

CONTRACT NO. T000685
between the
NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES
and
INTERNATIONAL BUSINESS MACHINES CORPORATION
for
DIGITAL HEALTH PASS

TERMS AND CONDITIONS

THIS CONTRACT No. T000685 ("Contract" or "Agreement") is made by and between the State of New York (the "State"), acting by and through the **New York State Office of Information Technology Services** (hereinafter "ITS"), with offices located at the State Capitol ESP, P.O. Box 2062, Albany, New York, 12220-0062, and **International Business Machines Corporation** ("IBM" or "Contractor"), having its principal place of business at 80 State Street, Albany, New York 12207, FEIN No. 13-0871985, each respectively a "Party" and collectively, the "Parties," to this Contract.

W I T N E S S E T H

WHEREAS, NYS has determined that under the ongoing COVID-19 pandemic emergency, there is an urgent need to procure a digital health pass to support the statewide technological effort to coordinate and track the COVID-19 testing and vaccination effort; and

WHEREAS, ITS has determined that IBM's Digital Health Pass meets the needs for providing such functionality for NYS responding to the COVID-19 pandemic, including:

- a) the ability for a NYS-operated portal to authenticate, display, and print a NYS Health Passport code in response to an individual inquiring about that individual's COVID-19 vaccination & testing status;
- b) a mobile phone application, capable of being installed on iOS and Android phones and available through the Apple Store and Google Play store, which can scan the NYS Health Passport displayed in the NYS portal, save it in the individual's digital wallet or provide a printable QR code, resulting in a credential after requesting it via the NYS portal;
- c) a credential verification tool, in the form of an additional mobile phone application, to allow participating entities to confirm the authenticity of a NYS Health Passport;
- d) technical assistance as to ways in which ITS might plan further deployment of this solution; and
- e) project management for eight (8) weeks or fewer for the Digital Health Pass implementation; and

WHEREAS, the Governor of the State of New York, the honorable Andrew M. Cuomo, in response to this pandemic issued Executed Order No. 202 declaring a state of emergency thereby suspending certain laws, including procurement laws, in order to purchase urgently needed services, commodities, and technology to respond to the pandemic.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. CONTRACT TERM

The term of this Contract T000685 will be from January 25, 2021 through March 19, 2024 unless extended by mutual agreement of the Parties in writing.

2. ESTIMATED PRICING

Assuming successful pilot completion and implementation, and subject to any amendments made pursuant to the terms of this Contract, the estimated pricing for the full three-year term of this Contract is **\$16,981,000.00**, consisting of fixed one-time implementation costs of **\$2,500,000.00**, estimated three-year licensing costs of **\$12,300,000.00**, and Phase 2 optional implementation services of **\$2,181,000.00**. This amount represents all licensing, custom product, and maintenance and support costs as described in more detail in Appendix H hereto.

3. MODIFICATION OF CONTRACT

The Contract may be amended only by mutual written consent of the Parties.

4. INTEGRATION, MERGER, AND ORDER OF PRECEDENCE

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

- Appendix A -Standard Clauses for New York State Contracts (October 2019 version), annexed hereto;
- Appendix B - Additional Standard Terms (COVID-19 Related Transactions), annexed hereto;
- This Contract T000685, including its appendices C, F, G, H, and I, but excluding its other exhibits, attachments, and appendices; and
- Appendices D and E (IBM Cloud and Watson Works terms).

IBM Digital Health Pass software licensing is governed by the IBM Cloud Services Agreement (Appendix D) and IBM Service Description (Appendix E) incorporated herein and can be accessed through ITS' IBM site number 7245968.

Notwithstanding the order of precedence above, in the event of a conflict between those terms throughout Appendices D and E that describe the manner in which IBM provides its "Cloud Services" as *"as a service"* IBM offerings that IBM makes available via a network, such as software as a service, platform as a service, or infrastructure as a service", and terms in any other contract document listed above that differently describes the manner in which IBM's "Cloud Services" are provided, the terms describing IBM's provision of Cloud Services in Appendices D and E shall prevail. As an example, other references in T000685 and its appendices to "indemnification", which is a legal concept, prevail over Appendix D and E references to "indemnification". But other references in T000685 and its appendices to "service levels", which describes IBM's "Cloud Services", yield to the terms of Appendices D and E.

All prior agreements, representations, statements, negotiations, and undertakings between the Parties related to the matters herein are superseded.

5. SCOPE OF WORK

- Overview:** This is a project consisting of an eight (8) week pilot and three (3) year contract including full application development of an IBM solution named, for the purposes of this Contract, IBM Digital Health Pass or "Health Passport", for ITS to help explore and implement how test records for the COVID-19 pandemic may be delivered to New York State constituents and verified by organizations. As it is presented to authorized users of the application, the application name may be re-branded by ITS, to avoid any likelihood of confusion with applications used for similar purposes elsewhere.

The initial Scope of Work for this project is annexed hereto as an attachment to this Contract T000685 ("Scope of Work").

b) Procedure for Changes in Scope. In the event a change in the Scope of Work attached to this Contract T000685 is requested during the term of the Contract, including but not limited to use of the IBM Digital Health Pass for other NYS health needs:

- 1) A written description of the changes (Change in Scope) that adheres generally to the sample provided at the end of the Scope of Work section of this Agreement will be prepared jointly by IBM and ITS as a Project Change Request (PCR).
- 2) The PCR will be numbered by ITS and will describe the change in general and specify any specific changes in the charges, estimated schedule, or other terms.
- 3) The PCR shall indicate the detailed charges and any impact of the change request upon the planned deliverables.
- 4) The PCR must be internally authorized by ITS following standard ITS procedures and signed by both IBM and by an authorized signatory of ITS to authorize implementation of proposed changes.
- 5) If the changes are not acceptable to ITS, the Change in Scope PCR will not be implemented.

If any Change in Scope would conflict with the Agreement, an amendment to the Agreement may be pursued by the parties. Such contract amendment must be approved by IBM, ITS, and, if required, by the NYS Office of the Attorney General (OAG) and the NYS Office of the State Comptroller (OSC).

c) IBM terms applicable to the Scope of Work. For the purposes of this Contract T000685, the IBM Cloud Services Agreement and the IBM Watson Works Terms and Conditions (collectively referred to herein as "IBM's Cloud Terms"), each of which is respectively attached hereto, shall apply, subject to this Contract's Order of Preference, except to the extent that IBM's Cloud Terms:

- contain verbiage reasonably deemed an endorsement or potentially an admission against interest by ITS, such as describing IBM's cloud services as "highly efficient" or that IBM's cloud services use "best practices". For the purposes of this Contract, those types of terms shall be considered surplusage by the Parties;
- contradict terms and conditions of this T000685 agreement, including to the extent they purport to supersede T000685's terms and conditions or refer to other terms and conditions hyperlinked or otherwise outside the four-corners of those attachments, except where those terms relate solely to IBM's provision of "Cloud Services", as described in Section 4 of this Contract;
- reference Transaction Documents, the terms and acceptance of which must be agreed to in writing by an ITS signatory authorized to sign same following ITS internal approval processes;
- refer to "Content" provided by "authorized users" of the services provided by Contractor pursuant to this Contract, which shall consist of the items of data described to authorized users of the Health Passport application in the Health Participant Authorization displayed to those authorized users. Appendix F herein contains proposed examples of the forms of authorizations to be completed by the users of the NYS Health Passport application, which may be refined further by the State.

Use by and transfer of personal data to IBM for the services described in this Contract T000685 including personal information obtained by IBM from an individual using the NYS Health Passport application or the State's verification of COVID-19 test results or vaccination status for that individual shall be used and maintained by IBM or any third parties such as IBM subcontractors only for the purposes described in this Contract and only

for the time necessary to provide an instance of the QR code indicating test results or vaccination status. All such information shall be discarded by IBM and its subcontractors immediately after each time the application is used by a participant and the QR code has been provided to the participant in response to that use.

6. CONTRACTOR RESPONSIBILITIES, QUALIFICATIONS, AND CHANGE IN STATUS

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

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

For any services provided by Contractor under this Contract, and for any renewals or amendments thereof whether for software and software maintenance, or technical support services, Contractor warrants that it and its Contractor Staff (as defined in this Contract) have sufficient experience working on the items that it has bid on, that it has the right and ability to service all aspects of that software, maintenance or services including access to firmware, or other attached or necessary components such as batteries, and that the Contractor has established relationships with the provider(s) of any needed software or other items such that Contractor can reasonably quickly replace or repair any aspect of that software, or other items.

ITS reserves the right to suspend any or all activities under this Contract at any time if it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension and must comply with the terms of the suspension order. Contract activity may resume at such time as ITS issues a written notice lifting the suspension order.

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

Upon ITS' receipt of such notice, ITS 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 ITS. In addition to any other remedies available at law or equity, ITS shall have the right to cancel the Contract, in whole or in part, for cause, if it finds, in its sole judgment, that such substantial change adversely affects the delivery of services or is otherwise not in the best interests of the State.

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

7. SUBCONTRACTORS, and CONTRACTOR OBLIGATIONS

Contractor is responsible for meeting all Contract obligations set forth herein, 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 this 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 this 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 this 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 this Contract.

No Subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this 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.

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 Contract, and Appendix A – Standard Clauses for New York State Contracts. 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 Subcontract 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 this 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.

If at any time during performance under this 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.

8. INDEPENDENT CONTRACTOR

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

9. BACKGROUND CHECKS / ONBOARDING

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

Contractor agrees that its Contractor Staff performing services on-site at NYS Facilities or those with logical access to NYS Confidential Information (i.e. log-in access) shall be required to undergo the same security clearances as those required of ITS employees. If not physically or virtually escorted, each Contractor Staff designated to work under the Contract with ITS shall submit identifying information to the State and be fingerprinted. ITS shall arrange for the scheduling of fingerprinting.

Such fingerprints shall be submitted to the NYS Division of Criminal Justice Services for a state criminal history record check and, at ITS' discretion, to the Federal Bureau of Investigation for a national criminal history record check.

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.

10. COOPERATION WITH THIRD PARTIES

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

11. COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS

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

12. RIGHT TO INSPECT

The State, and any regulatory authority having jurisdiction over the State or ITS, has the right to review Contractor's procedures, practices and controls related to the security of NYS Confidential Information and information assets. Upon request, Contractor will make available for review the policies, procedures, practices and documentation related to the protection of NYS Confidential Information and information assets, including but not limited to those related to information security governance, network security, risk and compliance management policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, secure disposal/sanitization and documentation. Contractor may be asked to provide a recent independent audit report, if available, on security controls prior to awarding of this 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.

13. WORK OUTSIDE THE SCOPE OF THE CONTRACT

Contractor must not perform work outside the scope of the Contract unless such work is authorized by a properly

executed written project change request or amendment to the Contract, and if applicable, approved by OSC. Work not so authorized will not be compensated.

14. NOTICE / SINGLE POINTS OF CONTACT / AUTHORIZED SIGNATORIES / CREDITS PENALTY FOR SOLICITING UNAUTHORIZED TRANSACTION DOCUMENT SIGNATURES

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:

NYS Office of Information Technology Services
Chief Technical Officer
Empire State Plaza, PO Box 2062 Albany, NY 12220-0062

With a copy to:

NYS Office of Information Technology Services
Director, Finance Operations
Empire State Plaza, PO Box 2062 Albany, NY 12220-0062

NYS Office of Information Technology Services
Director, Vendor Sourcing and Management Office
Empire State Plaza, PO Box 2062 Albany, NY 12220-0062

NYS Office of Information Technology Services
Division of Legal Affairs Bureau of House Counsel, Data Center Counsel
Empire State Plaza, PO Box 2062 Albany, NY 12220-0062

For Contractor:

Jack Milvaney, Client Executive, NYS Integrated Account
IBM Corporation
80 State Street
Albany, New York 12207
Telephone Number: 518-487-6518

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.

ITS maintains a website on which it lists the only, specific ITS individuals who are authorized to sign contractual documents on behalf of ITS, within specified dollar limits, currently located at <https://its.ny.gov/notice-its-authorized-signatories>. Contractor acknowledges that nobody else is authorized to sign contractual documents for ITS, even if such governmental personnel mistakenly believes and informs Contractor that they have such authority. In the event that the above-mentioned authorized signatories website changes or Contractor is otherwise unable to discern who has authority to sign ITS contractual documents, Contractor is required to reach out to ITS' single-point(s) of contact directly to obtain access to the most current listing.

