this requirement is available at <http://www.osc.state.ny.us/agencies/gbull/g222.htm>. Contractor agrees to cooperate fully with the State in administering these requirements.

1.31 OUTSTANDING TAX LIABILITIES

Contractor warrants that there are no outstanding tax liabilities against the Contractor in favor of the State of New York, or in the event that such liabilities exist, a payment schedule has been arranged for their speedy satisfaction before contract execution.

1.32 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.

- **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. Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any, of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, if any while providing Services under the Contract.

- **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, visual or written). 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 and hold the State harmless 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.

- **Press Releases**

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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 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.

- **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 New York State Agency information directly to that New York State 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 agents 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.

- **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.

- **CJIS**

If Contractor, its employees, agents or subcontractors shall have access to criminal justice information (including criminal history record information or other sensitive criminal justice information), as defined by the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy, and its related Security Addendum (attached as Appendix D and Appendix D2, respectively), on NYS systems or media, Contractor, its employees, agents or subcontractors must comply with the requirements of Appendix D and sign the certification set forth on Appendix D2.

1.33 PUBLIC INFORMATION AND FREEDOM OF INFORMATION LAW (FOIL)

Disclosure of information related to this procurement and the resulting Contract shall be permitted consistent with the laws of the State of New York and specifically FOIL. ITS shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this procurement that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for

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purposes of FOIL must be clearly marked and identified as such by the Contractor upon submission in accordance with the RFP provisions. If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall at the time of submission, request the exemption in writing and provide an explanation of (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor, or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to § 87(2) of FOIL. Acceptance of the identified information by ITS does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by ITS.

1.34 LEGAL REQUESTS AND RELEASE OF STATE DATA TO THIRD PARTIES PROHIBITED

Except otherwise required by law, Contractor shall not disclose State data to a third party. Except where expressly prohibited by law, Contractor shall promptly notify the State of any subpoena, warrant, judicial, administrative or arbitral order of an executive or administrative agency or other governmental authority of competent jurisdiction (a "Demand") that it receives and which relates to or requires production of the information or data Contractor is processing or storing on Your behalf. If Contractor is required to produce information or data in response to a Demand, Contractor will provide the State with the information or data in its possession that it plans to produce in response to the Demand prior to production of such information or data. Except as otherwise required by law, Contractor shall provide the State reasonable time to assert its rights with respect to the withholding of such information or Data from production. If the State is required to produce information or data in response to a Demand, Contractor will, at the State's request and unless expressly prohibited by law, produce to the State any information or data in its possession that may be responsive to the Demand and shall provide assistance as is reasonably required for the State to respond to the Demand in a timely manner. The State acknowledges that Contractor has no responsibility to interact directly with the entity making the Demand. The parties agree that the State's execution of this agreement, does not constitute consent to the release or production of State data or information.

1.35 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 of New York 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

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maximum feasible participation of New York State Certified minority- and women – owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ITS hereby establishes an overall contract goal of 0% for MWBE participation: 0% for New York State certified minority-owned business enterprises (“MBE”) participation and 0% for New York State certified women-owned business enterprises (“WBE”) participation. Contractor must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and agrees that ITS may withhold payment pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ITS will determine a Contractor’s “good faith efforts,” Contractor should refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and ITS may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid/proposal, Bidder agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan must be submitted to ITS with the proposal using the attached Form MWBE 100.
- B. Contractor will also be required to submit a Contractor’s Quarterly MWBE Contractor Compliance & Payment Report to ITS by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan submitted to ITS for approval.
- C. If ITS, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, ITS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.
- D. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal. A waiver request may be submitted to ITS at any time during the term of the Contract, but must be made no later than prior to the submission of a request for final payment on the Contract. ITS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- E. ITS may disqualify a Bidder as being non-responsive under the following circumstances:
 - a) If a Bidder fails to submit a MWBE Utilization Plan;

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- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or
- d) If ITS determines that the Bidder has failed to document good faith efforts.

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 a Minority and Women-Owned Business Enterprises and 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.

1.36 ETHICS COMPLIANCE

Contractor, its officers, employees, agents and subcontractors (if any) shall comply with the requirements of Public Officers Law § 73 and § 74, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with these provisions may result in termination of the Contract and/or other civil or criminal proceedings as required by law.

1.37 MOST FAVORABLE TERMS AND BEST PRICING

Contractor agrees that all fees, pricing, terms, and warranties provided by the Contractor under the Contract are substantially similar to the best equivalent terms being offered by the Contractor to any entity similarly situated to the State for substantially similar services or products. If during the term of the Contract, the Contractor enters into an arrangement with any similarly situated entity for substantially similar services or products, with more favorable terms or better pricing, Contractor hereby agrees to amend the Contract to provide the same to the State.

