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TERMS AND CONDITIONS

The Procurement is subject to and incorporates the following terms and conditions.

1. CONTRACT TERM

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

2. MODIFICATION OF CONTRACT

The Contract is subject to amendment only upon mutual consent of the parties, reduced to writing and, if applicable, approved by the State’s Attorney General (“OAG”) and OSC.

3. EXECUTORY PROVISION/CONTRACT FORMATION

Section 112 of the State Finance Law of the State of New York (“SFL”) requires that certain contracts entered into by a State Agency must first be approved by OSC before becoming effective. If applicable, the Parties recognize that the Contract is wholly executory until approved by OSC.

4. CONTRACTOR RESPONSIBILITIES, QUALIFICATIONS, AND CHANGE IN STATUS

4.1 Responsibilities

The Contractor is responsible for providing technical support services in accordance with the specifications set forth in the (iv) Proposal for Service, dated September 27, 2021 and the Contract and for meeting all Contract obligations set forth therein and any subsequent amendments mutually agreed to in writing by the Parties. Contractor is also responsible for all services, functions, processes and responsibilities, whether or not specifically described in the Contract, which are required, implied, or inherent for all services provided therein to be performed in a workmanlike manner.

4.2 Qualifications

Contractor acknowledges that the Contract is being entered into by the State in reliance on Contractor’s Proposal and its representations concerning the particular qualifications, experience, management, and technical expertise of the Contractor and its personnel, and the pricing for same.

4.3 Substantial Change in Contractor Status

Throughout the Contract term and any extensions, in addition to the requirements of SFL § 138 (requiring the State’s approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the State of any substantial change, as defined below, in the ownership or financial viability of the Contractor, its affiliates, subsidiaries or divisions, or partners. Such notice, and details of any such change, shall be provided in writing immediately when such is first known by Contractor, its affiliates, subsidiaries or divisions, or subcontractors.

“Substantial change” shall mean: (i) sales, acquisitions, mergers or takeovers involving the Contractor, its affiliates, subsidiaries or divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Proposal; (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; (v) 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 (vi) court ordered liquidation against Contractor, its Affiliates, subsidiaries or divisions, or partners.

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

4.4 Vendor Responsibility - General

Contractor must remain a "responsible" vendor within the meaning of the SFL, relevant case law and applicable guidelines, throughout the term of the Contract and any extensions. The Contractor agrees to present evidence of its continuing legal authority to do business in the State, its integrity, experience, ability, prior performance, and organizational and financial capacity, if requested by the State. Upon request by the State, Contractor shall update the information provided in the Vendor Responsibility Questionnaire submitted with its Proposal within ten (10) business days of such request.

5. TRANSACTION DOCUMENTS

A Transaction Document ("TD") shall be used for all orders placed under the Contract. The TDs are deemed to incorporate and to be issued under the terms of the Contract and cannot supersede the terms and conditions set forth therein. The TDs will only be valid when executed by duly authorized persons from ITS and Contractor. Payments for any services rendered under the Contract shall only be made for services begun on or after the date of the applicable TD except for in an emergency as defined in the Contract and State law. Notwithstanding the foregoing, the Contractor may, in a TD, agree at any time to provide ITS with more favorable prices, terms, warranties, or other benefits than are specified elsewhere in the Contract.

6. INDEPENDENT CONTRACTOR

Contractor is an independent contractor, and its officers, agents, employees, partners or subcontractors shall act in such an independent capacity and not as officers or employees of the State in the performance of the Contract. They are not employees of the State and are not entitled to any of the benefits associated with such employment. 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 worker's compensation, disability and unemployment insurance, and to provide the State with certification of such insurance upon request. Contractor remains liable and solely responsible without exemption for social security, unemployment insurance, workers' compensation and all other applicable taxes and obligations to which Contractor may be subject to by law.

7. CONTRACTOR PERSONNEL

All Contractor's officers, agents, employees, partners or subcontractors performing work under the Contract must meet or exceed the technical and training qualifications set forth in the RFP or the Proposal, whichever is higher, and must comply with all security and administrative requirements of ITS. All employees of the Contractor, or of its subcontractors, who shall perform services under the Contract, shall 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. The Contractor shall be fully responsible for performance of work by and conduct of its staff and subcontractor's staff. ITS may refuse access to or require replacement of any Contractor staff, or subcontractor staff, 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.

For reasons of safety and public policy, the use of illegal drugs and/or alcoholic beverages by the Contractor or its officers, agents, employees, partners or subcontractors shall not be permitted while performing any phase of the work herein specified.

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The State shall not be liable for any expense incurred by the Contractor or its officers, agents, employees, partners or subcontractors for any parking or towing fees or as a consequence of any traffic infraction or parking violations attributable to Contractor or its officers, agents, employees, partners or subcontractors.

The Contractor shall notify ITS immediately of any proposed changes in staff assigned to work under the terms of the Contract. ITS has the sole discretion to approve or disapprove any proposed changes in staff. The State, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld. The substitute must have the skills, experience and expertise which is comparable to or better than that of the person they will replace, and will be provided at the same or a lower hourly rate.

8. BACKGROUND CHECKS

Contractor and its officers, agents, employees, partners or subcontractors (“Contractor Staff”) will, 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 or required for access to State Facilities. This includes requirements related to the access of regulated data (see Appendix G), including any requirements of the State’s public safety agencies, and those related to the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy (<http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>).

Contractor agrees that its Contractor Staff performing services on-site at State 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, where authorized, to the Federal Bureau of Investigation for a national criminal history record check.

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.

The State 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.

9. COOPERATION WITH THIRD PARTIES

ITS reserves the right to employ other consultants and contractors in connection with its responsibilities and functions. Upon the request of the State, the Contractor shall fully cooperate with any third party, including but not limited to other contractors or subcontractors of the State.

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10. COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS

Upon the request of ITS, the Contractor shall cooperate with the State 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.

11. 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. Any work not so authorized will not be compensated.

12. PERFORMANCE MONITORING /NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE

The Contractor's performance will be assessed by ITS according to the achievement of Contractor's contractual obligations in a timely and professional manner, as set forth herein. ITS will utilize progress reports and periodic meetings to ensure that work under the Contract is carried out on a timely basis and results in effective work products.

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.