15. PAYMENT

Payments for services rendered shall be in accordance with the Contract. Unless mutually agreed otherwise in writing by the Parties, and in the case of ITS, that has been approved in accordance with ITS' internal approval

processes and signed by an ITS authorized signatory, all rates shall be inclusive of any and all direct and indirect costs including contract administration, clerical personnel, travel, computer charges, postage and all other expenses related to the engagement. The State's payment obligations shall be governed by the provisions of the New York State Finance Law ("SFL").

Other than as otherwise specified herein, Contractor shall invoice ITS monthly, with each month in the invoice reflecting actual purchases or actual hours provided during a calendar month, which consists of 1st day of the calendar month using the standard United States Gregorian calendar, through the last day of the calendar month, which is either the 28th, 29th, 30th, or 31st day of the month, depending on the particular month. Payments shall be made in United States Dollars (\$ USD).

For example, an improper invoice would span over more than a single calendar month, as reflected in the "Month" column, in the following example:

Improper Invoice:

<i>Technical Specialist 4</i>	<i>Month</i>	<i>Hours</i>	<i>Hourly Rate</i>	<i>Total</i>
[NAME]	6/28/18 - 7/25/18	5	\$117.19	\$585.95

A proper invoice, under this Agreement, shall cover only a single specific calendar month, such as June 2018, as reflected in the "Month" column, in the following example:

Proper Invoice:

<i>Technical Specialist 4</i>	<i>Month</i>	<i>Hours</i>	<i>Hourly Rate</i>	<i>Total</i>
[NAME]	6/28/18 - 6/29/18	2	\$117.19	\$234.38

. . . or, shall cover only a single specific calendar month, such as July 2018, as reflected in the "Month" column, in the following example:

Proper Invoice:

<i>Technical Specialist 4</i>	<i>Month</i>	<i>Hours</i>	<i>Hourly Rate</i>	<i>Total</i>
[NAME]	7/2/18 - 7/25/18	3	\$117.19	\$ 351.57

16. TRAVEL AND OTHER ANCILLARY COSTS - CONTRACTOR STAFF

All costs are included in the "Not-to-Exceed" section of this Contract. ITS will not separately reimburse Contractor for any indirect costs, fees, profit and all overhead expenses, including but not limited to, all training, travel, 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.

17. ITEMIZATION, ELECTRONIC PAYMENT, AND ELECTRONIC INVOICING REQUIREMENTS

17.1 Itemization. Contractor is apprised that its bills, documentation supporting charges in those bills, and all invoices paid under this Contract are subject to audit by auditors internal or external to ITS, and agrees to provide complete and accurate billing invoices to ITS in order to be eligible for payment. "Complete and accurate billing invoices" means invoices submitted to ITS containing all information and supporting documentation required by the Contract, ITS, and OSC with an itemization of each product or service. Contractor shall provide such itemization at a level of detail reasonably requested by ITS, including a breakdown of travel, lodging or other ancillary costs with enough detail for ITS to be able to confirm that Contractor is abiding by the requirements of the immediately preceding section of these terms. Contractor shall cooperate with ITS' reasonable requests for greater detail as required.

17.2 Electronic Payments. Payment for invoices submitted by the Contractor shall be rendered electronically, unless payment by paper check is expressly authorized by ITS in its sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with OSC's procedures to authorize electronic payments. Authorization forms are available at OSC's website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-474-4032.

Contractor acknowledges that it will not be eligible for payment on any invoices submitted under this 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.

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

18. WARRANTIES AND GUARANTEES

18.1. Contract Deliverables. Contractor warrants and represents that the services and/or goods required by the Contract shall be performed or provided in accordance with all the terms and conditions, covenants, statements, and representations contained in the Contract. Contractor's failure to meet pre-defined service levels may result in a credit or chargeback in an amount pre-determined by the Parties.

18.2. Product Performance and Product Warranties in General. Contractor hereby warrants and represents that products acquired by ITS under this Contract conform to the manufacturer's specifications, performance standards and documentation and that the documentation fully describes the proper procedure for using the products.

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

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

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

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

Where Contractor, an independent software vendor (ISV), or other third-party manufacturer markets any product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition

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

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

Unless recycled, recyclable, or recovered materials are available and approved by ITS, product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor's Z-series equipment may have used or reclaimed parts, however, so long as the warranty provided by Contractor for same is the same as for Contractor's new products. Contractor further warrants and represents that no component or part shall be substituted or applied contrary to the manufacturer's recommendations and standard practice.

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

18.3. Title and Ownership. Contractor warrants and represents that it has: (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any products acquired by the State under the Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify the State and hold the State harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein, as described below in the section concerning "Indemnification for Intellectual Property Infringement."

If ITS' usage of a product purchased under this Contract shall be enjoined for any reason or if Contractor reasonably believes that it may be enjoined, Contractor shall have the obligation, at its own expense and discretion, to take one or more of the following actions to make ITS whole:

- to procure for ITS, at its own expense, the right to continue using the product at issue and continue receiving any replacements or maintenance and support services that were previously contracted for and paid for by ITS;
- to modify the service or product so that usage becomes non-infringing, and as modified, is of materially equal quality and performance; or
- to replace such product or parts thereof, as applicable, with non-infringing product of at least equal quality and performance.

If the above remedies are not available, the Parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that ITS is given a refund for any amounts paid by ITS for a period during which the product's usage was enjoined.

18.4. Workmanship Warranty. Contractor warrants and represents that all services and Deliverables shall meet the completion criteria set forth in the Contract or any relevant Transaction Document, and that each of Contractor's services shall be performed in a professional and workmanlike manner in accordance with the highest applicable industry standards and according to its current description (including any completion criteria) contained in this Contract, an attachment, or a Transaction Document. A claim that specific services provided by Contractor did not meet the "highest applicable professional standards" must be made by ITS within ninety (90) days after the date on which the breach occurred. In the event that there has been a breach of the foregoing warranty and the Transaction Document 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 service or part thereof that gave rise to the claim. This warranty is in addition to, and not in lieu of, any other warranty under this Contract or other remedies that may be provided in a Transaction Document under this Contract.

In addition, if a Transaction Document 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 Transaction Document. 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 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.

18.5. Personnel Eligible for Employment. Contractor warrants and represents that all personnel performing services under this Contract are qualified to provide services and eligible for employment in the United States and shall remain so throughout the term of the Contract. Contractor shall provide such proof of compliance as is required by ITS.

18.7. Malware Warranty. The Contractor represents and warrants that *any* product acquired by ITS from Contractor under this Contract does not contain any known computer viruses or any other known malware, as defined in the "Software Virus Warranty" section below.

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

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

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

18.11. No Implied Warranties. To the extent permitted by law, these warranties are exclusive and there are no other express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose.

18.12. Date/Time Warranty. Contractor warrants that product(s) furnished pursuant to the Contract shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific products must perform as a package or system, this warranty shall apply to the products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of the Contract through: a) ninety (90) days; or b) the Contractor's or product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under the Contract for breach of warranty.

19. COMPLIANCE WITH LAWS - FEDERAL FUNDING

Contractor warrants and represents that, throughout the term of the Contract, in the performance of its obligations under the Contract, it will: (i) comply with all applicable laws, ordinances, rules and regulations of any governmental entity; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity. Failure to do so may constitute grounds for ITS to terminate or suspend this Contract, in whole or in part, or to take any other action deemed necessary by ITS.

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.

20. INDEMNIFICATION and LIMITATION OF LIABILITY

20.1. Indemnification. Contractor shall be fully liable for the actions of its employees, partners or Subcontractors and shall fully indemnify the State by defending the State from third party suits, actions, damages and costs of every name and description relating to bodily injury (including death) and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise or result from this Contract, without limitation; provided, however, that the Contractor shall not be obligated to indemnify the State to the extent any claim, loss or damage arising hereunder is due to the negligent act, failure to act, gross negligence or willful misconduct of the State.

The State shall give Contractor: (i) prompt written notice of any action, claim or threat of 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, claim or suit at the expense of Contractor.

In the event that an action or proceeding at law or in equity is commenced against the State arising out of a claim for death, bodily injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its employees, partners or Subcontractors, which shall arise or result from the services supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify ITS and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State may have. In the event of a dispute regarding the defense, the Contractor and the State shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

20.2. 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 and legal fees), claims, judgments, liabilities, and costs which may be assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the services, products, documentation or Deliverables furnished or utilized by Contractor under this Contract, provided that the State shall give Contractor:

- (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit;

(ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense; and

(iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require. This paragraph shall not apply to that portion of any infringement claim which results from a material modification by the State, without Contractor's approval, of any products, documentation or Deliverables furnished or utilized by Contractor pursuant to this Contract.

Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest. This section is not subject to the limitation of liability provisions of the Contract.

20.3. 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; or (iii) the amount for which the applicable insurance is stated in the "Contractor's Insurance Requirements" Appendix C to this Contract. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to the State.

Unless otherwise specifically enumerated herein, neither Party shall be liable for any incidental, punitive, consequential, indirect or special damages of any kind which may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others, however caused and regardless of the theory of liability even if such Party has been informed of the possibility of such damages. The limitations of liabilities, disclaimers of warranties, exclusivity of remedies, and other limitations are an essential element of the bargain between the Parties (without which the transactions contemplated by this Contract would not occur) and will apply even if a remedy fails in its essential purpose.

20.4. 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.

21. SUSPENSION OF WORK

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

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

22. QUALITY OF SERVICE

Should it be found that the quality of services being performed by the Contractor under the Contract, in whole or in part, are not in material compliance with the Contract service requirements, the State may declare Contractor in default and proceed in accordance with the Termination section below. Contractor reserves all rights to contest any such determination by the State.

23. TERMINATION

23.1. 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. Such termination of the Contract shall not affect any project or purchase order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this paragraph, the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.

23.2. For Cause. For a material breach 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 Contract or a specific Transaction Document may be terminated by the State at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible or for any of the other reasons stated in this section with the exception of termination for convenience. Such termination shall be upon written notice to the Contractor. In such event, the State may complete the contractual requirements in any manner it may deem advisable. Each Party may pursue available legal or equitable remedies for breach.

23.3. 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 or exercise such other remedies as shall be available under the Contract, at law and/or equity.

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

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

24. TRANSITION SERVICES (CONTINUING UNTIL CONTRACT EXPIRATION)

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

24.1. Transition Period. Unless otherwise agreed to by the Parties, the Transition Period shall commence within fifteen (15) days of receipt of a notice of termination or six (6) months prior to the end of the Term of the Contract, whichever event occurs first, and continue until Contract expiration.

24.2. Transition Plan. Within fifteen (15) days of receipt of a notice of termination or six (6) months prior to the end of the Term of the Contract, whichever event occurs first, the Contractor shall provide a final draft of a detailed written plan for Transition (Transition Plan) which outlines, at a minimum, the tasks, milestones and Deliverables associated with the smooth transition of services to ITS, a third-party or the successor contractor. The final Transition Plan will include items such as, but not limited to: (i) a full inventory of devices employed in the delivery of services, including both monitored, and managed and monitored, along with necessary documentation and information (e.g., firewall rule sets; user names; passwords; or hot IP lists); (ii) historical data about configuration management, including maintenance logs; and (iii) a description of the procedures the Contractor will use to return or destroy NYS Confidential Information, as defined in the Contract. Contractor agrees to amend the Transition Plan to include all other information deemed mutually necessary by ITS and Contractor. There will be no cost to the State for any portion of the development of the Transition Plan.

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

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

24.5. Responsibilities for Transition. Contractor shall cooperate with the State and the third-party or successor contractor to facilitate a smooth and orderly transition. ITS shall assume responsibility for Transition project management. A project manager responsible for coordinating Transition activities, maintaining the transition task schedule, and approving transition Deliverables shall be appointed by ITS. Weekly project review meetings shall be held with representatives of the Contractor, ITS, and the third-party or the successor contractor. ITS shall also ensure that all other resources (e.g. technical, administrative) deemed necessary by the Transition Plan, whether they are ITS or third-party resources, will be available as required to carry out tasks and functions defined in the Transition Plan and in accordance with the defined timelines specified in the Transition Plan.

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

25. DEFAULT

25.1. If either Party breaches a material provision of this Contract, which breach remains uncured for a period of thirty (30) days after written notice thereof from the other Party specifying the breach (or if such breach cannot be completely cured within the thirty (30) day period, such longer period of time provided that the breaching Party proceeds with reasonable diligence to completely cure the breach) or if Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, the other Party may, at its option, terminate this Contract upon ten (10) days written notice and exercise such other remedies as shall be available under this Contract, at law and/or equity.

