

1. HEADING AND CAPTIONS

The headings or captions contained within are intended solely for convenience and reference purposes and shall in no way be deemed to define, limit, or describe the scope or intent of the Contract or any provisions thereof.

2. CONTRACT TERM

The term of the Contract will be five (5) years. The Contract shall take effect and commence upon the approval of the Contract by the Office of the New York State Comptroller (“OSC” or “Comptroller”), as applicable.

3. MODIFICATION OF CONTRACT

The Contract may be amended only by mutual written consent of the Parties and approval by the NYS Office of the Attorney General (“OAG”) and NYS Office of the State Comptroller, if required.

4. EXECUTORY PROVISION/CONTRACT FORMATION

Pursuant to §112 of the State Finance Law of the State of New York (“SFL”), as applicable, the Contract must first be approved by OSC before becoming effective.

5. INTEGRATION, MERGER, AND ORDER OF PRECEDENCE

The Contract shall be comprised solely of the documents listed below in this section. The Contract constitutes the entire agreement between the Parties and while applicable laws and regulations pertain, no other statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained therein shall be binding or valid, and the Contract shall not be changed, modified, or altered in any manner except by an instrument in writing executed by both Parties as described in Section 3, above. In the event of an inconsistency or conflict in terms, precedence shall be given in the order indicated:

- a. Appendix A -Standard Clauses for New York State Contracts;
- b. Any Amendments to the Contract agreed to and executed in writing by the Parties and approved by OAG and OSC, as required;
- c. The Contract, including all of its appendices, attachments, and exhibits;
- d. ITS Request for Proposals No. C000522PR, including all of its appendices, attachments, exhibits, and any and all modifications and clarifications thereto including ITS’s response to bidder questions;
- e. The Contractor’s Proposal and any clarifications thereto that have been agreed to in writing by ITS.

All prior agreements, representations, statements, negotiations, and undertakings between the Parties are superseded.

6. CONTRACTOR RESPONSIBILITIES, QUALIFICATIONS, AND CHANGE IN STATUS

Contractor must remain a "responsible" vendor, as defined by the SFL, 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 the State, its integrity, experience, ability, prior performance, and organizational and financial capacity, upon request by ITS.

ITS reserves the right to suspend any or all activities under the 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 ITS issues a written notice lifting the suspension order.

In addition to the requirements of SFL §138 (requiring the State’s approval of subcontractors and assignments, and/or conveyances), the Contractor shall notify ITS in writing of any substantial change in the ownership or financial viability of the Contractor, its affiliates, subsidiaries or divisions, or partners, 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 or during the term of the Contract; (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.

In addition to any other remedies available at law or equity, ITS 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.

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.

7. INDEPENDENT CONTRACTOR

Contractor is an independent contractor, and its Contractor Staff are not and shall not act as State employees in the performance of the Contract. Contractor and its Contractor Staff are not entitled to any of the benefits associated with employment by the State. The Contractor agrees, during the term of the 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 workers' compensation, disability, and unemployment insurance, and to provide ITS with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

8. CONTRACTOR STAFF

"Contractor Staff" includes all officers, agents, employees, and subcontractors of the Contractor who perform services under the Contract or have access to "NYS Confidential Information," as this term is defined below.

All Contractor Staff performing work under the Contract must meet or exceed the technical and training qualifications set forth in the Contract, 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. Contractor Staff may be required to execute a Nondisclosure Agreement, either before or upon arrival for work at a NYS Facility or, if in ITS's sole discretion, the Contractor's Staff will otherwise have access to critical State networks, equipment, or data.

ITS, in its sole discretion, may require the Contractor to remove from interaction with the State, or may refuse access to State systems and NYS Facilities or require removal from any NYS Facility, any Contractor Staff performing work under the 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. The Contractor shall not assign the person to any aspect of the Contract or future work orders without ITS' consent. Such action by ITS shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

For reasons of safety and public policy, the use of illegal drugs and/or alcoholic beverages by the Contractor or Contractor Staff is not permitted while performing any services for ITS under the Contract.

The State shall not be liable for any expense incurred by the Contractor or Contractor Staff for any parking or towing fees or as a consequence of any traffic infraction or parking violations attributable to Contractor or Contractor Staff.

9. SUBCONTRACTORS, AND CONTRACTOR OBLIGATIONS

As described in the solicitation, Bidders were permitted to submit proposals that included subcontractors (defined

as contractors to the prime Contractor that is signing the Contract, who, pursuant to a written contract with Contractor, agree to perform a portion of the Contract's work upon written approval by ITS). The successful Bidder receiving Contract award and signing the Contract is and remains the Prime Contractor and single point of contact for ITS 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 must be identified by Contractor and must be acceptable to ITS. The Contractor agrees not to subcontract any of its services without the prior written approval of ITS, which approval shall not be unreasonably withheld upon receipt of a written request made by Contractor to ITS to subcontract. Contractor may identify a subcontractor proposed to perform certain Contract requirements, but such identification does not relieve the Contractor of any responsibility for performance under the Contract with ITS. Any subcontractor shall be clearly identified by Contractor and the nature and extent of its involvement in and/or proposed performance under the Contract shall be fully explained by the Contractor to ITS.

The Contractor shall provide to ITS a written copy of all subcontracts and third-party contracts related to the provision of services to ITS under the Contract 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 the 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 ITS' 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 provisions of the Contract. No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in the solicitation or the Contract. The Contractor accepts full responsibility for the actions of any Contractor Staff who carry out any of the provisions of the Contract. The Contractor is required to retain the requisite amount of legal control over its subcontractors such that the Contractor can remain the single point of contact for ITS and retain ultimate responsibility for all services performed under the Contract.

All subcontracts shall be in writing and include, in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying:

- a. That the work performed by the subcontractor must be in accordance with the terms and conditions of the Contract including Appendix A – Standard Clauses for New York State Contracts and the solicitation;
- b. That nothing contained in such subcontract shall impair the rights of ITS or the State;
- c. That nothing contained in the subcontract shall create any contractual relationship between the subcontractor and ITS or the State;
- d. That the State and ITS shall have the same authority to audit the records of all subcontractors as it does those of the Contractor;
- e. That subcontractor shall cooperate with any investigation, audit, litigation, or other inquiry related to the solicitation or the Contract; and
- f. That if at any time during performance under the Contract total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor is required to submit and certify to ITS a Vendor Responsibility Questionnaire.

Unless waived in writing by ITS, all subcontracts between the Contractor and subcontractors shall expressly name New York State, acting through ITS, as the sole intended third-party beneficiary of such subcontract. ITS reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make ITS or New York State a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against ITS. ITS reserves the right, at any time during the term of the Contract, to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this section and any subcontract provisions contained in the Contract.

The Contractor shall give ITS immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Contractor's duties under the Contract. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the Contract.

ITS reserves the right to reject any proposed subcontractor or supplier if it determines that the company is not qualified or is not responsible.

10. BACKGROUND CHECKS / ONBOARDING

All Contractor Staff shall, prior to the commencement of any services, whether on or off-site, comply with all State onboarding and security clearance requirements, including training, required for access to NYS Confidential Information (as defined in the Contract) or required for access to NYS Facilities (as also defined in the Contract), the preceding described, collectively, as "onboarding." This includes requirements related to access to Regulated data, including any requirements of the State's public safety agencies, or those related to the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy (<https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>).

Contractor agrees that its Contractor Staff performing services on-site at NYS Facilities or those with logical access to NYS Confidential Information (i.e., log-in access) shall be required to undergo the same security clearances as those required of ITS employees. If not physically or virtually escorted, each Contractor Staff designated to work under the Contract with ITS shall submit identifying information to the State and be fingerprinted. ITS shall arrange for the scheduling of fingerprinting. Such fingerprints shall be submitted to the NYS Division of Criminal Justice Services for a state criminal history record check and, at ITS' discretion, to the Federal Bureau of Investigation for a national criminal history record check.

Contractor also agrees that its Contractor Staff performing services on-site at NYS Facilities may be required to comply with those health checks which NYS requires of its own employees working on-site including for example providing proof of vaccination against, and/or testing for, infectious disease such as COVID-19.

All expenses, including travel and lodging, associated with the onboarding and security clearance process including fingerprinting of Contractor Staff are the responsibility of the Contractor and are not reimbursable.

ITS shall make all suitability determinations on Contractor Staff. For purposes of this section, a "suitability determination" is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the Contract requirements without undue risk to the interests of the State. Failure of a security clearance or non-compliance with this section will disqualify any Contractor Staff from performing any services on the Contract. If any Contractor Staff are removed from providing services under the Contract, they may be subject to all onboarding and security clearance requirements if they are returned to performing services under the Contract.

All Contractor Staff shall, at the termination of their providing services to ITS under the Contract, comply with all State off-boarding and security procedures, including return to ITS of any physical or logical access badges or other credentials that were issued by the State and required for their access to NYS Confidential Information or NYS Facilities.

11. 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, including successor Contractors, retained by the State.

12. COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS

Upon request by ITS, the Contractor shall reasonably, to the extent required by law and without waiving any of its legal rights or remedies, cooperate with the State, including with OSC, in any investigation, audit, or other inquiry related to the solicitation or the Contract or any related litigation, at no cost to the State. This provision shall survive the termination of the Contract.

13. RIGHT TO INSPECT

The State, and any regulatory authority having jurisdiction over the State or ITS, has the right to review Contractor's procedures, practices and controls related to the security of NYS Confidential Information and information assets. Upon request, Contractor will make available for review the policies, procedures, practices and documentation related to the protection of NYS Confidential Information and information assets, including but not limited to those 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 awarding of the Contract or at any time during the Contract term. The State, and any regulatory authority having jurisdiction over the State or ITS, 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. The State shall provide at least two (2) weeks' notice of its intention to exercise this audit right and will not use an independent third-party that is a competitor of Contractor. Such audit shall be conducted to ensure compliance with the requirements of the Contract.