13. NOTICE

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

For the NYS Office of Information Technology Services:

Procurement and Contract Support Unit
NYS Office of Information Technology Services
Empire State Plaza, PO Box 2062
Albany, NY 12220-0062

For Contractor:

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

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

14. COMPENSATION/PAYMENT FOR SERVICES, BILLING, AND PRICING

Contractor has provided fully loaded pricing as part of its "*Financial Proposal*" which is inclusive of all direct and indirect costs, fees, profit and all overhead expenses, including but not limited to, all training, travel,

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meals, and lodging costs, parking fees, and other ancillary fees and costs including permits, licenses, and insurance. Such costs are not reimbursable by the State.

Contractor shall invoice ITS, monthly in arrears, for all Services rendered during the month for the benefit of ITS, with appropriate detailed invoices in a form agreed to and as directed by ITS. Invoices shall be due thirty (30) calendar days after the last day of the preceding month. Charges for Services rendered by Contractor's personnel hired through a duly executed TD shall be based on the personnel's hourly rate as provided in such TD and for actual hours worked by the personnel. Notwithstanding the foregoing, for any Services rendered during the State's prior fiscal year (April 1 through March 31), any invoices for such Services 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.

OSC shall render payment for invoices under the Contract in accordance with ordinary State procedures and practices. The Contractor's SPOC shall certify the accuracy of all Contractor invoices prior to their submission to the State. Timeliness of payment and any interest to be paid to Contractor for late payment are governed by Article XI-A of the State Finance Law.

The Contractor's technical support services not-to-exceed hourly rates 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. 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.

15. ELECTRONIC PAYMENT REQUIREMENT

Contractor shall provide complete and accurate billing invoices to ITS in order to be eligible for payment. Billing invoices submitted to ITS must contain all information and supporting documentation required by the Contract, ITS, and OSC. 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

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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 ePayments@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.

16. WARRANTIES AND GUARANTEES

Where Contractor generally offers additional or more advantageous warranties than set forth in the Contract, Contractor shall offer or pass through any such warranties to the State.

16.1 Compliance with laws

Contractor warrants and represents that, throughout the term of the Contract and any extensions, Contractor shall meet or exceed all requirements of the Contract and any applicable laws, including but not limited to those related to insurance, and agrees to provide such proof as required by ITS.

Contractor warrants and represents that, throughout the term of the Contract and any extensions, and in the performance of 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.

16.2 Workmanship Warranty

Contractor warrants and represents that the services or Deliverables required by the Contract or any TD shall be performed or provided in accordance with all the terms and conditions, covenants, statements, and representations contained in the Contract and applicable TD. The Contractor warrants that it will perform all services in good faith, in a professional manner in accordance with the highest applicable professional standards, and that the services will conform in all material respects to the description of such services set forth herein and in any resulting TD. The Contractor warrants that it will correct, at no charge to ITS or the State, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work. Failure to do so may result in the State finding that Contractor is in default of its Contract obligations. For purposes of this Contract, "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances.

In the event that there has been a breach of the foregoing warranty and the TD 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, or other period agreed by the Parties, ITS will be entitled to a refund of the amounts paid to Contractor for the services 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 TD under the Contract.

In addition, if a TD identifies a fixed price Deliverable, Contractor will warrant that the Deliverable is fit for use by ITS ("fitness for use warranty") for a thirty (30) day period from Deliverable acceptance by ITS, as "Deliverable Acceptance" is defined below in this Contract. The remedies available to ITS in the event that Contractor breaches this additional fitness for use warranty shall be specified in the applicable TD. If no remedy for the breach of the fitness for use remedy is specified, ITS' remedies will be: (1) ITS will be entitled to return the fixed price Deliverable at no charge, including shipping, to Contractor; and (2) ITS will be entitled to a refund of all amounts paid to Contractor for the fixed price Deliverable. The Parties agree that custom programming may be

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provided to ITS pursuant to the terms of this Contract only if it is identified as a fixed price Deliverable.

The warranties stated above will not apply to the extent that there has been misuse, 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.

16.3 Personnel Eligible for Employment

Contractor warrants and represents that all personnel performing services under the Contract are eligible for employment in the United States and shall remain so throughout the term of the Contract and any extensions. Contractor shall provide such proof of compliance as is required by ITS.

16.4 Service Guarantee

Contractor's failure to satisfy performance standards or requirements set forth in the Contract may result in a credit or chargeback in an amount pre-determined by the Parties. The chargeback shall be paid to ITS in the form of a credit to ITS against the Contractor's invoice submitted to ITS immediately following the month in which the Contractor failed to satisfy the standard or requirement.

16.5 Survival of Warranties

All warranties contained in the Contract shall survive the termination of the Contract.

16.6 Limitations

THE WARRANTIES SET FORTH IN THE CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

17. INDEMNIFICATION AND LIMITATION OF LIABILITY

17.1 Indemnification

Neither Party shall be liable for any delay or failure in performance resulting from a force majeure event. The Parties shall use all reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under the Contract.

Contractor shall be fully liable for the actions of its agents, officers, employees, partners, or subcontractors, if any, and shall fully indemnify and save harmless the State and ITS from suits, actions, damages, and costs of every name and description relating to personal injury and damage to real or personal property caused by Contractor, its agents, officers employees, partners, or subcontractors, if any, without limitation; provided however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or negligent failure to act of the State.

Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its agents, officers, employees, partners and subcontractors of State and ITS security procedures or policies resulting from any criminal acts committed by Contractor's officers, agents, employees, and subcontractors while providing services under the Contract.

17.2 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), claims, judgments, liabilities, and costs which may be finally 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

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proprietary right in relation to the services, products, documentation, or Deliverables furnished or utilized, provided that the State shall give Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State or ITS shall require. This paragraph shall not apply to that portion of any infringement claim which results from a material modification by ITS, without Contractor's approval, of any products, documentation, or Deliverables furnished or utilized by Contractor pursuant to the Contract.

17.3 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. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to the State.

Unless otherwise specifically enumerated herein, neither Party shall be liable to the other for incidental, punitive, special, indirect, or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work), of any kind which may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit, revenue, or institutional operating savings 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.

17.4 Additional Remedies

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

17.5 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.

18. FEDERAL FUNDING AND OPERATING CLAUSES

18.1 Federal Funding

To the extent that any of the goods or services provided under this Contract may be funded in whole or in part by federal funds, Contractor agrees to comply with all applicable federal laws, rules and regulations required for the receipt and/or expenditure of such funds, 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.