25.2. No delay or omission to exercise any right, power or remedy accruing to either Party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

25.3. If, due to default that remains uncured for the period provided herein, a third-party shall commence to perform Contractor's obligations under this Contract, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all services provided prior to any such date, and if any lump-sum payment has been made, the State shall be entitled to a pro-rata refund of such payment.

26. ADDITIONAL TECHNOLOGY PROVISIONS

26.1. Permitted License Transfers. Should the State's business operations be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between State agencies, as applicable ("permitted license transfers"). The State may make such permitted license transfers without the need to secure the approval of Contractor. There shall be no additional license or other transfer fees due Contractor as long as the usage remains in accordance with the original license grant.

26.2. Use by Outsourcers, Service Bureaus, or Other Third- Parties. Outsourcers, facilities management or service bureaus retained by the State shall have the right to use any licensed product to maintain the State's business operations, including data processing, provided that ITS gives notice to Contractor of such intended use and means of access.

26.3. No Hardstop / Passive License Monitoring. Contractor hereby warrants and represents that the licensed product and all upgrades do not and will not contain any known computer code that would disable or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the licensed product to cause such disablement or impairment (sometimes referred to as a "trap door" device). If any future product licensed under this Agreement contains any of the foregoing, Contractor represents and warrants that it shall not invoke any such feature during the term of the Agreement. Contractor agrees that in the event of a breach or alleged breach of this provision the State may not have an adequate remedy at law, including monetary damages, and shall consequently therefore be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which the State shall be entitled.

26.4. Ownership of and Title to Contract Deliverables. Contractor acknowledges that it is commissioned by the State to perform the services detailed herein which may include the creation of Deliverables or Work Product and the development of intellectual property by Contractor, its Subcontractors, partners, employees, or agents for the State ("Custom Products"). Unless otherwise specified in writing agreed to by authorized signatories of the Parties, upon the creation of such Custom Products, in consideration of the pilot portion of this project which has been provided to NYS at no cost, ownership of all right, title, and interest in such Customer Products, including any modifications or enhancements thereto, vest immediately in and shall be owned by Contractor upon such creation. Contractor hereby grants to State an irrevocable, perpetual, nonexclusive, worldwide license to use, execute, reproduce, display, perform, distribute and prepare derivative works of the Custom Products as delivered to the State under a Scope of Work. 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. Custom Products excludes works of authorship delivered or made available to the State, but subject to a separate license agreement ("Existing Licensed Works").

26.5. Ownership of and Title to Existing Software. Title and ownership to existing software delivered by Contractor under the Contract that is normally commercially distributed by the Contractor or a third-party proprietary owner, whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products shall remain with Contractor or the third-party. Effective upon acceptance and unless otherwise agreed to by the Parties in this Agreement, such Existing Licensed Works shall be subject to the separate license agreement. With regards to third-party software, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Parties acknowledge that certain Contractor software is licensed on a monthly or term basis as further described in sections below in this Agreement.

27. FORCE MAJEURE

In the event that either Party is unable to perform any of its obligations under the Contract because of natural disaster, any act of God, war, civil disturbance, court order, or labor dispute, or any other acts beyond the reasonable control

of either Party (hereinafter referred to as a "Force Majeure Event"), the Party that has been so affected shall immediately give notice to the other Party, and shall exercise every commercially reasonable effort to resume performance, and the parties will act reasonably to discuss the affected obligations, potential work-arounds, and related issues in good faith and will document any agreed changes to this Contract. Any non-performance, affected performance or delay in performance of any non-monetary obligation by either Party resulting from a Force Majeure Event shall not be considered a breach or default under the Contract. The parties acknowledge and agree that pandemic events such as COVID-19 are events beyond the Parties' reasonable control and it is not possible to foresee (or advisable to try and foresee) its duration, impact or extent (including measures and recommendations that may be put in place by regulators).

28. DISPUTE RESOLUTION

The Parties agree to attempt to resolve any disputes regarding the performance of services or otherwise arising under the Contract expeditiously through the escalation process described below, or through such other means agreed to by the Parties:

A. Informal Dispute Resolution Processes

1. In the event there is a dispute under this Agreement, its Scope of Work (SOW), or any subsequent PCRs changing the SOW, the Parties will exercise their best efforts to resolve the dispute as soon as possible. IBM and ITS shall, without delay, continue to perform their respective obligations under the Agreement which are not affected by the dispute. Primary responsibility for informally resolving any dispute arising under this Agreement shall rest, for ITS, with ITS' Chief Technology Officer or such other ITS Project Manager assigned by ITS, and for IBM, with an IBM Account Executive named to ITS by IBM.
2. Notifications by either Party seeking informal resolution of disputed issues shall be provided in writing by the respective Party consistent with the notice provisions of Section 14 of the Contract, and in accordance with dispute resolution time frames agreed to in writing by IBM and ITS, with, if notice from IBM to ITS, an additional copy also to ITS' Chief Technology Officer or such other ITS Project Manager assigned by ITS. If either Party notifies the other of such dispute, the other Party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the Party's representatives to attempt diligently to reach a satisfactory result through negotiation.

B. Formal Dispute Resolution Processes

1. If negotiation between IBM's Account Executive and ITS' Chief Technology Officer or such other ITS Project Manager assigned by ITS fails within a reasonable time frame to informally resolve any such dispute to the satisfaction of the Parties, then a Party may submit the matter respectively, in writing:
 - by IBM, to ITS' Acting Executive Deputy Chief Information Officer (or then-equivalent ITS executive personnel, who ITS shall identify to IBM upon request), copied to each of the single points of contact described for ITS in Section 14 of the Contract, or, if:
 - by ITS, to the IBM's Account Executive and State & Local Government Regional General Manager (who shall be identified to ITS upon request).
2. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within reasonable time frames as then-agreed to by the parties. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

C. Appeals

1. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed within no more than ten (10) business days after the date the formal dispute decision is received by the filer, respectively, by

IBM, with the ITS Chief Information Officer (or then-equivalent ITS executive personnel, who ITS shall identify to IBM upon request), or, by ITS, to IBM executive personnel superior to IBM's State & Local Government Regional General Manager, identified by IBM.

2. Such appeal of the formal dispute decision by either Party shall not include new facts and information unless requested in writing by the receiving Party.

3. The decision of the receiving Party's executive receiving the appeal shall be considered the final and conclusive determination of the receiving Party.

D. Legal Appeals

Nothing contained in these provisions is intended to limit or impair the rights of either Party to seek and pursue remedies of law through the judicial process. Nothing in this section shall diminish the State's right to terminate the Contract as provided in the Contract or any other rights afforded to the Parties under the Contract.

29. GENERAL PROVISION AS TO REMEDIES

29.1. 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.

29.2. 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 upon a determination of a default under the Contract:

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

30. INSURANCE

Contractor must comply with the Insurance provisions set forth in the "*Contractor's Insurance Requirements*" annexed hereto as Appendix C.

31. TAXES

31.1. 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.

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

31.3. 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 such State 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: <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#XI/18/D.htm?Highlight=220>. Contractor agrees to cooperate fully with the State in administering these requirements.

32. OUTSTANDING TAX LIABILITIES

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

33. MWBE, EEO AND WORKFORCE REQUIREMENTS

33.1. New York State Law. Under various New York State laws (including NYS Executive Law Articles 15-A and 17-B; 5 NYCRR 140-145 and 9 NYCRR Part 252; and NYS Executive Order 162), ITS is obligated to promote opportunities for maximum feasible participation in the performance of its contracts for NYS-certified minority- and women-owned business enterprises ("MWBEs"), NYS-certified Service-Disabled Veteran-Owned Businesses (SDVOBs), and the employment of minority group members and women.

- In 2006, New York State commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. Published on April 29, 2010, the study, "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" and a follow-up report entitled "2016 MWBE Disparity Study" published on June 30, 2017 ("Disparity Studies") found evidence of statistically significant disparities between the participation levels of MWBEs in State procurement and contracting versus the number of MWBEs ready, willing, and able to participate in such procurements. Accordingly, the Disparity Studies made recommendations concerning implementation and operation of the statewide certified minority- and women-owned business enterprises program. These recommendations led to enactment and implementation of New York State Executive Law Article 15-A, which requires, among other things, that ITS establishes, in the performance of NYS contracts: goals for maximum feasible participation of NYS-certified MWBEs; and, equal employment opportunity (EEO) of minority groups members and women.
- Under Chapter 22 of the Laws of 2014, the NYS Service-Disabled Veteran-Owned Business Act was directed towards assisting service-disabled veterans in playing a greater role in the economy of NYS in order to promote and encourage the continuing economic development of service-disabled veteran-owned businesses.
- The January 9, 2017 NYS Executive Order No. 162 was created "to ensure that workers are being provided equal opportunities to work on State contracts and are being paid similarly for performing the same work."

- As such, under NYS law Contractors must continue to utilize small, minority and women owned businesses, provide opportunities for service-disabled veterans, and provide for the employment of minority group members and women in the performance of their contracts with NYS, consistent with current New York State law.

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

a. 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 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing, or (2) in excess of \$100,000 for real property renovations and construction.

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

Contractor's demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by NYS Executive Law Article 15 (the “NYS 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.

- i. MWBE Participation Goals:** For purposes of this Contract, ITS has established, to begin and apply post-implementation, only after successful completion of IBM's implementation of Digital Health Pass, an overall goal of 30% for Minority and Women-Owned Business Enterprises participation, broken down as 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).

For purposes of providing meaningful participation by MWBEs on the Contract by achieving the MWBE participation goals established herein, Contractor should reference the directory of NYS Certified MWBEs found at: <http://www.esd.ny.gov/mwbe.html>. Additionally, Contractor is encouraged to consult ITS using the contact information listed below, or the Division of Minority and Women's Business Development of the NYS Department of Economic Development (“DMWBD”), to discuss additional methods of maximizing participation by MWBEs on the Contract.

Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8 Contractor must document its “good faith efforts” to provide meaningful participation by MWBEs as Subcontractors or suppliers in the performance of the Contract. In accordance with 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.

MWBE Documentation: Specific MWBE documentation to be submitted to NYS at both the beginning of a contract with ITS, and updates made during the contract's term, are described with more specificity in the section below captioned, “*Required Supplier Diversity Forms and Processes for Submitting Them.*”

-
- ii. **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. As such, Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Contractor agrees it is bound by certain provisions of NYS Executive Law Article 15-A and the MWBE Regulations promulgated by DMWBD. If any of the terms or provisions in this section conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

In relation to this Contract, Contractor shall specifically comply with the following EEO provisions of Article 15-A:

- Contractor and its Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- Contractor and Subcontractors shall submit an EEO policy statement to ITS upon request. The EEO policy statement shall include at minimum language, indicating that the Contractor or Subcontractor:
 - (a) will not discriminate against any employee or applicant for employment because of: race, creed, color, national origin, sex, age, disability, or marital status; (b) will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination; and (c) shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - 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.
 - shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- The Contractor will include the above three provisions 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.
- If Contractor or Subcontractor does not have an existing EEO policy statement, they may use the Sample MWBE and EEO Policy Statement form attached to this Contract T000685 as Appendix I ("Sample M/WBE and EEO Policy Statement"), or any updated version thereof provided by ITS.

EEO Documentation: Specific EEO documentation to be submitted to NYS at both the beginning of a

contract with ITS, and updates made during the contract's term, are described with more specificity in the section below captioned, "*Required Supplier Diversity Forms and Processes for Submitting Them.*"

- b. **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:
- i. provide to ITS, and supplement on a quarterly basis, equal employment opportunity information by reporting the job title and salary in gross wages of each employee of the Contractor who is performing work on the Contract, or, if the Contractor cannot identify the individuals working directly on the Contract, of each employee in the Contractor's entire workforce; and
 - ii. 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.

Executive Order 162 Documentation: Specific Executive Order 162 title and salary documentation to be submitted to NYS at both the beginning of a contract with ITS, and updates made during the contract's term, are described with more specificity in the section below captioned, "*Required Supplier Diversity Forms and Processes for Submitting Them.*"

- c. **SDVOBs: Participation Opportunities for NYS Service-Disabled Veteran-Owned Businesses in the Performance of this Contract:** Article 17-B of the NYS Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. ITS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified 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, Contractor is strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of this Contract. Such participation may be as Subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on this Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>. Contractor is encouraged to contact the NYS Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or at veteransdevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on its contracts.