14. 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 written amendment to the Contract, and if applicable, approved by OSC. Work not so authorized shall not be compensated.

15. PRICE ESCALATION

The pricing contained in the Contractor's Financial Proposal shall remain fixed during the first year of the Contract Term. The Contractor's not-to-exceed hourly rates may be adjusted once annually thereafter in accordance with the methodology outlined below. Where the Prevailing Wage section of the Contract does not apply, the Contractor may be granted an increase in their not-to-exceed hourly rates, dependent upon fluctuations in CPI-U (Consumer Price Index – All Urban Consumers), as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. Any annual increase in the not-to-exceed hourly rates shall be the lesser of: (a) a cap at 2%; or (b) a cap at the CPI-U (Consumer Price Index – All Urban Consumers) for the preceding twelve-month period that is published by the U.S. Department of Labor's Bureau of Labor Statistics on or about 90 days prior to the anniversary date of OSC's approval of the Contract.

The Contractor has the sole responsibility to request, in writing, not-to-exceed hourly rate(s) adjustment. This request must be received at the below address within three (3) months of the "base month". The 'base' month for determining adjustments will be the third month prior to the start date of the Contract. For example, if the Contract is awarded in September 2020, the 'base' month will be June. The base month is fixed and will not be adjusted year to year. The adjustments will be based on the difference in the base month CPI for each applicable year and will become effective in the anniversary month. As long as the request is submitted and received within the required time frame, the adjustment will be processed using the base month CPI. Once approved or rejected, the Contractor will be notified in writing. Contractor shall not submit revised invoices until such notification, at which point an invoice may be submitted for any retroactive difference owed.

Requests must be sent to:
NYS Office of Information Technology Services
Procurement and Contract Support Unit
Empire State Plaza
P.O. Box 2062
Albany, NY 12220-2062

Should the Contractor fail to submit their request, to the proper location, within three (3) months of the applicable base month date, Contractor shall be deemed to have waived their right to any increase in the not-to-exceed hourly rates.

16. 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. In addition, a copy of the notice will be emailed to the recipient(s). 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:

NYS Office of Information Technology Services

Vendor Sourcing and Management Organization
Empire State Plaza, PO Box 2062 Albany, NY 12220-0062
vsmo@its.ny.gov

With a copy to:

NYS Office of Information Technology Services
Division of Legal Affairs, Bureau of House Counsel
Empire State Plaza, PO Box 2062 Albany, NY 12220-0062
its.sm.dla@its.ny.gov

For Contractor:

[Name]
[Title]
[Street Address] [City, State, Zip code]
Telephone Number: ()

With a copy to, 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.

17. CONTRACT PAYMENTS

Payments for services rendered and materials provided shall be in accordance with the Contract. Contractor may invoice ITS for services rendered and/or materials provided under a Work Assignment issued by ITS, only where ITS has executed the Work Product Acceptance Form, provided as Appendix I in the solicitation. Unless mutually agreed otherwise in writing by the Parties, all rates shall be inclusive of any and all direct and indirect costs including contract administration, clerical personnel, travel, computer charges, postage, and all other expenses related to the engagement. The State's payment obligations shall be governed by the provisions of the SFL.

Invoices shall be due thirty (30) calendar days after receipt of the completed Work Product Acceptance Form. Charges for services rendered and/or materials provided by Contractor will be based on the labor rates, for actual hours worked to complete the Work Assignment, and material costs, for materials provided to complete the Work Assignment, provided in Contractor's Quote Response Form in response to an ITS Work Assignment. Notwithstanding the foregoing, for any services rendered and/or materials provided during the State's prior fiscal year (April 1 through March 31), any invoices for such services and/or materials must be submitted by May 15 of the State's current fiscal year. Failure to submit such invoices by May 15 will result in forfeiture of payment due to Contractor unless ITS provided written notification detailing otherwise. Payments shall be made in United States Dollars (\$ USD).

Contractor shall remit invoices to ITS in accordance with invoicing instructions published by the NYS OGS Business Services Center on their website online via: <https://bsc.ogs.ny.gov/nys-vendors>. Contractor must submit complete and accurate invoices via email to: AccountsPayable@ogs.ny.gov. The subject field should include: agency name (ITS), invoice number, and Routing ID (if any) being billed. Invoices must be submitted in a non-editable file format, preferably a PDF. Excel and Word files should be converted to PDF to ensure data presentation, integrity, and to expedite processing time.

18. ITEMIZATION, ELECTRONIC PAYMENT, AND ELECTRONIC INVOICING REQUIREMENTS

a. Itemization. Contractor is apprised that its bills, documentation supporting charges in those bills, and all invoices paid under the Contract are subject to audit by auditors internal or external to ITS, and agrees to provide timely,

complete, and accurate billing invoices to ITS in order to be eligible for payment. "Timely, complete, and accurate billing invoices" means invoices submitted to ITS in a timely manner as described below, containing all information and supporting documentation required by the Contract, ITS, and OSC with an itemization of each material or service. Contractor shall provide such itemization at a level of detail reasonably requested by ITS, including a breakdown with enough detail for ITS to be able to confirm that Contractor is abiding by the requirements of the Contract. Contractor shall cooperate with ITS' reasonable requests for greater detail as required.

b. Electronic Payments. 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 OSC's procedures to authorize electronic payments. Authorization forms are available at OSC'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 the Contract if it does not comply with OSC's electronic payment procedures, except where ITS has expressly authorized payment by paper checks as set forth above.

c. Electronic Invoicing. Contractor acknowledges that, during the course of the Contract, the State is likely to begin moving to an electronic invoicing system in order to decrease invoice processing time, increase transparency into invoice status for vendors, and to reduce manual labor associated with opening, sorting, and scanning mailed invoices. It is anticipated that, once enrolled in NYS' electronic invoicing system, vendors may submit electronic invoices through the NYS Statewide Financial System ("SFS") vendor portal, which may build this vendor data into an SFS voucher, match invoices with associated purchase orders and receipts, and route the invoice for approval and payment. Contractor agrees to reasonably cooperate with the application of such an electronic invoicing system to Contractor's invoicing of ITS, once such system is available for this purpose.

19. WARRANTIES AND GUARANTEES

a. Contract Deliverables. Contractor warrants and represents that the services required by the Contract shall be performed or provided in accordance with all the terms and conditions, covenants, statements, and representations contained in the 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. Product Performance and Product Warranties in General. Contractor hereby warrants and represents that products acquired by ITS under the Contract conform to the manufacturer's specifications, performance standards and documentation and that the documentation fully describes the proper procedure for using the products.

Contractor further warrants and represents that products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable (the "product warranty period").

During the product warranty period, defects in the materials or workmanship of products, components, or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, must be repaired or replaced by Contractor at no cost or expense to ITS. Contractor shall extend the product warranty period for individual products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, subcontractors, distributors, resellers or employees ("extended warranty").

Any component or part replaced by the Contractor under the Contract warranties must be guaranteed for the greater of: (i) the product warranty period set forth herein; or (ii) the manufacturer's standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and neither the State nor ITS must in any event be liable or responsible therefor.

Where Contractor or other third-party manufacturer markets any product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the product warranty or extended warranty periods with the other third-party manufacturers for warranty repair or replacement of the applicable product.

Where Contractor or other third-party manufacturer markets any product with a standard commercial warranty that goes beyond the product warranty or extended warranty periods, Contractor must notify ITS and pass through the standard commercial warranty to ITS at no additional charge; provided, however, that Contractor must not be responsible for coordinating services under the standard commercial warranty after expiration of the product warranty and extended warranty periods.

Unless recycled, recyclable, or recovered materials are available and approved by ITS, product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no component or part shall be substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor shall not be responsible for any modification of the products made by ITS without Contractor's approval.

c. Workmanship Warranty. Contractor warrants and represents that all services shall meet the completion criteria set forth in the Contract or any relevant Work Assignment, and that each of Contractor's services shall be performed in a professional and workmanlike manner in accordance with the highest applicable industry standards and according to its current description (including any completion criteria) contained in the Contract, an attachment, or a Work Assignment. A claim that specific services provided by Contractor did not meet the "highest applicable professional standards" must be made by ITS within ninety (90) days after the date on which the breach occurred. In the event that there has been a breach of the foregoing warranty and the Work Assignment does not provide a specific remedy for the breach of that warranty, ITS' remedies under this warranty will be: (1) cure by Contractor within a reasonable time, not to exceed thirty (30) days, at no charge to ITS; and (2) if Contractor does not cure within the thirty (30) day period, ITS will be entitled to a refund of the amounts paid to Contractor for the service or part thereof that gave rise to the claim. This warranty is in addition to, and not in lieu of, any other warranty under the Contract or other remedies that may be provided in a Work Assignment under the Contract. In addition, the foregoing does not limit ITS' right to seek additional remedies against Contractor for any damage caused by Contractor to hardware or other products acquired under the Contract (for example, damages incurred by ITS as a result of hardware being rendered unusable).

The warranty stated above will not apply to the extent that there has been misuse (including but not limited to use of any hardware capacity or capability, other than that authorized by Contractor in writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by ITS, or failure caused by a product for which Contractor is not responsible.

d. Personnel Eligible for Employment. Contractor warrants and represents that all personnel performing services under the 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.

e. Service Guarantee. Contractor's failure to satisfy performance standards or requirements set forth in the Contract therein may result in a credit or chargeback in an amount pre-determined by the Parties. The monetary amounts associated with the Service Level Credits shall be credited to ITS on the next invoice.

f. Additional Warranties. Where Contractor generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the State.

g. No Limitation of Rights. The rights and remedies of the State provided in this clause are in addition to and do not limit any rights afforded to the State by any other clause of the Contract.

h. Survival of Warranties. All warranties contained in the Contract shall survive termination of the Contract.

i. No Implied Warranties. To the extent permitted by law, these warranties are exclusive and there are no other

express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose.