18.2 Governing Laws, Rules, and Regulations

The services rendered by the Contractor must comply with the applicable provisions of Title IV-D of the Social Security Act and Farm Bill, the implementing regulations at 42 CFR 433, 7 CFR 277.18(h), and those laws, rules, and regulations set forth in Table 53 of the FNS Handbook 901, dated January 2019, as amended from time to time by the applicable Federal Agency. The regulations, as amended, and guidelines to these regulations applicable to implementing and operating eligibility and enrollment systems are to be considered part of the Contract.

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Systems and modules developed, installed, or improved with 90 percent match must include documentation of components and procedures such that the systems could be operated by a variety of contractors or other users.

18.3 Debarment and Suspension

The Contractor agrees to comply with the provisions of this Section as set forth below:

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110.

The applicant (i.e., "Offeror") certifies that, as of the date of its Proposal submission, it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding the date of its Proposal submission been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding the date of its Proposal submission had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the Offeror is unable to certify to any of the statements in this certification, he or she shall attach an explanation to its Proposal.

18.4 Anti-Lobbying Act

The Contractor agrees to comply with the provisions of this section as set forth below:

The Anti-Lobbying Act prohibits the recipients of federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the applicant (i.e., "Offeror") certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete

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and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions;

3. The undersigned shall require that the language of this certification be include in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

18.5 Clean Air Act

The Contractor agrees to comply with the provisions of this section, stipulations contained in The Clean Air Act, Section 306, as set forth below:

1. No federal agency may enter into any contract with any person who is convicted of any offense under section 113(c) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.
2. The Administrator shall establish procedures to provide all federal agencies with the notification necessary for the purposes of subsection (a).
3. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each federal agency authorized to enter into contracts and each federal agency which is empowered to extend federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
4. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.
5. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]

18.6 Clean Water Act

The Contractor agrees to comply with the provisions of this section, stipulations contained in The Clean Water Act, Section 508, as set forth below:

- a. No federal agency may enter into any contract with any person who has been convicted of any offense under Section 309(c) of this Act for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

The Administrator shall establish procedures to provide all federal agencies with the notification necessary for the purposes of subsection (a) of this section.

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In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than 180 days after the enactment of this Act, cause to be issued an order:

1. requiring each federal agency authorized to enter into contracts and each federal agency which is empowered to extend federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and
2. setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

- (1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.
- (2) In paragraph (1), the term "commercial item" has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

18.7 Americans with Disabilities Act and Rehabilitation Act

The Contractor agrees to comply with the provisions of this section as set forth below:

Regulations implementing Title II of the Americans with Disabilities Act (42 U.S.C. 12131 et seq) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public by State and local governments, except public transportation services (28 CFR Part 35, Title II, Subtitle A).

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794) mandates that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance (45 CFR Part 84). Federally funded programs and activities may not, in providing aids, benefits or services provide qualified handicapped individuals with an aid, benefit or service that is not as effective as that provided to others 45 CFR Part 84.4(b).

19. 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 or ITS. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. 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. Activity may resume at such time as the State issues a formal written notice authorizing a resumption of work.

19.1 Suspension of Work for Non-Responsibility

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The State reserves the right to suspend any or all activities under the Contract, at any time, when 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. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Contract.

20. TERMINATION

20.1 For Convenience

By written notice, this Contract may be terminated at any time by the State for convenience upon thirty (30) days written notice without penalty or other early termination charges due. This provision should not be understood as waiving the State's right to terminate the Contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. If the Contract is terminated pursuant to this paragraph, the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.

20.2 For Cause

For any material breach or failure of performance of the Contract by the Contractor that remains uncured for more than thirty (30) days from the date of written notice to the Contractor, or such other time as may be agreed by the Parties, the State may terminate the Contract.

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, at its sole discretion, may pay for any and all services provided prior to any such date. If the State employs a third party to perform Contractor's obligations under the Contract, Contractor shall be liable for the payment of any cost differential that the State incurs as a result of having to employ such third party to cure or resolve the issue.

20.3 For Suspension or Delisting of Contractor's Securities

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

20.4 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 Proposal was materially false or incomplete, or if the Contractor fails to timely or truthfully comply with ITS's request to update its Vendor Responsibility Questionnaire.

20.5 Termination Notice

Notices required by this section shall be delivered to the other party in writing, pursuant to the Notice provisions of the Contract.

20.6 Termination Date

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In the event a notice of termination is issued for convenience, the Contract termination date shall be thirty (30) calendar days from the date notice is given in accordance with the Notice provisions of the Contract. The termination date for material breach or failure of performance shall be the date notice is given in accordance with the Notice provisions of the Contract.

20.7 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 notice of termination and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

21. TRANSITION

The State may require the Contractor to provide uninterrupted services after Contract termination/expiration (“Transition Services”) as permitted and approved by OSC for the State to comply with all legal requirements for establishing a new contract and transition to the use of a replacement Contractor or otherwise continue the provision of services.

21.1 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.

21.2 No Interruption in Service

At all times during the Transition Period, and unless directed otherwise in writing by the State, the Contractor shall continue all contractual obligations set forth in the Contract until such time as the State: (i) has approved the Contractor’s proposed Transition Plan; and (ii) an orderly transition to the State, 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 this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.

21.3 Transition Plan

Within fifteen (15) days of receipt of a notice of termination or three (3) months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall submit to the State for approval a detailed written plan for Transition (“Transition Plan”) that outlines, at a minimum, the tasks, milestones, and deliverables associated with the smooth transition of services to the State, a third party or a successor contractor. The format for metadata and/or information included with the transition materials will be determined solely by the State. Contractor agrees to amend the Transition Plan to include all other information deemed necessary by the State.

21.4 Contractor Transition Services

Transition Services shall include the performance of Contractor’s responsibilities as outlined in the Contract, and also the transferring of those responsibilities to the State, a third party or the successor contractor in accordance with the Transition Plan agreed upon by the Parties. Contractor shall maintain the same level of service during the Transition Period as is set forth in the Contract, provided, however, that as tasks or services are transitioned to or assumed by the State, a third party or the successor contractor, Contractor shall not be held responsible for the negligent acts or negligent omissions of the State, a third party or the successor contractor or for service degradation resulting from the negligent acts or negligent omissions of the State, a third party or the successor contractor with respect to the transitioned tasks or services.