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1.38 TRANSFER OF CONTRACT

ITS may transfer/assign the Contract to another State Agency or entity at its sole discretion by informing Contractor in writing of such a transfer. Contractor shall execute any documents required to accomplish the transfer/assignment of the Contract. Contractor shall comply with any instructions from ITS to accomplish the transfer/assignment of the Contract at no additional cost to the State.

1.39 SUBCONTRACTORS

Contractor may not subcontract the services procured under this Contract without the State's' prior written approval. ITS reserves the right to reject any proposed Subcontractor or supplier if it determines that the company is not qualified or is not responsible. All such subcontracting relationships between the Contractor and its subcontractors to perform Services must be memorialized by written agreement.

Contractor shall include in all agreements with its subcontractors, in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying:

- That the work performed by the subcontractor must be in accordance with the terms and conditions of this Contract
- That nothing contained in such subcontract shall impair the rights of ITS or the State
- That nothing contained in the subcontract shall create any contractual relationship between the subcontractor and ITS or the State
- That the State and ITS shall have the same authority to audit the records of all subcontractors as it does those of the Contractor
- That subcontractor shall cooperate with any investigation, audit, litigation or other inquiry related to the Procurement or the resulting Contract.

1.40 WAIVER

No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by a Party to, or waiver of, a breach under the Contract shall constitute consent to, a waiver of, or excuse for any other, different or subsequent breach. The rights, duties and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law or equity.

1.41 ACCESSIBILITY

Any web-based information and applications development, or programming delivered pursuant to the Contract will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by Contractor and the results of such testing must be satisfactory to ITS before web-based information and applications will be considered a qualified deliverable under the Contract or Procurement.

1.42 COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS

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

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- 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>

1.43 RIGHT TO INSPECT

The State has the right to review Contractor's procedures, practices and controls related to the security of State data and information assets. Upon request, Contractor will make available for review policies, procedures, practices and documentation related to the protection of State data and information assets, including but not limited to related to information security governance, network security, risk and compliance management policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, secure disposal/sanitization and documentation. Contractor may be asked to provide a recent independent audit report on security controls prior to formal awarding of any contract resulting from this RFP or at any time during the Contract term. The State shall have the right to send its officers and employees to inspect Contractor's facilities and operations used to provide Contract services. On the basis of such inspection, the State may require Contractor to implement corrective measures where the Contractor is found to be noncompliant with Contract provisions.

1.44 SEVERABILITY

In the event that one or more of the provisions of the Contract shall for any reason be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.

1.45 PIGGYBACKING

Contractor acknowledges and agrees that, pursuant to State Finance Law § 163(10)(e), the New York State Office of General Services may authorize and approve purchases from contracts let by Contractor to other New York State agencies, the United States Government or any other state, with the concurrence of the Office of the State Comptroller and under appropriate circumstances.

1.46 STATE'S RESERVED RIGHTS

ITS reserves the right to:

- a) Reject any or all proposals received in response to the RFP;
- b) Withdraw the RFP at any time, at the agency's sole discretion;

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- c) Make an award under the RFP in whole or in part;
- d) Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
- e) Seek clarifications and revisions of proposals;
- f) Use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
- g) Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- h) Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
- i) Change any of the scheduled dates;
- j) Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- k) Waive any requirements that are not material;
- l) Negotiate with the successful bidder within the scope of the RFP in the best interests of the State;
- m) Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- n) Utilize any and all ideas submitted in the proposals received;
- o) Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening; and,
- p) Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.
- q) Waive minor irregularities and/or omissions in Bids if in the best interest of the State;
- r) In its sole discretion, reject illegible, incomplete, or vague bids.

1.47 EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting Contracts. State Agency consultant Contracts are defined as "Contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant Contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such Contracts, OSC, DOB and CS. The effective date of these amendments is June 19, 2006. The requirements will apply to covered Contracts awarded on and after such date.

To meet these new requirements, the Contractor agrees to complete:

Form A - Contractor's Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information as part of its bid response.

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Form B - Contractor's Annual Employment Report. Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such Contract was in effect during such prior State fiscal year Contractor reports the:

1. Total number of Employees employed to provide the consultant services, by employment category.
2. Total number of hours worked by such Employees.
3. Total compensation paid to all Employees that performed consultant services under such Contract.*

*NOTE: The information to be reported is applicable only to those Employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to Employees of Subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to CS and OSC as designated below:

Department of Civil Service

Alfred E. Smith State Office Building
Albany, NY 12239

Office of the State Comptroller - Bureau of Contracts

110 State St., 11th Floor
Albany, New York
Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual Employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information is available in the Office of the State Comptroller's Bulletin G-226 regarding the Contractor Consultant Law requirements and report Forms A and B at <http://osc.state.ny.us/agencies/guide/MyWebHelp/>

INSTRUCTIONS FOR COMPLETING FORM A AND B:

Form A and Form B should be completed for Contracts for consulting services in accordance with OSC's policy and the following:

Form A - Contractor's Planned Employment Form (available from and submitted to the using Agency, if necessary.)