20. 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. Failure to do so may constitute grounds for ITS to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by ITS.

To the extent that any of the materials or services provided under the 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, including, but not limited to 2 CFR Part 200, relating to procurements by states, and any federal laws, rules and regulations specifying federal government intellectual property rights.

21. INDEMNIFICATION and 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 or 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 the 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 the Contract.

If any products, documentation, or deliverables are determined to be infringing, or Contractor suspects a product, documentation, or deliverable may be infringing, Contractor will, at its expense, and with the State's prior written approval, either: (i) procure the right for the State to continue using the products, documentation, or deliverables; (ii) replace the products, documentation, or deliverables with a non-infringing equivalent; (iii) modify the products, documentation, or deliverables to make it non-infringing; or (iv) direct the return of the products, documentation, or deliverables and refund any monies paid by the State for the products, documentation, or deliverables. These remedies shall be in addition to, not exclusive, of any other rights or remedies the State may have at law or equity.

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) \$2,000,000 (Two 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; or (iii) the amount for which the applicable insurance is stated in the "*Contractor's Insurance Requirements*" appendix to the Contract. 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 the 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 (without which the transactions contemplated by the Contract 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.

22. 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.

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

23. TERMINATION

a. For Convenience. By written notice, the 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 may, at its sole discretion, pay for all accrued but unpaid charges incurred through the date of the termination.

b. For Cause. 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 a specific Work Assignment 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 Work Assignment, 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 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' 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.

24. TRANSITION SERVICES (CONTINUING UNTIL CONTRACT EXPIRATION)

The Contractor shall provide certain services ("Transition Services") as the State deems reasonable and necessary for the State to comply with all the legal requirements for establishing a new contract or transitioning to a replacement Contractor for a Work Assignment.

a. Transition Period. The Transition Period shall be determined by the State, and Contractor will be notified of the period in writing. The State shall consult with the Contractor prior to making such determination. The State reserves the right to amend the Transition Period subsequently, upon thirty (30) days' advance written notice to the Contractor.

b. Transition Plan. Within fifteen (15) days of receipt of a notice of termination of the Contract or Work Assignment, whichever event occurs first, the Contractor shall provide a final draft of a detailed written plan for Transition (Transition Plan) which outlines, at a minimum, the tasks, milestones, and deliverables associated with the smooth transition of services to ITS, a third-party or the successor contractor. Contractor agrees to amend the Transition Plan to include all other information deemed mutually necessary by ITS and Contractor. There will be no cost to the State for any portion of the development of the Transition Plan.

c. No Interruption in Service. At all times during the Transition Period and unless directed otherwise in writing by ITS, the Contractor shall continue to fulfill all of its contractual obligations set forth in the Contract until such time as the State: (i) has approved the Contractor's proposed Transition Plan, as defined herein; and (ii) an orderly transition to ITS, a third-party, or the successor contractor has been completed pursuant to the approved Transition Plan. The Contractor shall be required to meet its contractual obligations pursuant to the Contract notwithstanding the issuance of a notice of termination of the Contract or Work Assignment by ITS.

d. Contractor Transition Services. "Transition Services" shall be deemed to include Contractor's responsibility for all tasks and services outlined in the Contract or Work Assignment, and for transferring in a planned manner specified in the Transition Plan all tasks and services to ITS, a third-party or the successor contractor. It is expressly agreed between the Parties that the level of service during the Transition Period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Contract, provided, however, that where, during the Transition Period, tasks or services are transitioned to or assumed by ITS, a third-party or the successor contractor, Contractor shall not be held responsible for the acts or omissions of ITS, a third-party or the successor contractor or for service degradation resulting from the acts or omissions of ITS, a third-party or the successor contractor.

e. Responsibilities for Transition. Contractor shall cooperate with the State and the third-party or successor contractor to facilitate a smooth and orderly transition. ITS shall assume responsibility for transition project management. A project manager responsible for coordinating transition activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed by ITS. Weekly project review meetings shall be held with representatives of the Contractor, ITS, and the third-party or the successor contractor. ITS shall also ensure that all other resources (e.g., technical, administrative) deemed necessary by the Transition Plan, whether

they are ITS or third-party resources, will be available as required to carry out tasks and functions defined in the Transition Plan and in accordance with the defined timelines specified in the Transition Plan.

f. Compensation for Transition Services. The State will not be charged nor will Contractor be reimbursed for Transition Services that are not allowed and provided for under the Contract including the development of the Transition Plan.

25. DEFAULT

a. If either Party breaches a material provision of the 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 the Contract upon ten (10) days written notice and exercise such other remedies as shall be available under the 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 the 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 the Contract, the State shall thereafter be released from 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

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/Force of Nature, war, civil disturbance, court order, labor dispute, global pandemic, 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.

27. DISPUTE RESOLUTION

The Parties agree to resolve any disputes arising under the Contract expeditiously through an escalation process by arranging for senior management representatives of the Parties to meet within three (3) business days in response to a dispute that threatens the performance of a material portion of the Contract. During the dispute, Contractor shall continue to provide services according to the Contract until such dispute is resolved. Nothing in this paragraph shall diminish the State's right to terminate the Contract as provided in the Contract.

28. GENERAL PROVISION AS TO REMEDIES

Parties may exercise their rights and remedies at any time, in any order, to any extent, and as often as they choose, without regard to whether one right or remedy precedes, concurs with, or succeeds another right or remedy. A single or partial exercise of a right or remedy shall not preclude the further exercise of that right or remedy or the exercise of another right or remedy over 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.

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 the following:

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

29. INSURANCE

Contractor must comply with the Insurance provisions set forth in Appendix C-1 - Contractor's Insurance Requirements annexed to the Contract and incorporated herein by reference.

30. TAXES

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.

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.

§5-a of the Tax Law of the State of New York requires that any contract valued at more than \$100,000 entered into by a State agency shall not be valid, effective, or binding against such State agency unless the Contractor certifies to the New York State Department of Taxation and Finance ("DTF") 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 DTF 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 agency that it filed the certification with the DTF 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 DTF before the Contract may take effect.

In addition, after the Contract takes 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 DTF 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 from the DTF. Contractor agrees to cooperate fully with the State in administering these requirements.

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 if such liabilities exist, a payment schedule has been arranged for their speedy satisfaction before Contract execution.

32. SUPPLIER DIVERSITY

Various New York State laws (including Articles 15-A and 17-B of the Executive Law of the State of New York

("EXC"); 5 NYCRR 140-145 and 9 NYCRR Part 252; and NYS Executive Order 162¹), require State agencies, including ITS, to provide opportunities for maximum feasible participation in the performance of their contracts for NYS-certified minority-and women-owned business enterprises ("MWBEs"), NYS-certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), and the employment of minority group members and women.

MWBE and EEO: Statutorily required studies published in 2010 and 2016 found evidence of statistically significant disparities between the participation levels of MWBEs in State procurement and contracting versus the number of MWBEs ready, willing, and able to participate in such procurements. These studies' recommendations led to enactment and implementation of EXC Article 15-A, which requires, among other things, that ITS establishes, in the performance of its contracts: goals for maximum feasible participation of NYS-certified MWBEs; and equal employment opportunity (EEO) of minority groups members and women.

EO-162 EEO and Job Title/Salary Requirements: Executive Order No. 162 was issued on January 9, 2017 "to ensure that workers are being provided equal opportunities to work on State contracts and are being paid similarly for performing the same work."

SDVOB: Under Chapter 22 of the Laws of 2014, the Service-Disabled Veteran-Owned Business Act was enacted to assist service-disabled veterans in playing a greater role in the economy of the State in order to promote and encourage the continuing economic development of service-disabled veteran-owned businesses.

As such, Contractor must continue to utilize small, minority and women owned businesses, provide opportunities for service-disabled veterans, and provide for the employment of minority group members and women in the performance of their contracts with the State, consistent with current New York State law. These laws also require Contractor to document its actions, as described below.

MWBE:

Note: Portions of the following provisions may not apply where the participation goals for that section are set at 0%.

ITS is required to implement the provisions of EXC Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for real property renovations and construction.

Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ITS, to fully comply and cooperate with ITS' implementation of EXC Article 15-A, which requirements include providing equal employment opportunities for minority group members and women, and contracting opportunities for certified minority and women-owned business enterprises.

Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by EXC Article 15 (the "Human Rights Law") or other applicable federal, state, or local laws.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to the terms of this section of the Contract, or enforcement proceedings as allowed by the Contract.

MWBE Participation Goals: For purposes of the Contract, ITS has established an overall goal of 30% for Minority and Women-Owned Business Enterprises participation, broken down as 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).

For purposes of providing meaningful participation by MWBEs on the Contract by achieving the MWBE participation goals established herein, Contractor should reference the directory of NYS Certified MWBEs found

¹ All references to Executive Order 162 refer to that which was originally issued by Governor Andrew M. Cuomo on January 9, 2017 and continued by Executive Order 6 issued by Governor Kathy Hochul on October 8, 2021.

at: <http://www.esd.ny.gov/mwbe.html>. Additionally, Contractor is encouraged to consult ITS using the contact information listed below, or the Division of Minority and Women's Business Development of the New York State Department of Economic Development ("DMWBD"), to discuss additional methods of maximizing participation by MWBEs on the Contract.

Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8 Contractor must document its "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with EXC §316-a and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to ITS for liquidated or other appropriate damages, as set forth herein.