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

- i. **SDVOB Participation Goals:** ITS has established, to begin and apply post-implementation, only after IBM's successful implementation of Digital Health Pass, an overall goal of 6% for SDVOB participation for this Contract, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with this Contract's SDVOB participation goals should be directed to the ITS supplier diversity

contacts listed at the end of the "*SUPPLIER DIVERSITY: MWBE, EEO, WORKFORCE, and SDVOB REQUIREMENTS*" section of the Contract.

- ii. Contractor must document its “good faith efforts” to provide meaningful participation by SDVOBs as Subcontractors or suppliers in the performance of the Contract.

SDVOB Documentation: Specific SDVOB documentation to be submitted to NYS at both the beginning of a contract with ITS, and updates made during the contract's term, are described with more specificity in the section below captioned, "*Required Supplier Diversity Forms and Processes for Submitting Them.*"

d. **Required Supplier Diversity Forms and Processes for Submitting Them:**

i. **Forms Required to be Submitted to ITS at the Beginning of the Contract:**

1. **MWBE Forms:**

- a. ***MWBE Utilization Form MWBE-100:*** If this Contract contains MWBE goals, then Contractor represents and warrants that Contractor has submitted directly to ITS a complete MWBE Utilization Plan ITS Form MWBE-100 either prior to, or at the time of, the execution of this Contract. A "*complete*" Utilization Plan is one in which each item of requested information on the form such as MWBE contact information inclusive of name, phone number, email address, and mailing address is fully provided by Contractor for the MWBEs listed. Contractor agrees to use such 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 NYS for approval using the processes described below concerning "*Forms Required to be Submitted to NYS During the Term of the Contract.*"
- b. ***MWBE Request for Waiver/Certification of Good Faith Efforts (ITS Form MWBE-104):*** Alternatively, if the Contractor, after making good faith efforts, is unable to comply with the Contract's MWBE goals, the Contractor may submit to ITS a Request for Waiver ITS Form MWBE-104 documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, ITS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- c. ***Required Letter Notice to Identified MWBEs:*** To the extent the Contract has MWBE goals, and the Contractor is submitting to ITS an MWBE Utilization Form MWBE-100, then upon final award of the Contract or completion of the procurement's restricted period, and prior to the commencement of the Contract, the Contractor must email a letter in the form stated below to each and every MWBE firm that Contractor has identified on its approved MWBE-100 Utilization Plan. The Contractor is required to simultaneously provide a copy of each such e-mailed letter to ITS at supplierdiversity@its.ny.gov. Also, to the extent Contractor's utilization plans change or additional certified MWBE Subcontractors are added, Contractor must send such an e-mail letter, again copying ITS, to each additional MWBE vendor added to the utilization plan for the contract:

Dear [Enter name of NYS certified MWBE Firm]:

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

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

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

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

Telephone Number: (518) 473-9341

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

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

Sincerely,

[enter signature]

2. EEO Forms:

EEO Staffing Plan (ITS Form EEO-100): To ensure compliance with this Section, the Contractor shall submit directly to ITS at or before the beginning of the Contract a completed 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 to ITS as part of their bid or proposal or within a reasonable time of the execution of this Contract.

3. NYS Executive Order 162 Forms:

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

4. SDVOB Forms:

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

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

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

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

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

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

To ensure it understands the process correctly, prior to Contractor submitting to ITS a request for a partial or total waiver of SDVOB participation goals, Contractor shall discuss same with the ITS supplier diversity contacts listed at the end of the "*SUPPLIER DIVERSITY: MWBE, EEO, WORKFORCE, and SDVOB REQUIREMENTS*" section of the Contract.

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

If ITS, upon review of the Contractor's submitted SDVOB Utilization Plan (Form SDVOB-100) and Quarterly SDVOB Compliance Reports (modified versions of Form SDVOB-101) determines that Contractor is failing or refusing to comply with the participation goals, and no waiver has been issued in regards to such noncompliance, then ITS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB participation goals.

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

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

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

1. ***Periodic MWBE Compliance Update Reports:*** For submitting MWBE forms, New York State has created an online system, the "New York State Contract System"("NYSCS"). The primary Internet link may be found here: <https://ny.newnycontracts.com/>. Rather than submitting MWBE update forms directly to ITS, once a contract has been awarded and during the term of the Contract, Contractor is responsible for updating and providing notice to ITS using the online NYSCS, on a cadence as required by that online system, periodic MWBE Compliance Reports using the NYSCS's equivalent of ITS Form MWBE-102, in order to document the progress made during the term of the Contract towards achievement of the MWBE goals of the Contract. For more information, Contractor may go to: <https://ny.newnycontracts.com/>.
2. ***Quarterly EO 162 and EEO Workforce Utilization Report:*** DMWBD has combined into a *single* form the two forms previously required for reporting Contractor compliance with NYS Executive Order 162, and Workforce Employment Utilization. Once a contract has been awarded, during the term of Contract Contractor is responsible for submitting this combined form, the EO 162 and EEO Workforce Utilization Report, directly to ITS in order to show:
 - a. any changes to the EEO Staffing Plan (ITS Form EEO-100) that the Contractor previously submitted to ITS at the beginning of the Contract, now reporting the *actual* workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories.

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

subject time frame, not limited to work specifically under the Contract.

- b. any changes to the NYS Executive Order 162 report that Contractor had submitted at the beginning of the Contract, now reporting the *actual* job title and salary in gross wages of each employee of the Contractor who is performing work on the Contract, or, if the Contractor cannot identify the individuals working directly on the Contract, of each employee in the Contractor's entire workforce.

The Quarterly EO 162 and EEO Workforce Utilization Report may be currently found at: <https://its.ny.gov/document/eo-162-eeo-workforce-utilization-report>. See the section below captioned "Obtaining the Required Supplier Diversity Forms" for more information.

- iii. ***Periodic SDVOB Compliance Update Reports:*** Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its initial SDVOB Utilization Plan, during the performance of the Contract. In accordance with 9 NYCRR § 252.2(q), Contractor is required to submit SDVOB Contractor Compliance Update Reports during the term of the Contract on a periodic basis as determined by the Contract, reflecting and documenting progress made by Contractor towards achieving the Contract SDVOB participation goals. ITS currently requires this reporting be submitted on a quarterly basis, using ITS' periodic SDVOB Compliance Update Report currently found at: <https://its.ny.gov/service-disabled-veteran-owned-business-sdvob-supplier-diversity-program>. See the section below captioned "Obtaining the Required Supplier Diversity Forms" for more information.

e. **Compliance with this Contract's Supplier Diversity Provisions:**

i. **Supplier Diversity Compliance:**

- 1. **Notice of Deficiency.** If ITS, upon review of the initial MWBE Utilization Plan and updated Periodic MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the participation goals and no waiver has been issued in 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.
- 2. **Disqualification as Non-Responsive.** ITS may disqualify a Bidder or Contractor as being non-responsive if they fail to meet the requirements of the Contract under the following circumstances:
 - a. **MWBE:** If such Bidder or Contractor fails to submit to ITS a required initial MWBE Utilization Plan or, through the NYSCS, required updated Periodic MWBE Contractor Compliance Reports;
 - b. **EEO:** If such Bidder or Contractor fails to submit to ITS a required initial EEO Workforce Employment Utilization Plan, or, required updated Quarterly EO 162 and EEO Workforce Utilization Reports;
 - c. **EO-162:** If such Bidder or Contractor fails to submit to ITS a required initial Executive Order 162 Workforce Utilization Report or, required updated Quarterly EO 162 and EEO Workforce Utilization Reports;
 - d. **SDVOB:** If such Bidder or Contractor fails to submit to ITS a required initial SDVOB Utilization Plan or, required updated Periodic SDVOB Contractor Compliance Update Reports;
 - e. If such Bidder or Contractor fails to submit a written remedy to any ITS notice of deficiency;

-
- f. If, when such is required, such Bidder or Contractor fails to submit to ITS a request for waiver; or
 - g. If ITS determines that such Bidder or Contractor has failed to document good faith efforts.

ii. **Breach of Contract, and Damages:**

1. **MWBE Breach of Contract:** Contractor further agrees that a failure to submit and/or use such initial MWBE Utilization Plan, or Plan as updated by Contractor through the NYSCS, shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ITS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.
2. **MWBE Liquidated Damages:** In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and ITS may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - b. 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.

3. **SDVOB Breach of Contract:** Contractor agrees that its failure to use SDVOBs as agreed in the initial Utilization Plan that Contractor submitted to ITS, or Plan as updated by Contractor through the NYSCS, or any of the following deficiencies by Contractor, shall constitute a material breach of the terms of the Contract and may be grounds for cancellation of the Contract by ITS:
 - a. Contractor's failure to submit, or to timely submit, to ITS an SDVOB Utilization Plan;
 - b. Contractor's failure to submit, or to timely submit, through the NYSCS a periodic SDVOB Contractor Compliance Update Report;
 - c. Contractor's failure to submit, or to timely submit, to ITS a written remedy to an ITS notice of SDVOB utilization deficiency;
 - d. Contractor's failure to submit, or to timely submit, to ITS, a Request for Waiver of SDVOB participation goals; or
 - e. Contractor's failure to document, or to timely document, to ITS Contractor's good faith efforts toward utilizing SDVOBs on the Contract.

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

f. Obtaining the Required Supplier Diversity Forms

- i. **ITS MWBE, EEO, and EO-162 Forms:** The website where Contractor can obtain required initial MWBE, EEO, and EO-162 forms is currently: <https://its.ny.gov/minority-and-womens-business-enterprise-mwbe-supplier-diversity-program>.

For the periodic MWBE reports required during the Contract term, such forms may be accessed through the NYSCS (<https://ny.newnycontracts.com/>) .

- ii. **ITS SDVOB Forms:** The website where Contractor can obtain required initial SDVOB forms is currently: <https://its.ny.gov/service-disabled-veteran-owned-business-sdvob-supplier-diversity-program>.

For the periodic reports required during the Contract term, such forms may also be accessed through <https://its.ny.gov/service-disabled-veteran-owned-business-sdvob-supplier-diversity-program>.

- iii. Contractor is responsible for obtaining all required forms referenced herein, and, to the extent that Contractor is unable to locate such forms for reasons including that ITS might have updated its website locations, for reaching out to an ITS contact using the contact information below to obtain copies of the forms:

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

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

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

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

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

supported by associated procurements.

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

35. ETHICS COMPLIANCE

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

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

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

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

36. FORMER EMPLOYEE APPEARANCES BEFORE ITS

Contractors, consultants, vendors, and Subcontractors may hire former New York State agency or authority employees. However, as a general rule and in accordance with the POL, former employees of the New York State agency or authority may neither appear nor practice before the New York State agency or authority, nor receive compensation for services rendered on a matter before the New York State agency or authority, for a period of two years following their separation from New York State agency or authority service. In addition, former New York

State agency or authority employees are subject to a “lifetime bar” from appearing before the New York State agency or authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the New York State agency or authority.

37. TRANSFER OR ASSIGNMENT OF CONTRACT

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

38. WAIVER

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

39. ACCESSIBILITY

39.1. 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.

39.2. 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 this Contract which is deemed to provide a “direct public service” must comply with EO-26.

40. 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.

41. PIGGYBACKING

Contractor acknowledges 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.

42. NYS FINANCE LAW §163(4)(g) COMPLIANCE: EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the 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 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 - Vendor Sourcing and Management Organization
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.

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.

43. DELIVERABLE ACCEPTANCE

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 Transaction Document requirements. The ITS approver will accept or reject the Deliverable. Deliverables will not be automatically accepted in the event of New York State failure to act. If the ITS approver rejects a Deliverable, the cause for rejection and all defects to be addressed will be documented by ITS and provided to the Contractor and the Contractor will correct all identified deficiencies, and resubmit the Deliverable for acceptance. There shall be no verbal acceptance or acceptance by default of a Deliverable.

44. CHANGE REQUEST

At any time during the term of this Contract, the State may make changes, subtractions or additions in any of the software, software maintenance, or technical support services within the general scope of work set forth in the Contract, consistent with pricing established under the terms of this Contract. Such changes will be subject to the unit costs itemized in the Contract or such other costs as may be mutually agreed between the Parties. All such changes shall be made and executed by both Parties using a change request form as agreed to by the Parties, and shall otherwise be in accordance with the terms and conditions of this Contract. If any such change causes an increase or decrease in pricing or the time required for the performance of the Contract, an equitable adjustment of the Contract amount and/or time of performance will be made on mutual agreement of the Parties, subject to the approval of OSC and any applicable control agency, if required.