Form B - Contractor's Annual Employment Report (to be completed by May 15th of each year for each consultant Contract in effect at any time between the preceding April 1st through March 31st fiscal year and submitted to the CS, OSC and procuring Agency.)

Scope of Contract: choose a general classification of the single category that best fits the predominate nature of the services provided under the Contract.

Employment Category: enter the specific occupation(s), as listed in the O*NET occupational classification system, which best describes the Employees providing services under the Contract.

(Note: Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)

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Number of Employees: enter the total number of Employees in the employment category employed to provide services under the Contract during the report period, including part time Employees and Employees of subcontractors.

Number of Hours: enter the total number of hours worked during the report period by the Employees in the employment category.

Amount Payable under the Contract: enter the total amount paid by the State to the State Contractor under the Contract, for work by the Employees in the employment category, for services provided during the report period.

1.48 COMPLIANCE WITH HIPAA (HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996) AND HI-TECH (HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF 2009)

To the extent Contractor or its subcontractor(s) create, receive, maintain, or transmit protected health information on behalf of the State pursuant to their responsibilities under this Contract, Contractor and such subcontractors must comply with HIPAA and HI-TECH, and execute the HIPAA and HITECH Compliance Certification Form provided by ITS.

1.49 DELIVERABLE ACCEPTANCE

Completed work products and services (“Deliverables”) will be delivered to the designated State approver who has been authorized to accept deliverables. Deliverables must meet contract requirements. The New York State approver will accept or reject the work product or service within fifteen (15) business days of the receipt of the Contractor’s notification of completion. If the New York State approver rejects a work product or service, the cause for rejection and all defects to be addressed will be documented by New York State and provided to the Contractor and the Contractor will correct all identified deficiencies, and resubmit the Deliverable for acceptance.

1.50 CHANGE REQUEST

At any time during the term of this Contract, the State may make changes, subtractions or additions in any of the Equipment, Software, Documentation, Services and/or other Deliverables within the general scope of work set forth in the Contract, consistent with pricing established under the terms of this agreement. All such changes shall be made using the Change Request Form (Appendix N) executed by both Parties, and shall otherwise be in accordance with the terms and conditions of this Contract. If any such change causes an increase or decrease in pricing or the time required for the performance of the Contract, an equitable adjustment of the Contract amount and/or time of performance will be made on mutual agreement of the Parties, subject to the approval of the New York State Comptroller and any applicable control agency, if required.

1.51 ADDITIONAL PROCUREMENT PROVISIONS

1.51.1 SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between the procuring agency and bidders during the procurement process. Bidders are restricted from making contact, from the earliest notice of intent to solicit offers/bids through final award and approval of the procurement 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

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statutory exceptions set forth in State Finance Law §139-j(3)(a). 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 Bidder shall be debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

1.51.2 NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a contract, the contractor must be registered in the New York State Vendor File (Vendor File) administered by the OSC. This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to Contractor for use on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York. For more information on the Vendor File please visit the following website: http://www.osc.state.ny.us/vendor_management/.

1.51.3 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, Bidder should 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.

Contractor must update its Vendor Responsibility Questionnaire within ten (10) business days of the State's request that it do so.

1.51.4 USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN CONTRACT PERFORMANCE

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf 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 of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities,

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services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women owned businesses consistent with current State law. Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements. Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

1.51.5 NOTIFICATION OF AWARD AND OPPORTUNITY FOR DEBRIEFING

The tentative awardee will be advised of selection by ITS through the issuance of a formal written correspondence indicating a proposed award. All Bidders will be notified of the selection or rejection of their bids. Once an award has been made, Bidders may submit a written request for a debriefing as to why their bid did not result in an award. The written request must be received by the ITS Sole Designated Contact identified on the cover page of this RFP no later than ten (10) business days from the date of the award announcement. The purpose of the debriefing is to provide information to each Bidder about the scoring and evaluation of the requesting Bidder's Bid. ITS will not provide Bidders with information about another Bidder's Bid. This is also an opportunity for a Bidder to learn how to improve future bids.

1.51.6 ITS BID PROTEST POLICY

The State of New York strives to assure a fair, open and competitive procurement process. To file a Bid Protest, vendors must timely follow the procedures for filing a bid protest set forth in the ITS Bid Protest Policy which can be found at http://www.its.ny.gov/sites/default/files/documents/bid_protest_policy_9_18_15_final.pdf.