EEO:

Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. As such, Contractor and its subcontractors shall 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, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Contractor agrees it is bound by certain provisions of EXC Article 15-A and the MWBE Regulations promulgated by DMWBD. If any of the terms or provisions in this section conflict with applicable law or regulations, such laws and regulations shall supersede these requirements. In relation to the Contract, Contractor shall specifically comply with the following EEO provisions of Article 15-A:

Contractor and its subcontractors shall undertake or continue existing EEO 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, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

Contractor and subcontractors shall submit an EEO policy statement to ITS upon request. The EEO policy statement shall include, at minimum, language indicating that the Contractor or subcontractor:

- (a) will not discriminate against any employee or applicant for employment because of: race, creed, color, national origin, sex, age, disability, or marital status;
- (b) will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination;
- (c) shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force;
- (d) shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status; and
- (e) shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

The Contractor will include the above three provisions (a-c) in every subcontract under the Contract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

If Contractor and/or any subcontractor does not have an existing EEO policy statement, they may complete one using the Sample MWBE and EEO Policy Statement form attached to the Contract as an Appendix ("*Sample MWBE and EEO Policy Statement*"), or any updated version thereof provided by ITS.

NYS Executive Order 162:

In compliance with Executive Order 162 dated January 9, 2017, for State contracts with a value in excess of \$25,000 where any of the services are performed by individuals who are located in New York State, Contractor agrees to:

- (a) provide to ITS, and supplement on a quarterly basis, equal employment opportunity information by reporting the job title and salary in gross wages of each employee of the Contractor who is performing work on the Contract, or, if the Contractor cannot identify the individuals working directly on the Contract, of each employee in the Contractor's entire workforce; and
- (b) extend this quarterly reporting requirement to the Contractor's subcontractors who work on the Contract with ITS, for the subcontractor's employees.

Salaries must be provided in United States Dollars (\$ USD). 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.

SDVOB:

EXC Article 17-B provides for more meaningful participation in public procurement by certified SDVOBs, thereby further integrating such businesses into New York State's economy. ITS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of ITS contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractor is strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of the Contract, ITS conducted a comprehensive search and determined whether the Contract might offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to the Contractor. To the extent the Contract sets specific SDVOB participation goals, then the following provisions apply to the Contract:

SDVOB Participation Goals: ITS has established an overall goal of 6% for SDVOB participation for the Contract, based on the current availability of qualified SDVOBs.

Where SDVOB goals have been established herein, Contractor must document its "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract. For purposes of providing meaningful participation by SDVOBs, Contractor should reference the directory of NYS Certified SDVOBs found at: <https://ogs.ny.gov/veterans>. Contractor is encouraged to contact the New York State Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or at veteransdevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on its contracts.

Documentation:

The various State laws and regulations described above have very specific provisions pertaining to the requirement for Contractors to document to a NYS agency's satisfaction their supplier diversity efforts. The process for doing so changes, however, as the State improves its online tools. Recently, DMWBD, which directs NYS agency supplier diversity efforts, has created an online system for vendors to report some of their required supplier diversity filings to the New York State Contract System, or "NYSCS". Over time, DMWBD has been migrating the filing of various supplier diversity forms to this online system. For example, DMWBD has recently required vendors to now file their EO-162 reports through NYSCS, rather than using the PDF form that had been

used previously.

As such, while the below provisions describe the various forms and timing required by State's supplier diversity laws, Contractor acknowledges that during the term of the Contract more and more supplier diversity information will be migrating to an online filing system through the NYSCS and references to, for example, PDF versions of the forms below may become *examples* of the information to be submitted as new capabilities for filing online through NYSCS become available. The sites where Contractor can obtain required supplier diversity forms currently include:

For initial MWBE, EEO, and EO-162 forms, either: <https://its.ny.gov/minority-and-womens-business-enterprise-mwbe-supplier-diversity-program> or through the NYSCS (<https://ny.newnycontracts.com/>).

For SDVOB forms, at: <https://its.ny.gov/service-disabled-veteran-owned-business-sdvob-supplier-diversity-program>.

Contractor is responsible for obtaining all required forms referenced herein and, to the extent that Contractor is unable to locate such forms for reasons including that ITS might have updated its website locations or the form is now being filed online through NYSCS, for reaching out with any questions to an ITS contact using the contact information below to obtain copies of or access to the forms:

NYS Office of Information Technology Services
Finance - Vendor Sourcing and Management Organization
Empire State Plaza, PO Box 2062
Albany, New York 12220-0062
Telephone Number: (518) 473-9341
Email Address: supplierdiversity@its.ny.gov

Supplier Diversity Forms Required to be Filed at the Start of the Contract:

Start of the Contract MWBE Forms:

MWBE Utilization Form MWBE-100: If the Contract contains MWBE goals, then Contractor represents and warrants that Contractor has filed with ITS a complete MWBE Utilization Plan ITS Form MWBE-100 ("Utilization Plan") either prior to, or at the time of, the execution of the Contract. A "*complete*" Utilization Plan is one in which each item of requested information on the form, such as MWBE contact information inclusive of name, phone number, email address, and mailing address, is fully provided by Contractor for the MWBEs listed. Contractor agrees to use such Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in this section. Any modifications or changes to the Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised Utilization Plan submitted to ITS for approval using the processes described below concerning "*Forms Required to be Submitted to NYS During the Term of the Contract.*"

MWBE Request for Waiver/Certification of Good Faith Efforts (ITS Form MWBE-104): Alternatively, if the Contractor, after making good faith efforts, is unable to comply with the Contract's MWBE goals, the Contractor may submit to ITS a Request for Waiver ITS Form MWBE-104 documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, ITS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

Required Letter Notice to Identified MWBEs: To the extent the Contract has MWBE goals, and the Contractor is submitting to ITS an Utilization Plan, then upon final award of the Contract or completion of the procurement's restricted period, and prior to the commencement of the Contract, the Contractor must email a letter in the form of the sample language below to each and every MWBE firm that Contractor has identified on its approved Utilization Plan. The Contractor is required to simultaneously provide a

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copy of each such e-mailed letter to ITS at supplierdiversity@its.ny.gov. Also, to the extent Contractor's utilization plans change or additional certified MWBE subcontractors are added, Contractor must send such an e-mail letter, again copying ITS, to each additional MWBE vendor added to the Utilization Plan for the Contract:

Dear *[Enter name of NYS certified MWBE Firm]*:

Please be advised that you have been listed as an MWBE subcontractor on a utilization plan submitted by our company [enter name of awarded prime Contractor] who has been tentatively awarded the following contract with the NYS Office of Information Technology Services (ITS): [enter name and number of Contract awarded].

Being listed on our utilization plan does not guarantee your engagement on this contract. Such concerns are managed by the selected vendor along with ITS. Please be in contact with [enter name of awarded prime Contractor] to discuss potential next steps.

Should you have any MWBE questions or other questions regarding this contract, please reach out to the NYS Office of Information Technology Services (ITS) and its MWBE liaison using the following contact information:

*NYS Office of Information Technology Services
Finance - Vendor Sourcing and Management Organization
Empire State Plaza, PO Box 2062
Albany, New York 12220-0062*

Telephone Number: (518) 473-9341

Contract questions, in general: contracts@its.ny.gov

MWBE questions, specifically: supplierdiversity@its.ny.gov

Sincerely,

[enter signature]

Start of the Contract EEO Forms:

EEO Staffing Plan (ITS Form EEO-100): Contractors shall complete the EEO Staffing Plan ITS Form EEO-100 (“Staffing Plan”) and submit it to ITS as part of their bid or proposal or within a reasonable time of the execution of the Contract. To ensure compliance with this section, the completed Staffing Plan must document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories.

Start of the Contract Executive Order 162 Forms:

EO 162 Workforce Utilization Report: To ensure compliance with this section, the Contractor shall file with ITS at or before the beginning of the Contract a completed EO 162 Workforce Utilization Report to supplement the equal employment opportunity information Contractor has provided to ITS under the Contract by reporting the job title and salary in gross wages of each employee of the Contractor who is performing work on the Contract, or, if the Contractor cannot identify the individuals working directly on the Contract, of each employee in the Contractor’s entire workforce.

Start of the Contract SDVOB Forms:

SDVOB Utilization Plan (Form SDVOB-100): In accordance with 9 NYCRR § 252.2(i), Contractor is required to complete and file with ITS with its bid, or at the beginning of the Contract, an SDVOB Utilization Plan on Form SDVOB 100 (“SDVOB Utilization Plan”), listing the SDVOBs that the

Contractor intends to use to perform the Contract, a description of the work that the Contractor intends the SDVOB to perform in order to meet the goals on the Contract, the estimated dollar amounts to be paid to each SDVOB, or, if not known, an estimate of the percentage of Contract work each SDVOB will perform. By signing the SDVOB Utilization Plan, Contractor acknowledges that making false representations or providing information showing a lack of good faith as part of, or in conjunction with, the submission of an SDVOB Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of the Contract for cause, loss of eligibility to submit future bids, and/or withholding of payments.

Any modifications or changes Contractor wishes to make during the term of the Contract to the SDVOB Utilization Plan after Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan submitted to NYS for approval using the processes described below concerning "*Forms Required to be Submitted to NYS During the Term of the Contract.*" ITS will review the updated SDVOB Utilization Plan submitted by Contractor and advise Contractor of ITS' acceptance thereof, or, if not accepted, ITS shall issue Contractor a notice of deficiency within twenty (20) days of receipt.

Contractor certifies that it will follow the original, or any revised and ITS-accepted, SDVOB Utilization Plan that it has submitted to ITS for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB participation goals set forth above or as further agreed to by the Parties.