21.5 Compensation for Transition Services

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Contractor shall be reimbursed for Transition Services performed during the Transition Period at the rates set forth in the Contract. The Contractor shall not be reimbursed or paid for services that are not permitted by the Transition Plan, including the development of such Transition Plan.

21.6 State Responsibilities for Transition

The State shall assume responsibility for transition project management.

21.7 Cooperation

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

22. CONTRACTOR RESPONSIBILITY IN THE EVENT OF AN EMERGENCY

For purposes of this section, the following definitions of an Emergency shall apply: "state disaster emergency" shall have the same meaning as set forth in section 20(2)(b) of the Executive Law and "other emergency situation" shall refer to a situation or occurrence which ITS, in its sole discretion, has determined poses a risk to health and public safety or the conservation of public resources.

In the event of a state disaster emergency or other emergency situation, the Contractor shall be notified that ITS is invoking this provision.

Unless the Contractor's performance would be excused pursuant to the Force Majeure provisions of the Contract during a state disaster emergency or other emergency situation the Contractor shall provide the necessary services to the State on a time is of the essence basis, working on a 24x7x365 basis, to restore and/or recover operation and services, which are critical to the health, safety and welfare of the State, to be determined at the sole discretion of the State.

Except as provided in this section, all other provisions of the Contract remain in full force and effect during a state disaster emergency or other emergency situation.

23. FORCE MAJEURE

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

24. DISPUTE RESOLUTION

The Contractor and the State agree to resolve any disputes regarding the performance of services, or otherwise arising under the Contract, expeditiously through an escalation process to be agreed upon by the Parties. Dispute resolution meetings between the Parties shall be held within three (3) business days in the event a dispute threatens the performance of a material portion of the service, with senior management engagement, as needed. During the course of a 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.

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25. GENERAL PROVISION AS TO REMEDIES

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

26. ADDITIONAL REMEDIES

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

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

27. INSURANCE

The Contractor shall comply with the requirements set forth in Appendix C-1 – Contractor's Insurance Requirements.

28. 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.

Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State Agency shall not be valid, effective, or binding against the Agency unless the Contractor certifies to the Department of Taxation and Finance that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Department of Taxation and Finance that each affiliate and subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, "affiliate" means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The Contractor also must certify to the procuring state entity that it filed the certification with the Department of Taxation and Finance and that the certification is correct and complete. Accordingly, in the event the value of this Contract exceeds \$100,000 and Contractor's sales delivered by any means to locations within New York State of tangible personal property or taxable services have a cumulative value in excess of \$300,000, measured over a specific period, the Contractor must file a properly completed Form ST-220-CA with ITS and a properly completed Form ST-220-TD with the Department of Taxation and Finance before the Contract may take effect. In addition, after the Contract has taken effect, the Contractor must file a properly completed Form ST-220-CA with ITS if the Contract's term is renewed. Further, a new Form ST-220-TD must be filed with the Department of Taxation and Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete. Further information about this requirement is available at

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<https://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>. Contractor agrees to cooperate fully with the State in administering these requirements.

29. OUTSTANDING TAX LIABILITIES

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

30. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

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

30.1 New York State Law. ITS is obligated under New York State Executive Law Article 15-A and 5 NYCRR 140-145 to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises ("MWBEs") and the employment of minority group members and women in the performance of its contracts. Furthermore, Contractors are reminded that they must continue to utilize small, minority and women owned businesses consistent with current New York State law.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study". An updated report entitled "2016 MWBE Disparity Study" was published on June 30, 2017). The reports found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements.

As a result of these findings, the Disparity Studies made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Studies culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that ITS establishes goals for maximum feasible participation of New York State Certified MWBEs and the employment of minority groups members and women in the performance of New York State contracts.

30.2 MWBE and EEO: General Provisions. ITS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("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 in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). 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

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nondiscrimination provisions required by New York State Executive Law 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.

30.3 MWBE: Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures.

30.3.1 MWBE Participation Goals

For purposes of this Contract, ITS has established an overall goal of 30% for Minority and Women-Owned Business Enterprises participation, 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 New York State Certified MBWEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>.

Additionally, Contractor is encouraged to consult ITS using the contact information listed below, or the NYS Division of Minority and Woman Business Development, 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 “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-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.

30.3.2 MWBE Utilization Plan (ITS Form MWBE-100)

Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan ITS Form MWBE-100 either prior to, or at the time of, the execution of this Contract. Contractor agrees to use such MWBE 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 MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan submitted to ITS for approval.

30.3.3 MWBE Quarterly Contractor Compliance Report (ITS Form MWBE-102)

Contractor is also required to submit to ITS a Quarterly MWBE Contractor Compliance Report ITS Form MWBE-102 by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

30.3.4 MWBE Request for Waiver/Certification of Good Faith Efforts (ITS Form MWBE-104)

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If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit 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.

30.4 EEO: Equal Employment Opportunity Requirements. Contractor shall comply with the provisions of the NYS Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. 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 NYS Executive Law Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). 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 this Contract, Contractor shall specifically comply with the following EEO provisions of Article 15-A:

- Contractor and 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.
- The Contractor shall submit an EEO policy statement to ITS within seventy-two (72) hours after the date of the notice by ITS to award this Contract to the Contractor. If Contractor or subcontractor does not have an existing EEO policy statement, Contractor or subcontractor may use the two-page model MWBE and EEO Policy Statement form that was provided as an attachment to the RFP. The Contractor's EEO policy statement shall include at minimum language, indicating that:
 - The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women 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.
 - The Contractor 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.
 - The Contractor 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

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cooperate in the implementation of the Contractor's obligations herein.

- The Contractor will include the above three provisions in every subcontract under this 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.

30.4.1 EEO Staffing Plan (ITS Form EEO-100)

To ensure compliance with this Section, the Contractor shall submit to ITS a staffing plan to 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. Contractors shall complete the EEO Staffing Plan ITS Form EEO-100 and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of this Contract.

30.4.2 EEO Workforce Employment Utilization Report/Workforce Report (ITS Form EEO-101)

Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to ITS on the Workforce Report ITS Form EEO-101 of any changes to its previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. 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 a separation can be made, Contractor shall submit the Workforce Report ITS Form EEO-101 and indicate that the information provided is related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract *cannot* be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report ITS Form EEO-101 and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

30.5 MWBE and EEO Compliance.

30.5.1 Notice of Deficiency.

If ITS, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the participation goals and no waiver has been issued in regards to such non-compliance, ITS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE participation goals.