45. REGISTRATION WITH NYS DEPARTMENT OF STATE

Prior to being awarded a Contract and throughout the duration of the resulting Contract, Contractor shall be registered with the 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. Such application must have been approved prior to Contract Award. (For details concerning this requirement, refer to information available at <http://www.dos.ny.gov/corps/index.html> and http://www.dos.ny.gov/cnsl/do_bus.html. To register with the Secretary of State, contact: <http://www.dos.ny.gov/corps/contact.html>). Contractor 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.

46. NEW YORK STATE VENDOR FILE REGISTRATION WITH OSC

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

47. NONDISCLOSURE & CONFIDENTIALITY

Contractor shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in performance of its activities under the Contract. Contractor shall ensure that its personnel, agents, officers 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. Failure by Contractor or its agents, employees, officers, partners or Subcontractors to fully comply with these requirements shall be deemed a failure to meet Contractor's obligations under this Contract and may result in ITS suspending, canceling and/or terminating the Contract for cause or to pursue any other legal or equitable remedies available.

As Confidential Information may be provided to Contractor under this Agreement by another New York State agency (the NYS Department of Health), Contractor agrees to reasonably and expeditiously enter into such separate, supplemental data use agreement as may reasonably be requested by said agency and mutually agreed to by Contractor and that agency.

47.1. 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, all State information of which Contractor, its officers, agents, employees, and Subcontractors become aware during the course of performing services for the State concerning State financial, statistical, technical or personnel data; State systems or operations; or any personally identifiable information shall be deemed to be NYS Confidential Information (oral, visual or written). 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": Under the Security Terms and Conditions sections of this Contract, obligations of the Contractor who is a Party to this Contract with ITS refers to collectively, as well, Contractor's officers, agents, employees, or Subcontractors.

47.2. Data Ownership, Non-Disclosure, and Confidentiality. NYS Confidential Information is owned exclusively by New York State, will remain the property of the State throughout its use under 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 the ITS Director or comparable ITS executive officer, or his/her designee. Contractor is permitted to use NYS Confidential Information solely for the purposes set forth in this Contract, and for no other purpose. At no time shall the Contractor access, use, or disclose any NYS Confidential Information (including personal, financial, health, or criminal history record information or other sensitive criminal justice information) for any other purpose.

The Contractor is strictly prohibited from releasing or using NYS Confidential Information for any purposes other than those purposes defined herein or authorized in writing by ITS. Contractor agrees that NYS Confidential Information shall not be distributed, used, repurposed, transmitted, exchanged or shared across other applications, environments, or business units of the Contractor or otherwise passed to other contractors, agents, Subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by the State. Contractor shall indemnify and hold ITS and the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its agents, employees, officers, partners or Subcontractors of such NYS Confidential Information, in accordance with the terms and conditions of this Contract. Agents, employees, officers, of the Contractor and its Subcontractors may be required to execute an ITS nondisclosure agreement, either before or upon arrival at NYS Facilities or if in ITS' sole discretion the employee(s) will otherwise have access to critical State networks, equipment or NYS Confidential Information.

47.3. 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>. ITS shall have the right at any time to require that the Contractor remove from interaction with ITS any Contractor representative who ITS 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 ITS 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 ITS consent.

Contractor 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 ITS will communicate security procedures necessitated by ITS 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.

Contractor warrants that its Contractor Staff members are properly informed and trained regarding security standards and are 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.

47.4. Accessing NYS Facilities. Contractor may access State information technology system(s) and NYS Facilities solely to respond to system or technical problems or at ITS' request, and for any work associated with hosting such NYS Confidential Information in connection with the provision of the system to ITS and its authorized users. 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 and follow 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 agent, employee, officer, partner or Subcontractor 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 ITS' expense. ITS shall arrange for the scheduling of such fingerprinting activities on State premises; or

(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 ITS, 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 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).

47.5. 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 ITS 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 state and federal law, rules, regulations, and requirements. The Contractor must provide the ability to encrypt data in motion and at rest in compliance with state or federal law. Contractor must use secure means (HTTPS) for all electronic transmission or exchange of system, user and application data with the State, with encryption at rest specifically using, at minimum, 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 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, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the Contract or a specific Transaction Document hereunder and or any amendment thereof, or of the Contractor's designated backup and recovery processes, and is encrypted in accordance with the requirements of this Contract and in compliance with all current federal, State, or local statutes, regulations, ordinances, and requirements.

Contractor shall also comply fully with all requirements of this Contract pertaining to security requirements specific to the services Contractor is providing to ITS under this Contract. In addition to the specific security provisions required herein, Contractor shall also use commercially reasonable best efforts to address and remediate any vulnerabilities associated with the types of 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 ITS' reasonable satisfaction.

47.6. Physical Transport of NYS Confidential Information. To the extent ITS agrees under this Contract or a Transaction Document hereunder that Contractor may physically transport any NYS Confidential Information, Contractor shall use, if applicable, reputable means to do so. Physical transport deliveries must be made either via hand delivery by an employee of the Contractor or by restricted delivery via courier (e.g., FedEx, United Parcel Service, or United States Postal Service) with shipment tracking and receipt confirmation. This applies to transport between the Contractor's offices, to and from Subcontractors, and to the State.

47.7. 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 in a specific Transaction Document approved by an ITS authorized signatory adhering to established ITS practices, Contractor shall not have remote access into ITS' 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 ITS technical personnel will download such software, and install and test it in New York State's information technology environment.

To the extent Contractor (or, any Subcontractors allowed by ITS) 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 ITS.

47.8. 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 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 ITS are prohibited.

ITS requires the Contractor to follow security best practices 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 ITS 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 ITS.

48. INFORMATION RELEASES

48.1. 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 ITS, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any State or Federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

48.2. Public Information, and the NYS Freedom of Information Law (FOIL). Disclosure by ITS 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. ITS 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 ITS.

If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of: (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor; or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to §87(2) of FOIL. Acceptance of the identified information by ITS does not constitute a determination that the information is exempt from disclosure under FOIL.

Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by ITS. Contractor represents and warrants that it understands that requests to exempt the entirety of Contractor's materials from disclosure under FOIL has generally not been found to be meritorious.

48.3. 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.

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 ITS Contractor's processes for responding to subpoenas, service of process, and other legal requests and a description of Contractor Staff roles and responsibilities related to electronic discovery, litigation holds, discovery searches, and expert testimonies.

ITS acknowledges that Contractor has no responsibility under 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.

49. BREACHES OF NYS CONFIDENTIAL INFORMATION

The New York State Information Security Breach and Notification Act (ISBNA: NYS General Business Law §889-aa; and NYS Technology Law, §208) has various requirements for how businesses and government in New York State must address breaches of private information and of the security of systems containing same. Under this Agreement, the Parties agree to comply with relevant provisions of the ISBNA. The Parties also agree to guard against breaches of NYS Confidential Information in the manner described below in these sections:

49.1. Breaches of "Private Information." Contractor is responsible not only for complying with the provisions of the ISBNA, but also the following terms and conditions with respect to any "private information" (as defined in ISBNA) received by Contractor under this Contract (hereafter in this section, "Private Information") that is within the control of the Contractor either on ITS' information security systems or the Contractor's information security systems (collectively, hereinafter in this section, "System[s]"). In the event of a "breach of the security of the system" (as defined by ISBNA, hereinafter in this section, "Security Breach"), Contractor shall commence an investigation, in cooperation with ITS, without unreasonable delay to determine the scope of the Security Breach and restore the security of the System to prevent any further Security Breaches. Contractor shall also notify ITS of any Security Breach without unreasonable delay following discovery of such Security Breach.

Except as otherwise instructed by ITS or required by law, Contractor shall, to the fullest extent possible, first consult with and receive authorization from ITS prior to notifying any individuals, DOS, the NYS Division of State Police, the OAG, or any consumer reporting agencies of a Security Breach or concerning any determination to delay notification due to law enforcement investigations.

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

Contractor is responsible for complying with the following ISBNA and other terms with respect to any Private Information received by or on behalf of ITS under this Contract. Contractor:

- Shall supply ITS with a copy of its breach notification policy, which shall be modified to be in compliance

with these provisions.

- Must encrypt any database fields and backup tapes that contain Private Information.
- Must ensure that the State's Private Information is encrypted in transit to/from Contractor's systems.
- In general, Contractor must ensure that Private Information is not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.
- Must monitor for Security Breaches 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 ITS.
- In the event a Security Breach occurs, Contractor shall notify the ITS Enterprise Information Security Officer ("EISO") by telephone without unreasonable delay after becoming aware of the Security Breach and commence an investigation in cooperation with ITS to determine the scope and cause of the Security Breach, and to prevent the future recurrence of such Security Breaches.
- Coordinate all communication regarding data impacted by a Security Breach with the ITS EISO, and ITS in general.
- Take immediate and necessary steps needed to restore the System[s] to prevent further Security Breaches, and take corrective action in the timeframe required by ITS. If Contractor is unable to complete the corrective action within the required timeframe, in addition to any other remedies available, ITS may contract with a third-party to provide required services until corrective actions and services resume in a manner acceptable to ITS, or until ITS has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period.

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

ITS reserves the right to require commercially standard credit monitoring for any and all individuals affected by a Security Breach at the sole expense of the Contractor for a period not to exceed 12 months, which shall begin 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. ITS reserves the right to require notice by regular or electronic mail.

49.2. Non-ISBNA Security Breaches. In addition to any responsibilities of Contractor under the Contract for reporting Security Breaches of Private Information as that term is defined in the ISBNA, Contractor must report to ITS *any* breaches of any NYS Confidential Information without unreasonable delay whether it consists of Private Information or otherwise. Contractor shall ensure that the personnel charged with carrying out services under this Contract are aware of Contractor's obligations to ITS hereunder. Contractor's staff browsing, viewing, altering, appending or modifying 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. Contractor represents and warrants that the NYS Confidential Information which it hosts for ITS remains at all times the property of ITS and must be fully accessible to ITS 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 ITS to ensure that ITS 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 ITS and capable of being used in technical solutions which compete with Contractor's hosted solution, as further described below.

49.3. 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 this Contract and approved by ITS to do so. Any divulging of such NYS Confidential Information to Contractor's personnel who are not strictly needed to perform services under this Contract and approved by ITS to do so shall be deemed a security breach under this Contract. In addition to any other remedies available to ITS 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.

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

50.1. 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 ITS. This may include:

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

The Parties may describe methods for data migration in more detail in specific Transaction Documents under this Agreement.

50.2. 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 ITS assets and the subsequent secure disposal of ITS assets. ITS shall be entitled to any post-termination assistance generally made available by Contractor with respect to the services it provides unless a unique alternative data retrieval arrangement has been established between the Parties as part of a Service Level Agreement or other Transaction Document.

At the State's option, the Contractor must provide ITS with a copy of the NYS Confidential Information, including metadata and attachments, in a mutually agreed upon, commercially standard format at no additional charges to the State, and give the State continued access to NYS Confidential Information for no less than ninety (90) days beyond the expiration or termination of the Contract. Thereafter, except for data required to be maintained by law or this 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. Contractor must then certify to ITS, in writing, that it has complied with the provisions of this paragraph. The State may withhold payment to Contractor

if NYS Confidential Information is not released to ITS in accordance with the preceding sections.

50.3. Data Return and Destruction - Regulated Data. New York State considers the protection of sensitive and 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, regulations, and ordinances. 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 Contract reflects several significant federal and state laws, rules and regulations, policies, standards and guidelines that providers doing business with the State must be aware of and comply with if applicable to the services being provided. Links to further guidance are included in that appendix. The list is intentionally US-centric, and is not intended to be all-inclusive. Further, since laws, regulations, requirements and industry guidelines change, consulting definitive sources to assure a clear understanding of compliance requirements is critical. Many NYS agencies may have additional program compliance requirements that must be considered in addressing compliance. (e.g., DMV Privacy Act, Public Service Law, etc.).

To the extent that Contractor, its employees, agents or Subcontractors have access to federal, State or local government regulated data pursuant to their responsibilities under the Contract, Contractor agrees that it will abide by the requirements of those federal, State and local laws and regulations, and will require in writing its employees, agents 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 law, exercise due care for the protection of data, and maintain appropriate data integrity safeguards against the deletion or alteration of such data. In the event that any regulated data is lost or destroyed because of any act or omission of the Contractor or any non-compliance with the obligations of this Contract, then Contractor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, Contractor shall reimburse the State for any costs incurred by the State in correcting, recreating, restoring or reprocessing such data or in providing assistance therewith.