If ITS issues to Contractor a notice of SDVOB utilization deficiency, Contractor agrees that it will respond to ITS' notice of deficiency within seven (7) business days of receipt, by submitting to ITS a written remedy in response to the notice of deficiency. If the written remedy that Contractor submits to ITS is not timely, or is found by ITS to be inadequate, ITS will notify the Contractor and direct the Contractor to submit to ITS, within five (5) business days of notification by ITS, a request for a partial or total waiver of SDVOB participation goals using the Request for Waiver Form SDVOB-200, as described below.

SDVOB Request for Waiver (Form SDVOB-200): Alternatively, in accordance with 9 NYCRR § 252.2(m), if Contractor finds it is unable to meet the Contract's SDVOB participation goals but is able to document its good faith efforts to do so, then Contractor may file with ITS an SDVOB Request for Waiver on Form SDVOB-200 requesting a partial or total waiver of the SDVOB participation goals, accompanied by supporting documentation.

To ensure it understands the process correctly, prior to Contractor submitting to ITS a request for a partial or total waiver of SDVOB participation goals, Contractor shall discuss same with the ITS supplier diversity contacts listed in this section of the Contract.

Contractor may submit the request for waiver at any time during the Contract, including at the same time it submits its SDVOB Utilization Plan, but no later than prior to the submission of a request for final payment on the Contract. If the documentation included with the Contractor's waiver request is complete, ITS shall evaluate the request and issue the Contractor a written notice of acceptance or denial within twenty (20) days of receipt.

If ITS, upon review of the Contractor's submitted SDVOB Utilization Plan and Quarterly SDVOB Compliance Reports (modified versions of Form SDVOB-101), determines that Contractor is failing or refusing to comply with the participation goals, and no waiver has been issued in regard to such noncompliance, then 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 SDVOB participation goals.

In accordance with 9 NYCRR § 252.2(n), Contractors must document their SDVOB required good faith efforts toward utilizing SDVOBs on the Contract. This documentation shall be filed by Contractor with ITS using a SDVOB Request for Waiver form (Form SDVOB-200). As described on the form, evidence of required good faith efforts shall include, but not be limited to, the following:

- Copies of Contractor's solicitations to SDVOBs, and any responses thereto.

- Explanation of the specific reasons Contractor chose not to use each SDVOB that responded to Contractor's solicitation to them.
- Dates of meetings attended by Contractor, if any, that were scheduled by ITS with certified SDVOBs whom ITS determined were capable of fulfilling the SDVOB goals set in the Contract.
- Information describing the specific steps the Contractor had undertaken to reasonably structure its bid and the scope of work it is performing under the Contract, for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- Other information Contractor deems relevant to its waiver request.

Forms Required to be Submitted to NYS During the Term of the Contract:

Periodic MWBE Compliance Update Reports: Once a contract has been awarded and during the term of the Contract, Contractor is responsible for updating, using the NYSCS and on a cadence as required by that online system, periodic MWBE Compliance Reports using the NYSCS's equivalent of ITS Form MWBE-102, in order to document the progress made during the term of the Contract towards achievement of the MWBE goals of the Contract. Contractor must immediately notify ITS of each submittal using the NYSCS. For more information, Contractor may go to: <https://ny.newnycontracts.com>.

Quarterly EO 162 and EEO Workforce Utilization Report: Once a contract has been awarded and during the term of the Contract, Contractor is responsible for submitting the EO 162 and EEO Workforce Utilization Report, through the NYSCS in order to show:

- Any changes to the EEO Staffing Plan that the Contractor previously submitted to ITS at the beginning of the Contract, now reporting the *actual* workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories.
- Any changes to the Executive Order 162 report that Contractor submitted at the beginning of the Contract, now reporting the *actual* job title and salary in gross wages of each employee of the Contractor who is performing work on the Contract, or, if the Contractor cannot identify the individuals working directly on the Contract, of each employee in the Contractor's entire workforce.

Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When the workforce to be utilized on the Contract *cannot* be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall still submit this form but indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

Examples of the Quarterly EO 162 and EEO Workforce Utilization Report may be currently found at: <https://its.ny.gov/document/eo-162-eeo-workforce-utilization-report>. Contact the ITS supplier diversity contacts listed in this section of the Contract for more information.

Periodic SDVOB Compliance Update Reports: Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its initial SDVOB Utilization Plan, during the performance of the Contract. In accordance with 9 NYCRR § 252.2(q), Contractor is required to submit SDVOB Contractor Compliance Update Reports during the term of the Contract on a periodic basis as determined by the Contract, reflecting and documenting progress made by Contractor towards achieving the Contract SDVOB participation goals. ITS currently requires this reporting be submitted on a quarterly basis, using ITS' periodic SDVOB Compliance Update Report currently

found at: <https://its.ny.gov/service-disabled-veteran-owned-business-sdovb-supplier-diversity-program>. Contact the ITS supplier diversity contacts listed in this section for more information.

Compliance with this Contract's Supplier Diversity Provisions:

MWBE Notice of Deficiency. If ITS, upon review of the initial MWBE Utilization Plan and updated Periodic MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the participation goals and no waiver has been issued in regard 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 participation goals.

Disqualification as Non-Responsive. ITS may disqualify a Bidder or Contractor as being non-responsive if they fail to meet the requirements of the Contract under the following circumstances:

MWBE: If such Bidder or Contractor fails to submit to ITS a required initial MWBE Utilization Plan or, through the NYSCS, required updated Periodic MWBE Contractor Compliance Reports;

EEO: If such Bidder or Contractor fails to submit to ITS a required initial EEO Workforce Employment Utilization Plan, or, required updated Quarterly EO 162 and EEO Workforce Utilization Reports;

EO-162: If such Bidder or Contractor fails to submit to ITS a required initial Executive Order 162 Workforce Utilization Report or, required updated Quarterly EO 162 and EEO Workforce Utilization Reports;

SDVOB: If such Bidder or Contractor fails to submit to ITS a required initial SDVOB Utilization Plan or, required updated Periodic SDVOB Contractor Compliance Update Reports;

If such Bidder or Contractor fails to submit a written remedy to any ITS notice of deficiency;

If, when such is required, such Bidder or Contractor fails to submit to ITS a request for waiver; or

If ITS determines that such Bidder or Contractor has failed to document good faith efforts.

MWBE Breach of Contract: Contractor further agrees that a failure to submit and/or use such initial MWBE Utilization Plan, or Plan as updated by Contractor through the NYSCS, shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ITS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

MWBE Liquidated Damages: 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:

- All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by ITS, Contractor shall pay such liquidated damages to ITS within sixty (60) days after they are assessed by ITS unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the DMWBD pursuant to EXC §313(8), in which event the liquidated damages shall be payable if the Director renders a decision in favor of ITS.

SDVOB Breach of Contract: Contractor agrees that its failure to use SDVOBs as agreed in the initial SDVOB Utilization Plan that Contractor submitted to ITS, or Plan as updated by Contractor through the NYSCS, or any of the following deficiencies by Contractor, shall constitute a material breach of the terms of the Contract and may be grounds for cancellation of the Contract by ITS:

- Contractor's failure to submit, or to timely submit, to ITS an SDVOB Utilization Plan;
- Contractor's failure to submit, or to timely submit, through the NYSCS a periodic SDVOB Contractor Compliance Update Report;
- Contractor's failure to submit, or to timely submit, to ITS a written remedy to an ITS notice of SDVOB utilization deficiency;
- Contractor's failure to submit, or to timely submit, to ITS, a Request for Waiver of SDVOB participation goals; or
- Contractor's failure to document, or to timely document, to ITS Contractor's good faith efforts toward utilizing SDVOBs on the Contract.

SDVOB Damages: Upon the occurrence of such a material SDVOB breach by Contractor, ITS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility, and, if Contractor is found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, then in accordance with 9 NYCRR § 252.2(s), Contractor shall pay damages to ITS calculated by ITS based on ITS' actual cost incurred relative to ITS' expenses for personnel, supplies, and overhead related to establishing, monitoring, and reviewing certified SDVOB enterprise programmatic goals.

33. ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

New York State businesses in general have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in New York State, Contractors are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Contractor understands that ITS expects Contractor to the maximum extent practical and consistent with legal requirements to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology.

The Legislature has determined that utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, maximize economic activity to the mutual benefit of the Contractor and its New York State business partners, and that New York State businesses will promote the Contractor's optimal performance under the Contract, thereby fully benefiting the public-sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York State businesses by its contractors. The State therefore expects Contractors to provide maximum assistance to New York State businesses in their use of the Contract, so that the potential participation by all kinds of New York State businesses will deliver great value to the State and its taxpayers.

34. STATE FINANCE LAW SECTION 139-I REQUIREMENT FOR CONTRACTS OF \$1,000,000 OR MORE

It is the policy of ITS to promote the participation by New York State business enterprises and residents in procurement contracts estimated to be \$1,000,000 or more in compliance with SFL §139-i. After the Contract is awarded, for procurement contracts in the amount of \$1,000,000 or more, Contractor will be required to notify New York State Business Enterprises and residents of subcontracting and employment opportunities in compliance with SFL §139-i. Contractor must document its efforts by showing that it has (i) solicited bids in a timely and adequate manner from New York State Business Enterprises including certified minority and women-owned businesses, (ii) contacted the New York State Department of Economic Development to obtain listings of New York State Business Enterprises, (iii) placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State, or (iv) participated in Bidder outreach conferences. If the Contractor determines that New York State Business Enterprises are not available to participate on the Contract as subcontractors or suppliers, the Contractor shall provide a statement indicating the method by which such determination was made. If the Contractor does not intend to use subcontractors, the Contractor shall provide a statement verifying such. Contractor shall also provide notification to New York State residents of employment opportunities through listing any such positions with the community services division of the State's Department of Labor, or provide for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

Bidders located in a foreign country are notified that the State may assign or otherwise transfer offset credits created by any procurement contract of \$1,000,000 or more, directly or indirectly, to third parties located in New York State, and that Bidders shall be obligated to cooperate with the State in any and all respects in making such assignment or transfer, including, but not limited to, executing any and all documents deemed by the State to be necessary or desirable to effectuate such assignment or transfer, and use their best efforts to obtain the recognition and accession to such assignment or transfer by any applicable foreign government.