30.5.2 Disqualification as Non-Responsive.

ITS may disqualify a Bidder or Contractor as being non-responsive under the following circumstances:

- a) If such Bidder or Contractor fails to submit a MWBE Utilization Plan;

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

Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan 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.

30.5.3 Liquidated Damages Related to MWBE Participation

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 NYS Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of ITS.

30.6 Obtaining the Required ITS MWBE and EEO Forms. All forms described herein can be located on ITS' website listed below. Contractor is responsible for obtaining all required forms referenced in this section, and, to the extent that Contractor is unable to locate such forms for reasons including that ITS might have updated its URL locations, for reaching out to an ITS contact using the contact information below to obtain copies of the forms. As of the time of execution of this Contract the website where Contractor can obtain the requisite ITS forms is: <https://its.ny.gov/minority-and-womens-business-enterprise-mwbe-supplier-diversity-program>. The addresses to which questions regarding this section's requirements, or the requirements of Article 15-A of the Executive Law and 5 NYCRR Parts 140 et. seq., may be addressed is:

NYS Office of Information Technology Services - Procurement and Contract Services
State Capitol, Empire State Plaza, PO Box 2062
Albany, New York 12220-0062
Telephone Number: (518) 486-4319
supplierdiversity@its.ny.gov

30.7 NYS Executive Order 162 Requirements. In compliance with NYS 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:

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(a) supplement the equal employment opportunity information it provides to ITS under the Contract on a quarterly basis 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.

31. ETHICS COMPLIANCE

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

32. CONFLICTS OF INTEREST

Contractor, by entering into the Contract, certifies that performance under the Contract does not and will not create a conflict of interest. A conflict of interest is 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.

33. MOST FAVORABLE TERMS

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

34. TRANSFER OF CONTRACT

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

35. WAIVER

No term or provision of the Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by a Party to, or waiver of, a breach under the Contract shall constitute consent to, a waiver or, 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.

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36. SUBCONTRACTORS

ITS will contract only with the successful Bidder who is the Prime Contractor. ITS considers the Prime Contractor the sole Contractor with regard to all provisions of the RFP and the Contract resulting from the RFP. No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in the RFP or the resultant Contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor 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.

As described in the RFP, Bidders were permitted to submit proposals that included subcontractors. The successful Bidder receiving Contract award and signing the Contract is and remains the Prime Contractor for this engagement. The Contractor is responsible for meeting all Contract obligations set forth in the RFP 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 written request made by Contractor to ITS to subcontract. Contractor remains the single point of contact for ITS and is the Party executing the Contract. 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.

All subcontracts shall be in writing and shall contain provisions which are functionally identical to, and consistent with, the provisions of the Contract including, but not limited to, the body of this Appendix C, Appendix A – Standard Clauses for New York State Contracts, and the RFP. 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. Contractor shall include in all written agreements with its subcontractors, in such a manner that they will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying:

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

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.

37. ACCESSIBILITY

37.1 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 or relevant Transaction Document.

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: 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.

37.2 Language Access for Individuals with Limited English Proficiency. NYS Executive Order 26 (EO-26), 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 his or her primary language with respect to the provision of services or benefits.

Each State agency must also provide translation services in the six 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. Currently Spanish, traditional Chinese, Russian, Haitian-Creole, Korean and Italian are the top six languages. Some agencies may also 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 comply with EO-26.

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38. 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.

39. PIGGYBACKING & USE BY OTHER STATE AGENCIES

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 the Office of the State Comptroller and under appropriate circumstances.

40. STATE'S RESERVED PROCUREMENT RIGHTS

Contractor understands and agrees that ITS reserves the following rights throughout the procurement process:

- a. Reject any or all proposals received in response to the RFP;
- b. Withdraw the RFP at any time, at ITS' sole discretion;
- c. Make an award under the RFP in whole or in part;
- d. Disqualify any Bidder or Contractor whose conduct and/or proposal fails to conform to the requirements of the RFP;
- e. Seek clarifications and revisions of proposals;
- f. Use proposal information obtained through site visits, management interviews and the State's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to ITS' request for clarifying information in the course of evaluation and/or selection under the RFP;
- g. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- h. Prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent RFP amendments;
- i. Change any of the scheduled dates;
- j. Eliminate any mandatory, non-material specifications that could not be complied with by all of the prospective Bidders;
- k. Waive any requirements that are not material;
- l. Negotiate with the successful Bidder within the scope of the RFP in the best interests of the State;
- m. Conduct contract negotiations with the next responsible Bidder, should ITS be unsuccessful in negotiating with the selected Bidder;
- n. Utilize any and all ideas submitted in the RFP proposals received;
- o. Unless otherwise specified in the RFP, treat every offer as firm and not revocable for a period of 270 days from the Bid opening;
- p. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the RFP;
- q. Waive minor irregularities and/or omissions in Bids if in the best interest of the State; and

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- r. In its sole discretion, reject illegible, incomplete, or vague Bids.

Should ITS and a tentative awardee be unable to reach agreement as to the terms of the Contract within a reasonable time as determined by ITS, ITS may withdraw the award, at its option, and proceed to the next highest scoring Bidder.

41. 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 State Finance Law § 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 New York State Finance Law Section 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 providing 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 using their best efforts to obtain the recognition and accession to such assignment or transfer by any applicable foreign government.

42. NEW YORK STATE VENDOR FILE REGISTRATION

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

43. REGISTRATION WITH THE NYS DEPARTMENT OF STATE

Prior to being awarded the Contract and throughout the duration of said Contract, Contractor shall be registered with the NYS Department of State ("DOS") 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. (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:

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<http://www.dos.ny.gov/corps/contact.html>). Contractor must provide to ITS the Contractor's Federal Employer Identification Number (F.E.I.N.) and/or its DOS 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.

44. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT BUSINESS ENTITY

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

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

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

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), 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 service-disabled veteran-owned businesses 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, Bidders are 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.

45.1 Contract Goals

- A. ITS hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the ITS Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause 49.4 below).