In the event that it becomes necessary for Contractor to receive NYS Confidential Information which Federal, State, or local statute, regulation, or ordinance 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 statute, regulation, or ordinance 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 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 statute, regulation, or ordinance prohibits from disclosure.

Contractor agrees that it shall immediately report to ITS the discovery of any unauthorized use or unauthorized disclosure of such NYS Confidential Information. Contractor shall also report the discovery of any unauthorized use or unauthorized disclosure of such NYS Confidential Information of any New York State agency information directly to that New York State agency.

51. AUDITS OF CONTRACTOR'S SECURITY CONTROLS

As described above in the sections of this Contract captioned "COOPERATION WITH INVESTIGATIONS,

AUDITS, AND LEGAL PROCEEDINGS" and "RIGHT TO INSPECT," Contractor may, to the extent in possession of Contractor, be asked to provide recent independent audit reports regarding the Services and only to the extent such reports are created in the ordinary course of Contractor's business, on its security controls during the term of this Contract. The State and any regulatory authority having jurisdiction over ITS shall have the right to send its officers and employees upon reasonable notice into the offices and plants of the Contractor for inspection of the facilities and operations used by Contractor in the performance of any work under this Contract. On the basis of such inspection, Contractor may be required by ITS to implement specific additional security measures in cases where ITS demonstrates that Contractor is found to be noncompliant with Contract safeguards.

52. COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"), THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF 2009 ("HI-TECH ACT"), AND OTHER HEALTH INFORMATION PRIVACY AND SECURITY LAWS

Definitions:

The following terms used in this Section shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (PHI), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in this Section may refer to Contractor or its Subcontractor(s), to the extent Contractor or its Subcontractor(s) create, receive, maintain, or transmit protected health information on behalf of ITS.

(b) Covered Entity. By entering into this Contract, ITS does not affirm that it necessarily meets the definition of a "Covered Entity" or a "Business Associate" under the HIPAA statute, and rather affirms that ITS may in a given instance be acting as a "conduit" or in another capacity providing services to other entities, some of which themselves may be covered entities. But to the extent ITS is deemed to be covered by HIPAA or HI-TECH, the Parties agree the term "Covered Entity" in this Section shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(d) Medicaid Confidential Data ("MCD"). MCD includes all information about a Medicaid recipient or applicant, including enrollment information, eligibility data and protected health information. The NYS Department of Health ("DOH") is the Single State Agency responsible for the administration of the New York State Medicaid program in New York State, including ensuring the security and confidentiality of MCD data.

HIPAA Protected Health Information Obligations and Activities of Contractor

If applicable, Contractor and its Subcontractors shall comply with HIPAA and all of its regulations. To the extent Contractor or its Subcontractor(s) create, receive, maintain, or transmit protected health information on behalf of ITS pursuant to their responsibilities under this Contract, Contractor agrees that it is subject to, will abide by, and will require in writing its Subcontractors to similarly abide by, the following requirements applicable to Business Associates under HIPAA, agreeing to:

(a) Not use or disclose protected health information other than as permitted or required by the Contract or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Contract;

(c) Report to ITS within ten (10) business days or fewer any use or disclosure of protected health information not provided for by this Contract of which it becomes aware. In no event shall Contractor exceed the timeframe for reporting to ITS breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware. Contractor shall provide ITS all information reasonably requested by ITS concerning any breach. Contractor shall also provide the following information to ITS upon first instance of the notification of breach: the identification of each individual whose unsecured protected health information has been, or is reasonably believed by Contractor, to have been, accessed, acquired, used, or disclosed during the breach.

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit protected health information on behalf of Contractor agree in writing to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information;

(e) Make available protected health information in a designated record set to ITS, in a manner to be prescribed by ITS within a reasonable timeframe not to exceed fifteen (15) days, absent extenuating circumstances, as necessary to satisfy obligations which ITS or the entities it provides services to reasonably believe applicable to them under 45 CFR 164.524. In the event Contractor or its Subcontractor(s) receive any request for such protected health information directly from an individual, Contractor shall refer such request to ITS within a reasonable timeframe not to exceed ten (10) business days.

(f) Make any amendment(s) to protected health information in a designated record set as directed by ITS pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy obligations that ITS reasonably believes it has under 45 CFR 164.526, in the manner as prescribed by ITS and within twenty (20) business days of such request. In the event Contractor or its Subcontractor(s) receive any request to amend a data set directly from an individual, Contractor shall refer such request to ITS within a reasonable timeframe not to exceed ten (10) business days;

(g) Maintain and make available the information required to provide an accounting of disclosures to ITS as necessary to satisfy obligations that ITS reasonably believes it has under 45 CFR 164.528, in the manner as prescribed by ITS and within ten (10) business days of such request. In the event Contractor or its Subcontractor(s) receive any request for an accounting of disclosures directly from an individual, Contractor shall refer such request to ITS within a reasonable timeframe not to exceed ten (10) business days;

(h) To the extent Contractor or its Subcontractor(s) are to carry out one or more of obligation(s) ITS may have under Subpart E of 45 CFR Part 164, in performing such obligations, comply with the requirements of Subpart E that apply to ITS; and

(i) Make either Contractor's or its Subcontractor(s)', or both's, internal practices, books, and records available to the Secretary of the Department of Health and Human Services and to ITS, for purposes of determining compliance with the HIPAA and HI-TECH Rules.

Permitted Uses and Disclosures of Protected Health Information by Contractor and its Subcontractor(s)

(a) Contractor and its Subcontractor(s) may only use or disclose protected health information as necessary to perform the services set forth in this Contract, provided however, that if de-identified information can be used in lieu of individually identifiable health information with the same effect, Contractor and its Subcontractor(s) shall use de-identified information in their performance of this Contract in accordance with 45 CFR 164.514(a)-(c).

(b) Contractor and its Subcontractor(s) may use or disclose protected health information as required by law.

(c) Contractor and its Subcontractor(s) agrees to make only those uses, disclosures and requests for protected health information that are consistent with the minimum necessary policies and procedures of ITS or the entit(ies) for whom ITS provides services which entail the creation, reception, maintenance, or transmittal of protected health information.

(d) Contractor and its Subcontractor(s) may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 except as may be provided for in this Contract or for the proper management and administration of Contractor or its Subcontractor(s), including the carrying out of the Contractor's or its Subcontractor(s)' legal responsibilities.

Other Health Information Obligations and Activities of Contractor

Contractor or its Subcontractor(s) may not disclose other types of health information protected by federal, State or local law including but not limited to personally identifiable mental health information protected under NYS Mental Hygiene Law §33.16, other personally identifiable health information or HIV information protected under NYS Health Law sections §18 or Article 27-F, or substance abuse information protected under federal regulations 42 CFR Part 2.

Contractor or its Subcontractor(s) may not disclose Medicaid Confidential Data without the prior written approval of DOH, either directly or as provided to Contractor or its Subcontractor(s) through ITS. If contacted by DOH, while also informing ITS, Contractor or its Subcontractor(s) shall reasonably work with DOH to identify any individuals who may have inappropriately or unlawfully accessed Medicaid Confidential Data.

Contractor agrees to ensure that Contractor and any agent, including a Subcontractor, to whom Contractor provides Medicaid Confidential Data, agrees to the same restrictions and conditions that apply throughout this Contract. Further, Contractor agrees to state in any such agreement, contract or document that the party to whom Contractor is providing the Medicaid Confidential Data may not further disclose it without the prior written approval of DOH. Contractor agrees to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that Contractor enters into that involves Medicaid Confidential Data.

The federal Center for Medicare and Medicaid Services (CMS) requires that all contracts and/or agreements executed between DOH and any second party that will receive Medicaid Confidential Data must include contract language that will bind such Parties to ensure that contractor(s) abide by the regulations and laws that govern the protection of individual, Medicaid confidential level data.

Medicaid Confidential Data includes all information about a recipient or applicant, including enrollment information, eligibility data and protected health information.

Contractor must comply with the following State and federal laws and regulations:

- Section 367b(4) of the NY Social Services Law
- New York State Social Services Law Section 369 (4)
- NYS Mental Hygiene Law §33.16,
- Article 27-F of the New York Public Health Law & 18 NYCRR 360-8.1
- Social Security Act, 42 USC 1396a (a)(7)
- Federal regulations at 42 CFR 431.302, 42 C.F.R. Part 2
- The Health Insurance Portability and Accountability act (HIPAA), at 45 CFR Parts 160 and 164

Please note that Medicaid Confidential Data released to Contractor may contain AIDS/HIV related NYS Confidential Information as defined in Section 2780(7) of the New York Public Health Law. As required by New York Public Health Law Section 2782(5), the following notice is provided to Contractor:

“This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for the release for further disclosure.”

Alcohol and Substance Abuse Related Confidentiality Restrictions:

Alcohol and substance abuse information is confidential pursuant to 42 C.F.R. Part 2. General authorizations are ineffective to obtain the release of such data. The federal regulations provide for a specific release for such data.

Term and Termination

(a) Termination for cause under HIPAA or HI-TECH. The Term of this Section shall be as described elsewhere in the "Term" section of this Contract. Among the other reasons for which ITS may terminate this Contract prior to the end of its Term date for cause, ITS may terminate this Contract if ITS determines the Contractor or its Subcontractor(s) have violated a material term of this HIPAA and HI-TECH Compliance Section of the Contract, and Contractor or its Subcontractor(s) have not cured the breach or ended the violation within a reasonable time that has been specified by ITS.

(b) Contractor's and its Subcontractor(s)' Obligations Upon Termination. Upon termination of this Contract for any reason, Contractor and its Subcontractor(s) shall return to ITS, transfer to another of ITS' contractors as directed by ITS, or, if agreed to by ITS on an individual case-by-case basis, destroy all protected health information received from ITS, or created, maintained, or received by the Contractor and its Subcontractor(s) on behalf of ITS, that the Contractor and its Subcontractor(s) still maintain in any form. Contractor and its Subcontractor(s) shall retain no copies of the protected health information. Contractor understands and agrees and will require of its Subcontractor(s) in writing that Contractor and its Subcontractor(s) are required to receive written approval from ITS prior to the return, transfer or destruction of any protected health information.

(c) Survival. Contractor's and its Subcontractor(s)' obligations under this HIPAA and HI-TECH Compliance section of this Contract shall survive the termination of this Contract.

Miscellaneous

(a) Regulatory References. A reference in this Contract to a section in the HIPAA or HI-TECH Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Contract from time to time as is necessary for compliance with the requirements of the HIPAA or HI-TECH Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Contract shall be interpreted to permit compliance with the HIPAA or HI-TECH Rules.

(d) Sub-contractors. Contractor shall require any Subcontractors that it uses that create, receive, maintain, or transmit protected health information on behalf of ITS under this Contract to conform to these HIPAA and HI-TECH Compliance requirements in addition to any other security, privacy or applicable terms of this Contract.

53. SAFEGUARDING FEDERAL TAX INFORMATION

For the purposes of this Section:

"Federal Tax Information" ("FTI") consists of federal tax returns and return information (and information derived from it).

"Data" is a representation of facts, concept, information, or instruction suitable for communication, processing, or interpretation by people or information systems.

To the extent that the services provided by Contractor under this Contract T000685 include or are expanded to include access by Contractor to FTI, Contractor agrees to have its personnel or that of its subcontractors to sign a copy of the

I. PERFORMANCE

In performance of this Contract, to the extent Contractor accesses or uses Federal Tax Information, Contractor agrees to comply with and assume responsibility for compliance by Contractor Staff with the following requirements:

- (1) Any such work, to the extent it is cloud-based, shall be certified under the Federal Risk and Authorization Management Program (FedRAMP), a government program providing a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services.
- (2) All such work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- (3) The Contractor and Contractor Staff with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (4) Any FTI made available to Contractor in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- (5) All FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (6) The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any FTI or IRS Data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (7) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI or IRS Data will be given to ITS. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide ITS with a statement containing the date of destruction, description of material destroyed, and the method used.
- (8) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (9) No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (10) The Contractor will maintain a list of employees authorized access. Such list will be provided to ITS and, upon request, to the IRS reviewing office.
- (11) ITS will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

- (1) Each Contractor Staff (hereinafter in this Section, Contractor "person") of Contractor to whom FTI is or may be disclosed shall be notified in writing by such person that the FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such FTI for a purpose or

to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom FTI is or may be disclosed shall be notified in writing by such person that any FTI made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting access to FTI must be preceded by certifying that each individual understands ITS' security policies and procedures for safeguarding IRS Data. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in ITS' files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A. (See, IRS Publication 1075: Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See, IRS Publication 1075: Section 10, Reporting Improper Inspections or Disclosures). For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and ITS, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process, or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

54. CONTROLLED UNCLASSIFIED INFORMATION ("CUI")

Pursuant to federal regulation 32 CFR Part 2002 that was issued and effective as of September 14, 2016, "Controlled Unclassified Information" is information that the federal government creates or possesses, or that an entity (including a state or local government) creates or possesses for or on behalf of the federal government, to which a federal law,

regulation, or Government-wide policy requires or permits a federal agency to apply safeguarding or dissemination controls.