35. ETHICS COMPLIANCE

Ethics. Contractor, its officers, employees, agents, partners, and subcontractors (if any) shall comply with the requirements of the NYS Public Officers Law ("POL") § 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.

The Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the POL, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Commission on Ethics and Lobbying in Government ("CELG"), or its predecessors (collectively, the "Ethics Requirements"). The Contractor certifies that all of its employees and those of its subcontractors who are former employees of the State and who are assigned to perform services under the Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its subcontractors and who is disqualified from providing services under the Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its subcontractors derived from the Contract. The Contractor has a continuing obligation during the Term to identify and provide ITS with notice of those employees of the Contractor and its subcontractors who are former employees of the State that will be assigned to perform services under the Contract, and make sure that such employees comply with all applicable laws and prohibitions. ITS may request that the Contractor provide it with whatever information ITS deems appropriate about each such person's engagement, work cooperatively with ITS to solicit advice from CELG, and, if deemed appropriate by ITS, instruct any such person to seek the opinion of CELG. ITS shall have the right to withdraw or withhold approval of any subcontractor if utilizing such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. ITS shall have the right to terminate the Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

Conflict(s) of Interest Disclosures. The Contractor must disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Contractor or former officers and employees of the State and their affiliates, in connection with the Contractor's rendering of services enumerated in the solicitation and Contract. If a conflict does or might exist, Contractor must describe how it would eliminate or prevent it, and indicate what procedures

will be followed to detect, notify ITS of, and resolve any such conflicts.

The Contractor must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by CELG or its predecessor State entities (collectively, "Commission"), and if so, provide to ITS a brief description indicating how such matter before the Commission was resolved or whether it remains unresolved.

Contractor, by entering into the Contract, certifies that performance under the Contract does not and will not create a conflict of interest as defined under the POL, including any implementing regulations, State or ITS policies, applicable court precedent, or applicable Federal laws, regulations, rules, and guidelines including 45 CFR parts 75.112 and 75.327(b)&(c). A conflict of interest may include any situation that may have or appear to impair Contractor's ability to provide objective and impartial information, advice, or counsel, or create an unfair competitive advantage for the Contractor or its subcontractors. Contractor further acknowledges that by entering into the Contract that it may be precluded from bidding on other ITS solicitations where Contractor prepares and furnishes specifications to be used in a competitive solicitation pursuant to SFL § 163-a and any applicable Federal laws, rules, and regulations.

36. TRANSFER OR ASSIGNMENT OF CONTRACT

ITS may transfer or assign the Contract to another New York State agency or entity at its sole discretion by informing Contractor in writing of such a transfer or assignment. Contractor shall execute any documents required to accomplish the transfer or 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.

37. WAIVER OF BREACH

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.

38. ACCESSIBILITY

Web Accessibility, Branding, and Universal Web Navigation. Any web-based information and applications development, or programming delivered pursuant to the Contract will conform and comply with New York State Enterprise IT Policy NYS-P08-005 ("*Accessibility of Web-Based Information and Applications*" - see <https://its.ny.gov/tables/technologypolicyindex>) 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.

Any public facing web-based information and applications development, or programming delivered pursuant to the Contract will comply with New York State Information Technology Standard, NYS-S16-001 ("*New York Universal Web Navigation*" - see: <https://its.ny.gov/tables/technologypolicyindex>) and NYS Branding Guidelines as such policy and standard may be amended, modified or superseded, which requires that State agency web-based information and applications are accessible to persons with disabilities.

Language Access for Individuals with Limited English Proficiency. NYS Executive Order 26² (EO-26), as amended, directs executive New York State agencies that provide direct public services to offer language assistance services (translation and interpretation) to people of Limited English Proficiency (LEP).

Each State agency provides interpretation services between the agency and an individual in the individual's primary language with respect to the provision of services or benefits.

² All references to Executive Order 126 refer to that which was originally issued by Governor Andrew M. Cuomo on October 6, 2011, and continued by Executive Order 6 issued by Governor Kathy Hochul on October 8, 2021.

Each State agency must also provide translation services in the ten (10) most common non-English languages spoken by LEP individuals in the State of New York, based on the United States census data and relevant to services offered by each of such agencies. According to the NYS Language Access Policy (<https://www.ny.gov/language-access-policy>), effective as of August 1, 2021, the top ten (10) languages are Spanish, Chinese (Mandarin & Cantonese), Russian, Bengali, Yiddish, Haitian-Creole, Korean, Italian, Arabic, and Polish. Some agencies may choose to add additional languages based on their experience and other federal requirements.

If applicable, any solution being procured under the Contract which is deemed to provide a “direct public service” must at least continue to comply with EO-26, as amended, for the term of the Contract.

39. 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.

40. 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 ITS to other New York State agencies, the United States Government or any other state, with the concurrence of OSC and under appropriate circumstances.

41. NYS FINANCE LAW §163(4)(g) COMPLIANCE: 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 SFL, relative to maintaining certain information concerning Contract Employees working under State agency service and consulting contracts. State agency consultant contracts are defined at SFL §163(14)(d) 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 New York State agency awarding such contracts, Office of State Comptroller (OSC), NYS Division of the Budget (DOB), and NYS Department of Civil Service (CS).

Contractor shall comply with all ITS requests and requirements related to reporting under SFL §163(4)(g). Furthermore, all subcontracts entered into by Contractor for purposes of performing the Contract shall contain a provision whereby its subcontractors agree to comply with ITS requests and requirements related to reporting under SFL §163(4)(g). 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”).

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.

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, the Contractor reports the:

- Total number of employees employed to provide the consultant services, by employment category.

- Total number of hours worked by such employees.
- Total compensation paid to all employees that performed consultant services under such contract.*

* NOTE: The information to be reported is applicable only to those of Contractor's 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 a Contractor's or subcontractor's employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to ITS, CS and OSC as designated below:
Reports are preferred in email format to: Supplierdiversity@its.ny.gov; SubmitformB@cs.ny.gov;
CDMOST@osc.ny.gov

If mailed, please submit Form B to:

**NYS Office of Information Technology
Services Vendor Sourcing and
Management Organization**
Empire State Plaza
PO Box 2062
Albany, New York 12220-0062

NYS Department of Civil Service
Alfred E. Smith State Office Building
Albany, New York 12239
Attn: Executive Office

**NYS Office of the State
Comptroller**
110 State Street - 11th Floor
Albany, New York 12236
Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to POL §87. 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.

Contractor may find further information in OSC's Guide to Financial Operations section concerning "*Consultant Disclosure Legislation*", 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 State 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.)

Number of Employees: enter the total number of Contractor's or subcontractor's 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 these employees in the employment category.

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

42. DELIVERABLE ACCEPTANCE

Contractor will deliver completed work products and services (“Deliverables”) to the designated ITS approver who has been authorized to accept Deliverables, using the “Work Product Acceptance Form” attached to the solicitation. Deliverables must meet Contract and/or Work Assignment requirements. The ITS approver will accept or reject the Deliverable. Deliverables will not be automatically accepted in the event of New York State failure to act. If the ITS approver rejects a Deliverable, the cause for rejection and all defects to be addressed will be documented by ITS and provided to the Contractor and the Contractor will correct all identified deficiencies, and resubmit the Deliverable for acceptance. There shall be no verbal acceptance or acceptance by default of a Deliverable.

43. PREVAILING WAGE

All public works and building service contracts, regardless of dollar value, require the payment of prevailing wages and supplements as established by law by the New York State Department of Labor (“DOL”). Information indicating that prevailing wages are not being paid on a public works project will be forwarded to DOL for investigation. Willful violations of the prevailing wage provisions of the Labor Law of the State of New York may result in monetary fines or debarment from the bidding and awarding of contracts.

Contractor shall obtain the prevailing wage rate schedule for those job classifications likely to be required for performance of its obligations under the Contract, and warrants that it will pay wage levels, at minimum, commensurate with the requirements of that schedule pursuant to the State’s Labor Law. Contractor further warrants that it will consult with DOL to determine the appropriate wage levels for any additional job titles found to be necessary for performing its obligations under the Contract, and, that such persons employed in those titles will also be paid, at a minimum, commensurate with the wage levels specified in that schedule. ITS will endeavor to assist Contractor, upon request, to obtaining those schedules should such assistance be reasonably necessary.

Contractors and subcontractors are required to comply with all prevailing wage rate notifications as set forth in labor §220 of the Labor Law of the State of New York, as revised. Contractor is solely responsible for confirming subsequent changes to the posted rates and for paying the prevailing rates at all times during the Contract term.

44. CHANGE REQUEST

Change Orders, for purposes of the Contract, shall be defined as “unanticipated changes to a Work Assignment not exceeding a cumulative ten percent (10%) of the total costs of the winning quote for the specific Work Assignment.” Change Orders shall be a separate line item on Contractor’s quote and included as part of the financial evaluation for the RFQ. Contractor shall immediately notify the ITS designated contract for the Work Assignment of a situation that it anticipates will require a Change Order. A Change Order will only be authorized by written amendment to the Work Assignment executed by duly authorized signatories of both the Contractor and ITS. At the sole discretion of ITS, any work that requires exceeding the ten percent (10%) limitation will require a new competitive RFQ; however, in no case will work be permitted to continue that would result in Contractor being paid over and above the Contractor’s quote for the Work Assignment plus the Change Order ten percent (10%) limitation. Contractor shall remain responsible for completing the work in the original Work Assignment until receipt of ITS’s written approval.

45. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to SFL §§139-j and 139-k, the solicitation that resulted in the Contract included and imposed certain restrictions on communications between ITS and Bidders during the procurement process. Bidders were restricted from making contact, from the earliest notice of intent to solicit offers/bids through final award and approval of the Contract by ITS and, if applicable, OSC (“restricted period”), to other than designated staff unless it was a contact included among certain statutory exceptions set forth in SFL §139- j(3)(a). As noted in the solicitation, certain

findings of non-responsibility can result in rejection of the Contract award and in the event of two findings within a four-year period, the Bidder shall be debarred from obtaining governmental Procurement Contracts. The Contract is subject to termination in the event any such findings are made. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

46. REGISTRATION WITH NYS DEPARTMENT OF STATE

Prior to being awarded a Contract and throughout the duration of the resulting Contract, Contractor shall be registered with the New York State Department of State as an entity authorized to conduct business in New York State, or have filed an application for authority to do business in New York State with the New York State Secretary of State at time of Bid submission. Such application must have been approved prior to Contract Award. (For details concerning this requirement, refer to information available at <http://www.dos.ny.gov/corps/index.html> and http://www.dos.ny.gov/cnsl/do_bus.html. To register with the Secretary of State, contact: <http://www.dos.ny.gov/corps/contact.html>). Contractor understands and agrees that by entering into the Contract, and by its registration with the New York State Department of State as an entity authorized to conduct business in New York State, this constitutes consent to the general jurisdiction of New York State courts.

Contractor must provide to ITS the Contractor's Federal Employer Identification Number (F.E.I.N.) and/or its Department of State Registration Number or Application Number. The Contractor must notify the State immediately in the event that there is any change in the above corporate status.

47. NEW YORK STATE VENDOR FILE REGISTRATION WITH OSC

Prior to being awarded a Contract and throughout the duration of the resulting 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 New York State. For more information on the Vendor File please visit the following website: http://www.osc.state.ny.us/vendor_management/.

48. NONDISCLOSURE & CONFIDENTIALITY

Contractor shall maintain the security, nondisclosure, and confidentiality of all information in accordance with the following clauses in the performance of its activities under the Contract. Contractor shall ensure that its agents, employees, officers, partners, and subcontractors, if any, are fully aware of the obligations arising under the Contract and shall take all commercially reasonable steps to ensure their compliance to prevent unauthorized use, access, or disclosure of NYS Confidential Information. Failure by Contractor or its agents, employees, officers, partners, or subcontractors to fully comply with these requirements shall be deemed a failure to meet Contractor's obligations under the Contract and may result in ITS suspending, canceling, and/or terminating the Contract for cause or to pursue any other legal or equitable remedies available.

a. Definitions. "*New York State ('NYS') Facilities*": As used in the Contract, the term "*NYS Facilities*" shall mean any real property, tangible personal property, or electronic or virtual systems, or any part(s) or component(s) thereof, used in the conduct of New York State's business operations, including, but not limited to, physical office or computing space, computer(s) or computer systems, telecommunications or network infrastructure (e.g., utility closet(s), conduits, hubs, switches, routers), and supporting NYS Facilities and systems (e.g., mechanical, power, cooling, security, fire protection, water), regardless of owner.

"*New York State ('NYS') Confidential Information*": For purposes of the Contract, any information that ITS or the State, regardless of form or medium of disclosure (e.g., verbal, hard copy, or electronic) or source of information (e.g., ITS, other state agencies, electronic systems, federal government, or third-party contractors) provides to the Contractor, its agents, employees, officers, partners, and subcontractors or which Contractor, its agents, employees, officers, partners, and subcontractors obtains, discovers, derives, or otherwise becomes aware of as a result of Contractor's performance other than:

- (a) information that is previously rightfully known to the receiving Party without restriction on disclosure;

(b) information that is or 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

(c) information that is independently developed by Contractor without use of NYS Confidential Information.

"Contractor": For purposes of the Contract, obligations of the Contractor who is a Party to the Contract with ITS and refers to collectively, as well, Contractor's agents, employees, officers, partners, or subcontractors.

"State." For purposes of the Contract shall be interpreted to including New York State executive agencies (e.g., ITS, DTF, OTDA, DOH).

"Information Security Incident." For purposes of the Contract shall mean any allegation or suspicion held by or brought to the attention of a State employee or Contractor involving inappropriate or unauthorized access to, or disclosure of, NYS Confidential Information or NYS Facilities.

b. Data Ownership, Non-Disclosure, and Confidentiality. NYS Confidential Information is owned exclusively by New York State, will remain the property of the State throughout its use under the Contract, and shall not be released to any third-party by Contractor unless as required by applicable law or a court of competent jurisdiction, or unless Contractor has first obtained explicit written permission from a duly authorized individual employed by the State. Contractor is permitted to use NYS Confidential Information solely for the purposes set forth in the solicitation and the Contract, and for no other purpose. At no time shall the Contractor access, use, or disclose any NYS Confidential Information (including, but not limited to, personal, financial, health, or criminal history record information or other sensitive criminal justice information) for any other purpose. Further, NYS Confidential Information must be fully accessible to the State during the term of the Contract and at the Contract's conclusion.

The Contractor is strictly prohibited from releasing or using NYS Confidential Information for any purposes other than those purposes defined herein or authorized in writing by the State. Contractor agrees that NYS Confidential Information 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. Contractor shall indemnify and hold ITS and the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor of such NYS Confidential Information, in accordance with the terms and conditions of the Contract. Contractor, including Contractor's agents, employees, officers, partners, or subcontractors, may be required to execute nondisclosure agreements, either before or upon arrival at NYS Facilities or, if in the State's sole discretion, Contractor will otherwise have access to critical State networks, equipment, or NYS Confidential Information.

c. Compliance with NYS Information Security Policies and Procedures. Contractor warrants, covenants, and represents that it shall comply fully with all security procedures of the State communicated to it in the performance of the Contract, including NYS Information Security policies and standards located at <https://its.ny.gov/ciso/policies/security>. At the State's discretion, it may, at any time during the term of the Contract, request that Contractor provide documentation validating its adherence to these security policies and standards. Contractor must deliver such documentation within thirty (30) days of a request by the State or as mutually agreed to, in writing, by the Parties.

Contractor, to the extent the following meets or exceeds the NYS Information Security policies and standards described above, shall use industry standard security measures, including standard encryption protocols, to protect and guard the availability and security of all NYS Confidential Information, and adhere to all the State's security policies. Contractor shall be strictly prohibited from using NYS Confidential Information in any fashion other than that defined herein. There may be instances whereby the State will communicate security procedures necessitated by the State's operations. Contractor will use reasonable efforts to implement same. In the event Contractor does not implement or communicates that it cannot or will not implement such security procedures, the Parties will reasonably work to resolve such dispute pursuant to the Contract's Dispute Resolution process to the extent such dispute does not adversely impact the State's legal obligations.

d. Protection and Transmission of NYS Confidential Information. Contractor shall use appropriate means to preserve and protect NYS Confidential Information. This includes, but is not limited to, use of stable storage media, regular data backups and archiving, password protection of volumes, and data encryption. Consistent with the NYS Encryption Standard at: <https://its.ny.gov/tables/technologypolicyindex>, to the extent doing so is applicable based

on the specific services provided by Contractor to ITS under the Contract, the Contractor must encrypt NYS Confidential Information at rest, on file storage, on database storage, or on back-up media, and in transit in accordance with Local, State, and Federal laws, rules, regulations, ordinances, policies, standards, and guidelines. The Contractor must provide the ability to encrypt data in motion and at rest in compliance with state or federal law. Contractor must use secure means (HTTPS) for all electronic transmission or exchange of system, user, and application data with the State, with encryption at rest specifically using, at minimum, the latest FIPS approved cryptographic modules, and the secure means used for electronic transmission or exchange of system, user and application data with the State shall be HTTPS, TLS version 1.2 or higher.

Contractor agrees that to the extent it has been authorized in writing to use such storage, any and all NYS Confidential Information will only be stored, processed, and maintained solely on designated target devices, and that no NYS Confidential Information at any time will be processed on or transferred to any portable computing device or any portable storage medium.

e. Physical Transport of NYS Confidential Information. To the extent the State agrees under the Contract that Contractor may physically transport any NYS Confidential Information, such physical transport may only occur upon the written direction and approval of the State and must comply with all applicable Local, State, and Federal laws, rules, regulations, ordinances, policies, standards, and guidelines. This includes, but is not limited to, transport between the Contractor's offices, to and from subcontractors, and to the State.

f. Data Storage, Access, and Location - Off Shore Restrictions. Contractor agrees that: (a) all NYS Confidential Information shall remain within and may not be stored, or accessed from, outside of the Continental United States (CONUS) and (b) unless expressly agreed to in writing by a State authorized signatory adhering to established State practices, Contractor shall not have remote access into NYS Facilities.

All access to NYS Confidential Information and NYS Facilities, physical or virtual, must be conducted within CONUS and have adequate security systems in place to protect against the unauthorized access to NYS Confidential Information stored therein or NYS Facilities. The Contractor shall not send or permit to be sent to any location outside of the CONUS any NYS Confidential Information related to the Contract.