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45.2 SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ITS.
- C. ITS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ITS acceptance or issue a notice of deficiency within twenty (20) days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the 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 is submitted is not timely or is found by ITS to be inadequate, ITS shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five (5) business days of notification by ITS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ITS may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If ITS determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan 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-responsibility.

45.3 Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ITS for guidance.
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause 49.4 below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ITS at that time, the provisions of clauses 49.2 (C), (D) & (E) will apply. If the documentation included

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with the Bidder's/Contractor's waiver request is complete, ITS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ITS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If ITS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ITS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to ITS.

45.4 Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ITS with certified SDVOBs whom ITS determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

45.5 Quarterly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report quarterly SDVOB Contractor Compliance to ITS during the term of the Contract for the preceding quarter's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available on the ITS website and should be completed by the Contractor and submitted to ITS, by the 10th day of each quarter during the term of the Contract, for the preceding quarter's activity to:

NYS Office of Information Technology Services - Procurement and Contract Support
State Capitol, Empire State Plaza, PO Box 2062
Albany, New York 12220-0062
Telephone Number: (518) 486-4319
supplierdiversity@its.ny.gov

45.6 Breach of Contract and Damages

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Contractor's failure to comply with this section of the Contract or the regulations at 9 NYCRR 252.2 may be deemed a material breach of this Contract. Upon such an occurrence, 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 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.

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

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning Contract Employees working under State Agency service and consulting Contracts. New York State agency consultant Contracts are defined at State Finance Law §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, 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 §163(4)(g) of the New York State Finance Law. Furthermore, all subcontracts entered into by Contractor for purposes of performing the Contract shall contain a provision whereby its subcontractors agree to comply with ITS requests and requirements related to reporting under §163(4)(g) of the New York State Finance Law. Reports and forms filed by Contractor pursuant to this section shall be available for public inspection and copying under the provisions of the Freedom of Information Law (FOIL).

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

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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:

**NYS Office of Information
Technology Services -
Procurement & Contract
Services**
Attn: Consultant Reporting
ESP, Swan Street Building -
Core 4
Albany, NY 12220

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

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

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

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 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.

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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.

47. DELIVERABLES

47.1 Ownership/Title to Deliverables

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

Nothing herein shall preclude the State from entering into an agreement with the Contractor to jointly own a specific work developed under the Contract.

47.2 Federal Ownership Rights

CMS and FNS each reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal Government purposes, such software, modifications, and documentation designed, developed, or installed with Federal funds pursuant to 7 CFR 277.18(l)(ii), 42 CFR 495.360, 45 CFR 95.617, and any successor or amended regulations.

47.3 Acceptance of Deliverables

Completed work products (“Deliverables”) will be delivered to the designated ITS approver who has been authorized to accept Deliverables. Deliverables must meet Contract and/or TD requirements. The ITS approver will accept or reject the Deliverable. Deliverables will not be automatically accepted in the event that the State fails 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. The Contractor will correct all identified deficiencies and resubmit the Deliverable for acceptance. Acceptance of a Deliverable will only be done in writing, meaning that verbal acceptance or acceptance by default is expressly prohibited.

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 officers, agents, employees, partners, and subcontractors, if any, are fully aware of the obligations arising under this Contract and shall take all commercially reasonable steps to ensure their compliance to prevent unauthorized use, access or disclosure of NYS Confidential Information.

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Failure by Contractor or its officers, agents, employees, partners or subcontractors to fully comply with these requirements shall be deemed a failure to meet Contractor's obligations under this Contract and may result in the State suspending, canceling and/or terminating the Contract for cause or to pursue any other legal or equitable remedies available.

48.1 Definitions.

"New York State ('NYS') Facilities": As used in this 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 this 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, state employees, electronic systems, or third party contractors), provides to Contractor, its officers, agents, employees, partners, and subcontractors, or which is obtained, discovered, derived, or otherwise by Contractor, its officers, agents, employees, partners, and subcontractors as a result of the services provided to the State under the Contract. Notwithstanding the foregoing, information which falls into any of the following categories shall not be considered NYS Confidential Information:

- (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 this Contract, obligations of the Contractor who is a Party to this Contract with ITS and refers to collectively, as well, Contractor's officers, agents, employees, partners or subcontractors.

"State." For purposes of this Contract shall be interpreted to include New York State Agencies (e.g., ITS, OTDA, OCFS, DOH).

"Information Security Incident." For purposes of this 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.

48.2 Data Ownership, Non-Disclosure, and Confidentiality. NYS Confidential Information is information or data not owned by the Contractor that will remain the property of the State throughout its use under this 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 this solicitation and the Contract and any resultant TDs, 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.

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

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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 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 this Contract. Contractor will be required to execute all nondisclosure agreements identified in this solicitation, either before or upon arrival at NYS Facilities or, if in the State's sole discretion, the employee(s) will otherwise have access to critical State networks, equipment or NYS Confidential Information.

48.3 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 this Contract, including ITS Information Security policies and procedures located at <https://its.ny.gov/eiso/policies/security>. The State shall have the right at any time to require that the Contractor remove from interaction with the State any Contractor representative who the State believes is detrimental to its working relationship with the Contractor. The State will provide the Contractor with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. Contractor shall not assign the person to any aspect of the Contract or future work orders without the State's consent.

Contractor, to the extent the following meets or exceeds ITS Information Security policies 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.

Contractor warrants that it will be properly informed and trained regarding security standards and is prohibited from disclosing NYS Confidential Information to any persons without a need to know. Contractor will work cooperatively with the State so that software applications accessed by members of the public or others are accessed by the single sign-on service provided by New York State Directory Services or such other service chosen by ITS.