Under the federal regulation, federal agencies may begin when feasible marking federal data, and imposing CUI provisions including dissemination controls, in the federal agencies' contracts, grants, licenses, certificates, memoranda of agreement/arrangement or understanding, and information-sharing agreements or arrangements with state or local governments or with other entities.

During the course of this Contract, ITS expects to begin seeing such federally marked data accompanied by federal information-sharing requirements. Moreover, ITS may develop its own CUI marking program and set of state-specific CUI controls.

As such, Contractor represents and warrants that it submitted its Bid in full knowledge of 32 CFR Part 2002 and the federal CUI program, and with full understanding that during the course of the Contract, Contractor may be required to adhere to such federal, state, or local CUI requirements and abide by any CUI controls imposed thereunder.

55. EUROPEAN UNION'S GENERAL DATA PROTECTION REGULATION

The European Union's General Data Protection Regulation ("GDPR") requires that for those European Union citizens who are covered under the regulation, "Personal Data" as defined in the regulation shall be:

- *"processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');*
- *collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation');*
- *adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');*
- *accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');*
- *kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');* and
- *processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality')."*

While the Parties do not anticipate that the GDPR shall be applicable to any NYS Confidential Information under this Agreement, to the extent a Party reasonably believes in any given circumstance that personal data subject to the GDPR is in fact being processed pursuant to this Agreement and is subject to the GDPR, such Party shall notify the other Party and the Parties upon mutual reasonable agreement may enter into a Data Processing Agreement concerning the deployment of security measures or other physical, technical, or administrative methods to bring the Parties into compliance with same.

56. EXECUTION AND NOTARIZATION OF THE CONTRACT(S)

Contractor shall sign this Contract, and have such signature notarized by a notary public, within the borders of the Continental United States ("CONUS").

57. USE OF FEDERAL FUNDS

Required terms and conditions in relation to the use federal funding are incorporated herein in Appendix B under the heading Federal Emergency Management Agency (FEMA) Mandatory Terms and Conditions ("FEMA Terms"). Contractor acknowledges that ITS may use United States federal grant funds to purchase services under this Contract and as a result such purchases shall be subject to 2 CFR Part 200, as it applies to contractors. Contractor is at all times acting as a contractor and not as a subrecipient, as those terms are defined in 2 CFR Part 200. To the extent such grants or funds are used, then the purchases shall be subject to the additional FEMA Terms set forth in Appendix B; provided, however, that each of the FEMA Terms shall apply as and solely to the extent that it is indispensable to ITS's eligibility for reimbursement of its costs under this Contract with federal funding. Where a conflict or inconsistency exists between this Contract and the FEMA Terms, the term in this Contract shall be applied unless such application would render ITS ineligible for reimbursement of its costs under this contract through federal funding, in which event the analogous FEMA Term shall apply. Further, the Parties agree that this Contract is neither a construction contract nor a contract involving experimental, developmental, or research work, nor is Contractor employing laborers or mechanics.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

ATTACHMENT to Contract T000685: Scope of Work

1.0 EXECUTIVE OVERVIEW

As described in Contract T000685.

1.1 PROJECT SCOPE

The scope of this project is for IBM to provide to ITS the following solutions:

- Ability for a NYS operated portal to authenticate, display and print a NYS Health Passport code in response to an individual inquiring about their COVID-19 vaccination and testing results and display in the New York digital wallet running on iOS or Android phones;
- A Digital wallet, in the form of a mobile application, capable of being installed on iOS phones and Android phones which will save in the individual's digital wallet, credentials (passport) requested via the NYS portal;
- A Credential verification tool *including the first release of the Business Registration capability which will capture Business Name, Industry Type and Zip Code*, in the form of an iOS and android phone application, to confirm the authenticity of a NYS Health Passport *and supply verification usage metrics*;
- Technical assistance as to ways in which ITS might plan further deployment of this solution; and
- Project management for the 8-week Digital Health Passport implementation and support.

1.1.1 SOLUTION DESCRIPTION (AS APPLICABLE TO PERFORMANCE BASED SERVICES)

IBM will provide services assisting ITS with the deployment of IBM's Digital Health Pass to facilitate individuals tracking their COVID vaccination or testing results and enabling them to demonstrate it to third party organizations.

IBM will use timeboxing management techniques to meet schedule and budget. With this technique, time, IBM resources, and Deliverables will be fixed and the level of detail within the scope will vary to meet project budget. A timebox approach enables the solution to address the highest business priorities first. This approach has proven to be a cost-effective method of building both business and technology value through the linking of projects and priorities in the bigger strategic picture. This scope of work has been timeboxed to 8 weeks.

IBM's approach for the implementation of IBM's Digital Health Pass includes:

- 1. Project Management** - Throughout the project.
- 2. Project Launch** – Project Initiation.
- 3. Minimum Viable Product (MVP) Deployment** – Analysis, Development, Testing, and Architecture.
 - a. MVP Deployment includes multiple releases, with continuous delivery.
 - b. Each release will be conducted as a sprint.
 - c. Each sprint will include planning, design, development, unit testing, System Integration Testing (SIT) and User Acceptance Testing (UAT).
 - d. The project team will be responsible for providing best-efforts support for the MVP
- 4. Deployment and Scaling Planning** – Strategy Definition and broader deployment.
- 5. Release 1 Deployment** – Initial Release of the NYS Digital Health Pass.

1.1.2 PROJECT ORGANIZATION (AS APPLICABLE)

IBM:

IBM will assign a project team to deliver the IBM responsibilities outlined in section 1.3 IBM Responsibilities.

ITS:

Individuals to be determined by ITS from appropriate ITS groups, but not limited to:

- ITS Project Manager

1.1.3 PROJECT PLACEHOLDERS (AS APPLICABLE)

Not applicable.

1.2 KEY ASSUMPTIONS

This Contract T000685 with its estimated schedule is based on IBM's current understanding of ITS' requirements and the assumptions listed below. Deviations from these assumptions and responsibilities herein may affect the successful provision of services and may result in changes to the tasks, schedule, and charges. Such changes that arise during the proposed project will be managed through the procedure described in the "Procedure for Changes in Scope" section of the Contract.

Item #	Category	Assumptions
1	Launch	ITS has identified up to 5,000 individuals to receive the NYS Health Passport and up to 10 verification sites to participate in the Pilot prior to project launch meeting. ITS and IBM have mutually agreed on the Pilot participants.
2	MVP Deployment	Data required for IBM to consume and generate NYS Health Passport includes Pilot participant personal information and vaccination and testing records. ITS and its participating individuals must obtain sufficient consent and authorization from Pilot participants (i.e., Digital wallet end users) to provide personal data to IBM and engaging IBM, as further described below. This includes but is not limited to obtaining a valid Authorization from Pilot participants which permits the use by and transfer of personal data to IBM for the Services. ITS is responsible for providing the Terms of Use to participate in the NYS Health Passport initiative and a sufficient privacy notice to Digital wallet and Credential Verification tool end users, as further described below.
3	MVP Deployment	ITS will deliver and support access to the COVID-19 vaccination and testing data through secure .api. IBM is not responsible for the access and performance of the .api.
4	MVP Deployment	ITS will make reasonable efforts to compel third parties to work with IBM including access to information, rapid response to inquiries, and system adjustments.
5	MVP Deployment	During the pilot period NYS Health Passport will not replace existing systems to prove COVID-19 vaccination or testing status. The pilot will operate in parallel with existing procedures and is intended to provide insight on additional ways vaccination status may be tracked and demonstrated.
6	MVP Deployment	The project team will provide minimal support at a best-efforts level of support and will not provide a helpdesk capability. Support will likely be email, webform, or via other similar simplistic tracking tools.
7	MVP Deployment	The solution will execute on IBM cloud infrastructure leveraging IBM Blockchain Platform, IBM Digital Health Pass and / or other tools and infrastructure as IBM deems necessary. IBM is responsible for the cost of computing environments and tools during the 8 week pilot
8	MVP Deployment	IBM is prepared to issue licenses for up to 5,000 individuals seeking NYS Health Passport vaccination or testing credentials and support over the term of the Scope of Work.
9	MVP Deployment	The Digital Wallet will execute on Apple iPhones (iOS only) or Android/Google phones, respectively through the Apple Store and Google Play Store. Tablets (e.g. iPads) are not in scope for the Digital Wallet app. The Verifier application will execute on Apple iPhones (iOS only) through the Apple Store. Tablets (e.g. iPads) will be supported in the next version.

10	MVP Deployment	<p>For the 8 week MVP deployment the minimum viable method of linking a constituent to a credential will be pursued. This will include one of the following:</p> <p>Importing a credential by scanning a NYS Health Passport QR code which is generated when a user logs into a NYS operated portal; Printing a NYS Health Passport which can be scanned by the Verifier application; or</p> <ul style="list-style-type: none"> Storing a NYS Health Passport in a Digital Wallet app that is pushed to a user's wallet.
11	MVP Deployment	<p>For Apple iOS applications:</p> <ul style="list-style-type: none"> The ITS-branded application must be released from the ITS's Apple Developer Program. ITS must provide access to at least one IBM Developer to their Apple Developer Program. ITS must provision the application under their Apple Developer Program. ITS must allow IBM to customize the IBM application for them under their Apple Developer Program. ITS must grant IBM developer access to the App ID and respective development provisioning profiles to allow IBM to build and further customize the app under ITS's Apple developer program. ITS must allow IBM developer to register at least one device to help with debug activities ITS is encouraged to give IBM test teams access to the app via Testflight to allow IBM to do production beta testing ITS will be responsible for uploading the development build provided by IBM to App Store Connect and managing the publication process.
12	MVP Deployment	<p>For Android applications:</p> <ul style="list-style-type: none"> IBM will provide ITS with an unsigned APK. ITS is responsible for signing with ITS's Production signing keystores prior to further distribution via Google Play or other delivery channel.
13	MVP Deployment	<p>ITS will select its own App name(s) and App icon(s). IBM will implement the App Names(s) and App icon(s) at the direction of ITS. ITS will acquire all necessary licenses and/or permission, if any, provide names and icon(s) to IBM.</p>
14	MVP Deployment	<p>IBM is delivering Digital HealthPass to ITS for further development, build, and test.</p> <p>For Apple applications: ITS understands and confirms that further development (whether performed by the ITS or by IBM acting on the ITS's behalf) is undertaken under the ITS's Apple Developer or Developer Enterprise Program Agreement. ITS confirms that they have all appropriate Apple developer program license(s) and that ITS, as Apple's licensee, is subject to, and will comply with, the terms of the appropriate Apple developer program agreement.</p> <p>For Android applications: IBM is developing a customized instance of IBM Digital Health Pass as a Contractor under ITS' direction. IBM is not a licensee, licensor, or a distributor of ITS' instance of IBM Digital Health Pass and performs the work described in this Scope of Work on ITS' behalf. Other than those warranties or representations made in this Agreement pertaining to IBM's Digital Health Pass in general, IBM makes no express or implied warranties or representations and provides no indemnity with respect to the specific</p>

		customized instance of IBM Digital Health Pass that it creates on ITS' behalf as a Contractor of ITS and under ITS' direction.
15	Deployment and Scaling	ITS will work with New York State officials to establish configuration and deployment settings for the IBM Digital Health Pass solution. IBM may make recommendations of configuration and deployment settings but the ultimate decisions reside with New York State officials.
16	Testing	Production-like data will be used as test data, and will be provided by ITS.
17	Training	Training will be provided via a recorded video demonstration of the tools.
18	Method of Performance	IBM assumes no travel in conjunction with the services of this contract. Should travel be required and agreed to, it will be managed through the procedures described in Contract T000685 and the "Procedure for Changes in Scope" section of the Contract.
19	Method of Performance	NYS ITS will provide remote access to all required environments.
20	Method of Performance	Resources will work Monday – Friday 8am-5pm while observing State designated holidays. Where possible, IBM will support an expedited schedule for the MVP Deployment.
21	Method of Performance	All materials provided to NYS by IBM will be provided in English only for the initial 8 week effort. The solution will be designed so NYS can meet its language accessibility legal obligations by translating the materials into non-English languages in subsequent phases and allow users to select languages as appropriate
22	Method of Performance	Proprietary IBM tools that are used for program management will be owned by IBM and will not be licensed to ITS.
23	Method of Performance	All modifications and changes to the project plan will follow the change control process in the "Procedure for Changes in Scope" section of the Contract.
24	Method of Performance	Any modifications to the Scope of Work will follow the change control process in the "Procedure for Changes in Scope" section of the Contract
25	Method of Performance	ITS will obtain and provide information, data, decisions, and approvals within three (3) working days of IBM's request unless ITS and IBM agree in writing to a different response time or as reasonably agreed to within the time frame of the project. This includes approval of work products and deliverables.
26	Method of Performance	ITS will identify appropriate project participants/experts to attend necessary meetings, workshops and in general participate in the program.
27	Method of Performance	Project participants/experts from ITS shall be available as outlined by the project plan.
28	Method of Performance	ITS will manage personnel and their tasks, including third parties, per the project plan.
29	Method of Performance	IBM's solution will support up to 20 million individuals seeking NYS Health Passport vaccination or testing credentials.