1.51.7 BID PREPARATION EXPENSES

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a Bid or for any work performed prior to the formal execution of a Contract or approval by the State Comptroller, if required.

1.51.8 LATE SUBMISSIONS

Bids must be received by ITS on or before the date and time indicated in Section 6 RFP Calendar. Late Bids will be rejected. The received time of Bids will be determined by ITS by consulting the United States Official Time Clock at <http://time.gov/HTML5/>.

1.51.9 BID VALIDITY

Bids must remain open and valid and, effective, firm and irrevocable, for at least 90 days from the bid opening 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 ITS makes a tentative award of the Contract or the Bidder withdraws the Bid in writing.

1.51.10 BID RESULT NOTIFICATIONS

Bidders will be notified, in writing, of whether their proposal was tentatively selected for award or not. Should ITS and a tentative awardee be unable to reach agreement as to the terms of the Contract within a

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reasonable time, as determined by ITS, ITS may withdraw the award and proceed to the next highest bidder.

1.51.11 ACCURACY OF BIDS

Bidders are responsible for the accuracy of their bids. All Bidders are directed to take extreme care in developing their bids. Bidders are cautioned to review their bids carefully prior to bid submittal, as requests for bid withdrawals of any type are not likely to be granted. All exceptions and deviations must be noted in bids and no adjustments may be made after award is issued. If a Bidder submits its bid ahead of the submission deadline, it may submit an amended Bid any time prior to the Bid Submission Due Date indicated in Key Events/Dates.

1.51.12 BIDDERS, SUB CONTRACTORS AND CONTRACTOR OBLIGATIONS

Bidders may submit proposals that include subcontractors. Upon award, the Bidder shall be the Contractor for this engagement. The Contractor is responsible for meeting all Contract obligations set forth in the solicitation and Contract, including all Appendices, Attachments, and any subsequent amendments mutually agreed to in writing between the parties. All subcontractors proposed by the Bidder must be identified in the proposal and must be acceptable to ITS. The Bidder remains the single point of contact for ITS and the party that will execute the Contract. Where applicable, the proposal may identify the subcontractor proposed to perform certain RFP requirements but such identification does not relieve the Contractor of any responsibility for performance under the contract with ITS.

The Contractor shall provide a written copy of all subcontracts and third party contracts to the State upon request and include a certification that it has fully disclosed all terms and conditions of such contracts and will disclose any amendments which occur subsequent to the original submission. Failure to provide such information shall constitute a breach of contract. Any waiver of breach as a result of Contractor's failure to furnish information required in this paragraph shall not be deemed a waiver of any subsequent breach. The Contractor may request the State's approval to submit redacted copies of such subcontracts and third party contracts from which trade secrets or proprietary information has been removed pursuant to the Trade Secret Materials paragraph of this Contract.

1.51.13 EXTRANEOUS TERMS

Bids must conform to the terms set forth in the Solicitation. Material deviations may render the Bid non-responsive and may result in the rejection of the Bid. Extraneous terms proposed by a Bidder for consideration must be submitted using the format and process set forth in the RFP. Any Bidder submissions on standard, pre-printed forms such as but not limited to product literature, order forms, license agreements, contracts or other documents that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only. Only extraneous terms accepted by ITS in writing shall be expressly incorporated into the Contract. Acceptance and/or processing of a Bid shall not constitute acceptance of extraneous terms. ITS will not entertain any exceptions to Appendix A - Standard Clauses for New York State Contracts.

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.

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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 insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to 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. Any other insurance maintained by 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 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 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 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 of

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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. 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 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

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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 and shall cover liability arising from bodily injury, premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground 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:

- Premises liability;
- Independent contractors;
- 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.

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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
<p>* 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.</p>		

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

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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	
<p>*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.</p>		

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:

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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	
<p>*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.</p>		

Crime Insurance on a “loss sustained form” or “loss discovered form” providing 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.**

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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.

CONFLICTS OF INTEREST

1. The CONTRACTOR has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONTRACTOR's performance of the services does not and will not create a conflict of interest with, nor position the CONTRACTOR to breach any other contract currently in force with the State of New York, that the CONTRACTOR will not act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.

2. The CONTRACTOR hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONTRACTOR's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the AGENCY immediately of any actual or potential conflicts of interest.

3. In conjunction with any subcontract under this AGREEMENT, the CONTRACTOR shall obtain and deliver to the AGENCY, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The CONTRACTOR shall also require in any subcontracting

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agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the AGENCY a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

4. The AGENCY and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The AGENCY will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the AGENCY, a real or potential conflict of interest cannot be cured,