48.4 Accessing NYS Facilities. Contractor may access State information technology system(s) and NYS Facilities solely at the State's request, and for any work associated with this Contract. In the event Contractor accesses NYS Facilities, Contractor will comply fully with all security procedures of the State concerning such access communicated to it in the performance of this Contract or any amendments hereof. Contractor agrees that it will adopt procedures to ensure the integrity and security of any NYS Confidential Information which is known to Contractor. Those procedures include, for each prospective and current officers, agents, employees, partners, and subcontractors of Contractor designated to work under this Contract or under any amendments hereof, that they are required:

- (a) if entering enter NYS Facilities through physical means, to be required to undergo the same security clearances as are required of those workforce members of ITS who physically access NYS Facilities including, upon request by ITS, submitting identifying information and being fingerprinted on-site at Contractor's expense. ITS shall arrange for the scheduling of such fingerprinting activities on State premises; or

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(b) if using or entering NYS Facilities through electronic, telecommunications, information technology, or any other virtual means to be required to undergo the same security clearances as are required of those workforce members of ITS who access NYS Facilities including, upon request by the State, submitting identifying information and being fingerprinted at Contractor's location at Contractor's expense. Contractor shall arrange for the scheduling of such fingerprinting activities at a law enforcement agency in Contractor's locale, and in accordance with the law in the jurisdiction in which such fingerprinting takes place, either

i. submit those fingerprints to a local law enforcement or criminal justice agency for the purpose of obtaining a criminal history record report, and, at ITS' discretion, to the Federal Bureau of Investigation for a national criminal history record check, and report to ITS the substance of the criminal record of any of the fingerprinted individuals; or,

ii. mail those fingerprints to ITS for ITS to submit them for the purpose of obtaining a criminal history record report(s).

48.5 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 the State under this Contract, the Contractor must encrypt NYS Confidential Information at rest, on file storage, 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 Local, State or Federal laws, rules, regulations, ordinances, policies, standards, and guidelines. 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, FIPS 140.2 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 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.

Contractor shall also comply fully with all requirements of this Contract pertaining to security requirements specific to the services Contractor is providing to the State under this Contract. In addition to the specific security provisions required herein, Contractor shall also use, to the extent the following meets or exceeds ITS Information Security policies described above, commercially reasonable best efforts to address and remediate any vulnerabilities associated with the types of application development or configuration services it is providing under this Contract which appear on the CWE/SANS list of the "TOP 25 Most Dangerous Programming Errors" (<http://www.sans.org/top25errors/>). If any application security scanning undertaken hereunder reveals software application vulnerabilities or any other security risks attendant to a provided solution, Contractor is responsible for ensuring those vulnerabilities and risks are remediated to the State's reasonable satisfaction.

48.6 Physical Transport of NYS Confidential Information. To the extent the State agrees under this 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. This includes but is not limited to transport between the Contractor's offices, to and from subcontractors, and to the State.

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48.7 Data Storage, Access, and Location - Off Shore Restrictions. Contractor may conduct help desk, support services, and software development and testing activities under this Contract from any location convenient to Contractor, except that the Parties agree 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 approved by an State authorized signatory adhering to established State practices, Contractor shall not have remote access into the State's information technology systems.

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

To the extent support by Contractor requires replication of a set of conditions such as a software crash event, Contractor shall replicate that set of conditions in its own environment when providing support, while communicating with New York State technical personnel. For software development activities, such as patches, updates, or adding new functionality, Contractor shall conduct that software development within its own Development, Quality Assurance, and Production Environments, and, when ready, shall package and provide it through an agreed-to Internet-based location, from which State technical personnel will download such software, and install and test it in New York State's information technology environment.

Upon prior written approval of the State, to the extent Contractor requires access to State system or application audit logs for support and troubleshooting, Contractor or such subcontractors will maintain such logs only within CONUS, will take the strictest measures to ensure such logs do not contain NYS Confidential Information including production data, and will maintain such logs in a secure environment subject to audits by the State.

48.8 Separation of Duties / Access Controls. The Contractor must ensure that all NYS Confidential Information that it holds under this Contract is stored in a controlled access environment to ensure data security and integrity. Contractor will provide the State a list of the physical locations where Contractor has stored any NYS Confidential Information at any given time and will update that list if the physical location changes. All Contractor facilities must have adequate security systems in place to protect against the unauthorized access to such facilities and data stored therein. Access into and within such facilities must be restricted by Contractor through an access control system that requires positive identification of authorized individuals as well as maintains a log of all accesses (e.g., date and time of the event, type of event, user identity, component of the information system, outcome of the event). The Contractor shall have a formal procedure in place for granting and terminating computer system access to NYS Confidential Information and to track access. Contractor access to NYS Confidential Information for any types of projects outside of those approved by the State are prohibited.

The State requires the Contractor to follow the principle of least privilege by adhering to separation of job duties, and limiting Contractor staff knowledge of NYS Confidential Information to that which is absolutely needed to perform job duties. Upon request, Contractor will provide documentation to the State clearly defining the security roles and access levels for each of its staff working with NYS Confidential Information with a level of specificity objectively reasonable to and approved by the State.

49. INFORMATION RELEASES

49.1 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 the State, which written approval shall not be unreasonably withheld or delayed provided, however, that

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Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any Local, State or Federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

49.2 Public Information, and the NYS Freedom of Information Law (FOIL). Disclosure by the State of items related to this 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 Section 87 of the NYS Public Officers Law. The State shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this 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 have generally not been found to be meritorious.

49.3 Requests to Release NYS Confidential Information to Third Parties. Except where expressly prohibited by law, Contractor shall immediately notify and provide to ITS 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 ITS 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 request will be sent to:

ITS:

ITS General Counsel
Empire State Plaza
Swan Street Building, Core 4
Albany, New York 12210
(518) 473-5115
Its.sm.dla@its.ny.gov

Except as otherwise required by law, Contractor shall provide ITS 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

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legal requests and a description of Contractor Staff roles and responsibilities related to electronic discovery, litigation holds, discovery searches, and expert testimonies.

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

50. BREACHES OF NYS CONFIDENTIAL INFORMATION

50.1 Compliance with the NYS Information Security Breach and Notification Act (ISBNA). In accordance with the Information Security Breach and Notification Act ("ISBNA") (NYS General Business Law, §899-aa; NYS Technology Law, §208), 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 this Contract (Private Information) that is within the control of the Contractor either on the State's information security systems or the Contractor's information security 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 ITS of any breach of the security of the System immediately following discovery of such breach. Notice of such breach will be sent to:

ITS:

ITS General Counsel
Empire State Plaza
Swan Street Building, Core 4
Albany, New York 12210
(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 NYS Office of the Attorney General ("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 to delay the notice pursuant to the ISBNA, the Contractor shall provide the notice under ISBNA to the State not more than twenty-four hours after the Contractor has been advised by the law enforcement agency that notice under the ISBNA 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 this Contract. Contractor:

- Shall supply the State 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.

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- 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 the State's 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 Enterprise Information Security Officer ("EISO") 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 EISO 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.