49. BREACHES OF NYS CONFIDENTIAL INFORMATION

a. Compliance with the NYS Information Security Breach and Notification Act ("ISBNA"). In accordance with the Information Security Breach and Notification Act (ISBNA) (§889-aa and §889-bb of the General Business Law of the State of New York ("GBL"); §208 of the State Technology Law of the State of New York), Contractor shall be responsible for complying with the provisions of the ISBNA and the following terms contained herein with respect to any Private Information (as defined in ISBNA) received by Contractor under the Contract that is within the control of the Contractor either on the State's information technology systems or the Contractor's information technology systems (System). In the event of a breach of the security of the System (as defined by ISBNA) Contractor shall immediately commence an investigation, in cooperation with the State, to determine the scope of the breach and restore the security of the System to prevent any further breaches. Contractor shall also notify the State of any breach of the security of the System immediately following discovery of such breach. Notice of such breach will be sent to:

NYS ITS Cyber Command Center
Telephone (Mon – Fri, 9AM-5PM): (518) 242-5045
Telephone (Mon – Fri, 5PM-9AM, weekends, and holidays): (518) 292-2200
Email: cycom@its.ny.gov

With a copy to:

ITS General Counsel
Empire State Plaza
Swan Street Building, Core 4
Albany, New York 12223
(518) 473-5115
its.sm.dla@its.ny.gov

Except as otherwise instructed by the State, Contractor shall, to the fullest extent possible, first consult with and

receive authorization from ITS prior to notifying any individuals, the Department of State (“DOS”), the NYS Division of State Police, the OAG, or any consumer reporting agencies of a breach of the security of the System or concerning any determination to delay notification due to law enforcement investigations.

Nothing herein shall in any way impair the authority of the OAG to bring an action against Contractor to enforce the provisions of ISBNA or limit Contractor’s liability for any violations of the ISBNA or any other applicable statutes, rules, or regulations. In the event that the Contractor is advised by a law enforcement agency pursuant to GBL §899-aa(4) to delay the notice under GBL §899-aa(3), the Contractor shall provide the notice under GBL §899-aa(3) to the State not more than twenty-four hours after the Contractor has been advised by the law enforcement agency that notice under GBL §899-aa(3) can be provided.

In accordance with ISBNA, Contractor is responsible for complying with the following terms with respect to any Private Information (as defined in the ISBNA) received by or on behalf of the State under the Contract. Contractor:

- Shall supply ITS with a copy of its breach notification policy, which shall be modified to be in compliance with this provision.
- Must encrypt any database fields and backup tapes that contain Private Information, as set forth in the ISBNA.
- Must ensure that the State's Private Information is encrypted in transit to/from Contractor's systems.
- In general, Contractor must ensure that Private Information is not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.
- Must monitor for breaches of security to any of its systems that store or process Private Information.
- Shall take all steps as set forth in ISBNA to ensure Private Information shall not be released without authorization from the State.
- In the event a security breach occurs as defined by ISBNA, notify the ITS Chief Information Security Officer (CISO) by telephone within four (4) hours of becoming aware of the breach and commence an investigation in cooperation with the State to determine the scope and cause of the breach, and to prevent the future recurrence of such security breaches.
- Coordinate all communication regarding the data breach with the ITS CISO and the State.
- Take immediate and necessary steps needed to restore the information security system to prevent further breaches, and take corrective action in the timeframe required by the State. If Contractor is unable to complete the corrective action within the required timeframe, in addition to any other remedies available, the State may contract with a third-party to provide the required services until corrective actions and services resume in a manner acceptable to the State, or until the State has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period.

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

The State reserves the right to require commercially standard credit monitoring for any and all individuals affected by the data breach at the sole expense of the Contractor for a period to be determined by the State, but not less than twelve (12) months, which shall begin thirty (30) days following the notice of offer from the Contractor of such credit monitoring to those affected individuals, which shall be within a reasonable time following the identification of such affected individuals. The State reserves the right to require notice by regular or electronic mail.

b. Non-ISBNA Breaches. In addition to any responsibilities of Contractor under the Contract for reporting breaches of Private Information under ISBNA, Contractor must immediately report to ITS *any* breaches, Information Security Incidents, or unauthorized uses or disclosures of any NYS Confidential Information whether it consists of Personal

Information or otherwise. Notice of such breaches or incidents shall be sent to:

NYS ITS Cyber Command Center

Telephone (Mon – Fri, 9AM-5PM): (518) 242-5045

Telephone (Mon – Fri, 5PM-9AM, weekends, and holidays): (518) 292-2200

Email: cycom@its.ny.gov

With a copy to:

ITS General Counsel

Empire State Plaza

Swan Street Building, Core 4

Albany, New York 12223

(518) 473-5115

its.sm.dla@its.ny.gov

Contractor shall ensure that the Contractor Staff charged with carrying out services under the Contract are aware of Contractor's obligations to the State hereunder. Contractor's Staff browsing, viewing, altering, appending, or modifying the NYS Confidential Information in violation of Contractor's own security policies shall be deemed to have breached the security of the system for the purposes of the Contract.

50. DATA TRANSPARENCY, ACCESSIBILITY, MIGRATION, AND DESTRUCTION AT END OF CONTRACT

During any period of suspension of services or of the Contract, the Contractor will not take any action to intentionally erase any NYS Confidential Information. At the expiration or termination of the Contract, the Contractor shall implement an orderly return of State assets and the subsequent secure disposal of State assets.

At the State's option, the Contractor must provide the State with a copy of the NYS Confidential Information, including metadata and attachments, in a mutually agreed upon, commercially standard format at no additional charges to the State, and give the State continued access to NYS Confidential Information for no less than ninety (90) days beyond the expiration or termination of the Contract. Thereafter, except for data required to be maintained by Local, State, and Federal laws, rules, regulations, ordinances, policies, standards, or guidelines or the Contract, Contractor shall destroy NYS Confidential Information from its systems and wipe all its data storage devices to eliminate any and all NYS Confidential Information from Contractor's systems. The sanitization process must be in compliance the NYS Security Standard, NYS-S13-003, available at <https://www.its.ny.gov/document/sanitizationsecure-disposal-standard>, and, where required, other sanitization and disposal standards. If immediate purging of all data storage components is not possible, the Contractor will certify that any NYS Confidential Information remaining in any storage component will be safeguarded to prevent unauthorized disclosures until such purging is possible. Contractor must then certify to the State, in writing, that it has complied with the provisions of this paragraph including providing any supporting documentation as required. The State may withhold payment to Contractor if NYS Confidential Information is not released to the State in accordance with the preceding sections.

51. INFORMATION RELEASES

a. Press Releases. Contractor agrees that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding the Contract, or relating to its activities under the Contract, shall be disseminated in any way to the public, nor shall any presentation be given regarding the Contract or those Contractor activities without the prior written approval of ITS, 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.

b. Public Information, and the NYS Freedom of Information Law (FOIL). Disclosure by the State of items related to the Contract shall be permitted consistent with the laws of the State of New York and specifically the NYS Freedom of Information Law (FOIL) contained in POL §87. The State shall take reasonable steps to protect from public disclosure any records or portions thereof relating to the Contract that are otherwise exempt from disclosure under that statute. Information constituting trade secrets or critical infrastructure information, for purposes of FOIL,

must be clearly marked and identified as such by the Contractor upon submission to the State.

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 the State 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 the State. Contractor represents and warrants that it understands that requests to exempt the entirety of Contractor's materials from disclosure under FOIL has generally not been found to be meritorious.

c. Requests to Release NYS Confidential Information to Third Parties. Except where expressly prohibited by law, Contractor shall immediately notify and provide to the State a copy of any request, subpoena, warrant, judicial or court order, administrative order, 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 NYS Confidential Information that Contractor is processing or storing on the State's behalf. If Contractor is required to produce NYS Confidential Information in response to a Demand, Contractor will provide the State with the NYS Confidential Information in its possession that it plans to produce in response to the Demand prior to production of such NYS Confidential Information. Where the Contractor is not required by law to produce or release the requested information, the written approval of the State is required prior to any such disclosure being made. Notice of such the Demand shall be sent to:

ITS General Counsel
Empire State Plaza
Swan Street Building, Core 4
Albany, New York 12223
(518) 473-5115
its.sm.dla@its.ny.gov

Except as otherwise required by law, Contractor shall provide the State reasonable time to assert its rights with respect to the withholding of such NYS Confidential Information from production. If the State is required to produce NYS Confidential Information in response to a Demand, Contractor will, at the State's request and unless expressly prohibited by law, produce to the State any NYS Confidential Information 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. This assistance may include Contractor, upon request, disclosing to the State Contractor's processes for responding to subpoenas, service of process, and other legal requests and a description of Contractor Staff roles and responsibilities related to electronic discovery, litigation holds, discovery searches, and expert testimonies.

ITS acknowledges that Contractor has no responsibility under the Contract to interact directly with the entity making the Demand. The Parties agree that the State's execution of the Contract does not constitute consent to the release or production of NYS Confidential Information.



Appendix _ - SAMPLE:
MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE AND EEO POLICY STATEMENT

I, _____, the Contract awardee/Contractor, agree to adopt the following policies with respect to the project being developed or services rendered under ITS Contract No. _____, to be provided geographically at _____.

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- If this Contract shows greater than 0% MWBE goals, actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
If this Contract shows greater than 0% MWBE goals, request a list of State-certified M/WBEs from the contracting agency and solicit bids from them directly.
Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital

EEO

status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.
(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that such union or representative will affirmatively cooperate in the implementation of this organization’s obligations herein.
(d) Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall 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, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
(e) This organization will include the provisions of sections (a) through (d) of this EEO statement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work performed in connection with this State contract.

Agreed to this _____ day of _____, 20__

By: _____

Print: _____ Title: _____

_____ (Name of Designated Liaison), is designated as Contractor's Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises - Equal Employment Opportunity (M/WBE-EEO) program under this Contract.