50.2 Non-ISBNA Breaches. In addition to any responsibilities of Contractor under the Contract for reporting breaches of Private Information under the ISBNA, Contractor must immediately report to ITS *any* breaches or Information Security Incidents of any NYS Confidential Information whether it consists of Personal Information or otherwise. Notice of such incident will be sent to:

ITS:

ITS General Counsel
Empire State Plaza
Swan Street Building, Core 4
Albany, New York 12210
(518) 473-5115
its.sm.dla@its.ny.gov

Contractor shall ensure that the personnel charged with carrying out services under this 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 this Contract.

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To the extent applicable under this Contract, Contractor represents and warrants that the NYS Confidential Information which it hosts for the State remains at all times the property of the State and must be fully accessible to the State during the term of the Contract and at the Contract's conclusion. Included among its responsibilities under this Contract, Contractor will take all reasonable measures at no additional cost to the State to ensure that the State is able to extract or receive any and all of NYS Confidential Information out of Contractor's hosted solution, including metadata and attachments, in a format which is reasonably accessible to the State and capable of being used in technical solutions which compete with Contractor's hosted solution, as further described below.

50.3 Preventing Unfair Advantage - Contractor Internal Breaches. Contractor further represents and warrants that it is aware that New York State procurement laws require a "level playing field" prohibiting an unfair advantage to any particular vendors on State IT procurements. Contractor acknowledges that to the extent it performs any configuration services under this Contract, Contractor's personnel may become aware of NYS Confidential Information consisting of data elements that are collected from government agencies regarding IT planning and potential future purchasing, and that even without actual government agencies' data, knowing exactly what is collected could give the impression of an unfair advantage to Contractor for future State IT procurements. Contractor shall use its most stringent commercially reasonable best efforts to create a "firewall" between those of its personnel and its business units which are permitted to perform services under this Contract and all other personnel and business units of Contractor including those involved in seeking State IT procurements to ensure NYS Confidential Information is not divulged to any of Contractor's personnel who are not strictly needed to perform services under the Contract and approved by the State to do so. Any divulging of such NYS Confidential Information to Contractor's personnel who are not strictly needed to perform services under the Contract and approved by the State to do so shall be deemed a security breach under the Contract. In addition to any other remedies available to the State for such security breach, Contractor understands that if such security breaches occur Contractor may be deemed a non-responsible vendor under the State's procurement laws and forbidden from contracting on any New York State procurements related to any of the NYS Confidential Information which was breached.

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

51.1 Data Migration. Contractor shall ensure that the services it performs and the solutions it designs under this Contract are performed in such a way so as to ensure easy migration of any NYS Confidential Information held by Contractor as required by the State. This may include:

- Contractor keeping NYS Confidential Information, including State policy and profile information, separate from processes of any software itself and maintaining that information in a format that allows the State to easily transfer it to an alternative application platform;
- Contractor making its Application Programming Interfaces ("APIs") available to the State; and
- Contractor reformatting data and/or applications at Contractor's own expense in order to easily allow the State to switch to alternative software providers or move the NYS Confidential Information back in-house at the State.

51.2 Data Return and Destruction - In General. 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. The State shall be entitled to any post-termination assistance generally made available by Contractor with respect to the services it provides

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unless a unique alternative data retrieval arrangement has been established between the Parties as part of a Service Level Contract.

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 charge 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, and 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 NYS Security Policy NYS-S13-003, <https://www.its.ny.gov/document/sanitizationsecure-disposal-standard>, and, where required, CJIS sanitization and disposal standards. If immediate purging of all data storage components is not possible, the Contractor will certify that any 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. The State may withhold payment to Contractor if NYS Confidential Information is not released to the State in accordance with the preceding sections.

51.3 Data Return and Destruction - Regulated Data. New York State considers the protection of sensitive data, NYS Confidential Information, and business systems to be of the utmost importance. The NYS Confidential Information collected and maintained by State and local government agencies is protected by a myriad of Federal, State, and local laws, rules, regulations, ordinances, policies, standards, and guidelines. Access to and use of NYS Confidential Information is limited to authorized government employees and legally designated agents, for authorized purposes only.

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

To the extent that Contractor has access to Federal, State or local government regulated data pursuant to their responsibilities under the Contract, Contractor agrees that it will abide by the requirements of those Federal, State and local laws, rules, regulations, ordinances, policies, standards, and guidelines, and will require in writing its officers, agents, employees, partners or subcontractors to similarly abide by any such requirements including the execution of any documents or agreements required to be executed, certifying their compliance with same.

Contractor must, in accordance with applicable law and the instructions of the State: maintain such regulated data for the time period required by applicable laws, rules, regulations, ordinances, policies, standards, and guidelines; exercise due care for the protection of data; and maintain appropriate data integrity safeguards against the deletion or alteration of such data. In the event that any regulated data is lost or destroyed because of any act or omission of the Contractor or any non-compliance with the obligations of the Contract, then Contractor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, Contractor shall reimburse the State for any costs incurred by the State in correcting, recreating, restoring or reprocessing such data or in providing assistance therewith.

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In the event that it becomes necessary for Contractor to receive NYS Confidential Information which Federal, State, or local laws, rules, regulations, ordinances, policies, standards, and guidelines prohibits from disclosure, Contractor hereby agrees to return or destroy all such NYS Confidential Information that has been received from the State when the purpose that necessitated its receipt by Contractor has been completed. In addition, Contractor agrees, after termination of the Contract, not to retain any NYS Confidential Information which Federal, State, or local laws, rules, regulations, ordinances, policies, standards, and guidelines prohibits from disclosure.

Notwithstanding the foregoing, if the return or destruction of the NYS Confidential Information is not feasible, Contractor agrees to extend the protections of the Contract for as long as necessary to protect the NYS Confidential Information and to limit any further use or disclosure of that NYS Confidential Information. If Contractor elects to destroy NYS Confidential Information, it shall use reasonable efforts in accordance with applicable Federal, State, or local laws, rules, regulations, ordinances, policies, standards and guidelines to achieve the same and notify the State accordingly. Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of NYS Confidential Information which Federal, State, or local laws, rules, regulations, ordinances, policies, standards, and guidelines prohibits from disclosure.

52. REVIEW AND AUDIT OF CONTRACTOR'S SECURITY CONTROLS

The State, and any regulatory authority having jurisdiction over the State or ITS, reserves the right to review and/or audit 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 and/or audit 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, if available, 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.