1.3 IBM RESPONSIBILITIES

1.3.1 General Responsibilities

Under this Contract T000685, IBM will provide ITS with the management and technical assistance incorporated into Contract No. T000685 for the NYS Health Passport, more specifically, the services described below.

1.3.2 IBM Digital Health Pass Project

Description

IBM shall support ITS as outlined in the approach below that will allow ITS to implement their IBM Digital Health Pass. This effort will include the following tasks:

1. Project Management
2. Project Launch
3. Minimum Viable Product (MVP) Deployment
4. Deployment and Scaling Planning
5. Release 1 Deployment

Deliverables and work products for each task are provided in the table in Section 1.3.2.5 Deliverables and Work Products. The Task column corresponds to the four (4) tasks listed above.

1.3.2.1 Project Management

IBM will provide a Project Manager who shall perform project management activities under this Contract T000685 and report to the ITS Project Manager. The purpose of this task is for IBM to provide direction and control of IBM project personnel and to provide a framework for project planning, communications and reporting, procedural and contractual activity. To the extent applicable, IBM will perform the following subtasks:

- Prepare and develop Project Plan and update as necessary
- Review project goals and objectives, this Contract T000685, and the contractual responsibilities of both parties with the ITS Project Manager
- Review areas of risk and work with ITS to define mitigation plans with the ITS Project Manager
- Maintain project communications through the ITS Project Manager
- Conduct regularly scheduled project status meetings between IBM, ITS, and individual participants, on a timetable agreed to by IBM and ITS, with an emphasis on determining the need for proper scheduling for IBM consultant staff, and other delivery/operational issues to maximize efficiency
- Prepare and submit status reports, in conjunction with project status meetings, to the ITS Project Manager
- Work with the ITS Project Manager to administer the process defined in the "Procedure for Changes in Scope" section of the Contract, as necessary
- Coordinate and manage the activities of IBM project personnel
- Perform issue management and tracking

Completion Criteria: This task is ongoing and will be complete at the end of the 8 weeks.

1.3.2.2 Project Launch

Project Launch – Project Initiation per the project plan. Timeframe: Week 1

IBM will:

- Kick off project
- Baseline project plan with ITS Project Manager
- Identify and confirm weekly program review items with ITS Project Manager. This may include budget review, staff review, issue/risk review and upcoming events/meetings
- Identify and finalize weekly progress report template with ITS Project Manager
- Baseline and prioritize in scope source system inventory with ITS Project Manager

Completion Criteria: These tasks will be considered completed when performed as described or at the end of Week 1.

1.3.2.3 Minimum Viable Product (MVP) Deployment

MVP Deployment – Timeframe: Week 1-5

IBM will:

- Work with ITS to define user workflows that are appropriate for MVP deployment
- Enable IBM Digital Health Pass for up to 5,000 individuals and up to 10 unique verification sites
- Deliver functionality per the Functionality Summary with the solution deployment target of week five
- Design support for individuals to hold wallet credentials (passes) besides Covid-19 vaccination and testing credentials for verification. Wallet and verification app designs will include capability to extend for passes issued by other authorities approved by ITS.
- Summarize program results for ITS leadership

Completion Criteria: These tasks will be considered completed when performed as described or at the end of Week 5.

1.3.2.4 Deployment and Scaling

Deployment and Scaling – Working with ITS and State of New York officials to determine how Digital Health Pass could best address the verification proof and documentation for New York constituents. Timeframe: Week 6-8

IBM will:

- Provide reasonable efforts within the Method of Performance to address product defects or other support questions arising from users
- Support and observe IBM Digital Health Pass usage throughout the term of the Scope of Work
- Participate in meetings to discuss how public education and deployment plans may be conducted
- Participate in meetings on how to drive adoption on both an individual and organizational (verifier) perspective
- Facilitate meetings on how to configure and utilize Digital Health Pass to support New York State COVID-19 vaccination and testing procedures
- Provide plan for further deployment of IBM Digital Health Pass with a roadmap to scaling to 20,000,000 individuals

Completion Criteria: These tasks will be considered completed when performed as described or at the end of Week 8.

1.3.2.5 Release 1 Deployment

Release 1 Deployment – Working with ITS and State of New York officials to deploy the initial release of the IBM Digital Health Pass. Timeframe: Week 7-8

IBM will:

- Support ITS in the deployment of Release 1 of the Digital Health Pass Solution through the iOS/Android AppStores
- Provide solution documentation to ITS in support of the NYS Level 1 Support
- Deploy the IBM Digital Health Pass Web Portal Solution
- Provide IBM Digital Health Pass scaling to up to 20,000,000 individuals

Completion Criteria: These tasks will be considered completed when performed as described or at the end of Week 8.

1.3.2.6 IBM Deliverables and Work Products

The table below depicts the deliverables and work products that IBM proposes to submit and/or update for this project.

Task	#	Artifact Name	Deliverable or Work Product	Description
Project Management	1	Project Plan	Work Product	<ul style="list-style-type: none"> ▪ A workplan document outlining tasks, consisting of start and end dates, dependencies, and State and IBM resources ▪ Updated as needed
Project Management	2	Weekly Progress Reports	Work Product	<ul style="list-style-type: none"> ▪ Weekly status report document containing: (a) activities performed or accomplishments achieved during the previous week (b) Issues and associated resolutions that may have arisen during that week; (c) problems, concerns, and recommendations; and (d) activities planned for the following week
Minimum Viable Product (MVP) Deployment	3	Functionality summary	Work Product	<ul style="list-style-type: none"> ▪ Documentation of features to be included within release sprint.
Minimum Viable Product (MVP) Deployment	4	Risk and Issue summary	Work Product	<ul style="list-style-type: none"> ▪ Summary of risks and issues ITS and IBM team are resolving
Minimum Viable Product (MVP) Deployment	5	MVP Solutions	Deliverable	<ul style="list-style-type: none"> ▪ NYS Health Passport iOS Apps (Digital Wallet and Credential verification) ▪ NYS Health Passport Android App (Digital Wallet) ▪ NYS Health Passport portal

Task	#	Artifact Name	Deliverable or Work Product	Description
Deployment and Scaling	5	Strategy Document	Deliverable	<ul style="list-style-type: none"> ▪ High level summary outlining an approach to deploying Digital Health Pass after the MVP Deployment <ul style="list-style-type: none"> – Configuration recommendations – Deployment recommendations – Cost and timing for future deployments

1.4 ITS RESPONSIBILITIES

1.4.1 ITS Responsibilities

Description in General:

The successful completion of the proposed project depends on the full commitment and participation of ITS management and personnel. The responsibilities listed in this section are in addition to those responsibilities specified in the Agreement and in this Contract T000685. IBM's performance is dependent upon the following responsibilities being fulfilled by ITS. Prior to the start of this Contract T000685, ITS will designate an ITS Project Manager who will be the focal point for all IBM communications relative to this project and will have the authority to act on behalf of ITS in all matters regarding this project.

The ITS Project Manager's responsibilities include, but are not limited to, the following:

- Serve as the single interface between IBM and all State departments and/or third parties participating in the project
- Manage ITS and/or third party personnel and responsibilities for this project per the project plan
- Schedule and secure attendance of ITS and/or third parties in meetings, sessions, activities, etc.
- Attend scheduled project meetings
- Obtain and provide information, data, documents, decisions and approvals within timeframes agreed to by ITS and IBM Project Managers
- Resolve deviations from the estimated schedule, which may be caused by ITS and/or third parties
- Help resolve project issues and escalate issues within ITS as necessary
- Work with the IBM Project Manager to administer the process defined in the "Procedure for Changes in Scope" section of the Contract, as necessary

Specifically for this Project, ITS will, per the project plan:

1. Onboard and provide IBM required access and authorization
2. Provide the software listed in the software requirements section as being an ITS responsibility
3. Provide the infrastructure listed in the infrastructure requirements section as being an ITS responsibility
4. Be responsible for all data quality and data cleansing
5. Provide valid test data
6. Be responsible to lead and execute UAT per the project plan
7. Create and provide the ITS and Third Party Production Cutover Plan for Go-Live
8. Perform Pre- and Post-Go Live activities

1.4.2 Software Requirements

ITS, individual participants and IBM are responsible for software components in conjunction with this project as described below:

1. ITS and individual participants are responsible for software to manage the testing process including, but not limited to, scheduling, follow up reminders and result delivery outside Digital HealthPass.
2. Individual participants are responsible for maintaining a version of their mobile device operating software as current as no more than three versions behind the latest version provided for their software.
3. IBM is responsible for the software needed to generate and issue a vaccination or testing credential. This includes IBM Digital Health Pass components such as the digital wallet application for iOS or Android phones, and iOS versions of verification application for organizations, and the IBM Blockchain Platform.

1.4.3 Infrastructure Requirements

ITS, individual participants and IBM are responsible for infrastructure and connectivity components in conjunction with this Contract as described below:

1. ITS and individual participants are responsible for their own devices and infrastructure requirements. This includes cloud, hardware and iOS and Android/Google devices (phones).
2. ITS and individual participants are responsible for their own internet connectivity through mobile or wifi methods.
3. IBM is responsible for the production and development infrastructure and test equipment (iOS and Android/Google devices/iPhones).

1.5 OFFICE SPACE AND OTHER FACILITIES

ITS will provide appropriate meeting rooms, office space, office supplies, furniture, telephone, clerical assistance, machine time and other facilities for the IBM project team while working on ITS premises. These facilities shall be provided as determined by the ITS Project Manager. IBM project team members shall observe ITS work rules.

1.6 LAWS, REGULATIONS, AND STATUTES

ITS is responsible for the identification of, interpretation of, and its compliance with any applicable laws, regulations, and statutes that affect ITS' applications or business. For services provided at ITS locations, ITS will permit posting of any notifications required by applicable law.

The Parties acknowledge that the products and services described herein are provided to ITS and the State of New York, and not to any particular individual or ITS employee. Neither IBM nor ITS believes that providing any products and services described herein at no cost or at a discounted cost raises any actual or potential conflicts of interest. ITS agrees that the no cost or discounted products and services described herein are not intended to influence, and will not influence, the procurement decisions of ITS (or any organization with which NYS elected and appointed officials are affiliated), and that these products and services are not intended, in any manner, to circumvent any established ITS or state procurement or ethics laws or rules. IBM's products or services provided at no cost or discounted cost under this Contract T000685 are not intended to be used to undertake any activity that may directly or indirectly support terrorists or acts of terrorism, or for any other unlawful purpose.

ITS confirms that to its knowledge IBM providing the products and services at no cost or discounted cost under this Contract T000685 complies with all applicable State ethics laws, and does not conflict with any applicable law, regulation, or agency policy. ITS shall obtain all necessary approvals and authorizations required to accept at no cost or discounted cost the products and services described in this Contract T000685.

1.7 REQUIRED CONSENTS (AS APPLICABLE)

The Parties will agree, prior to the performance of any obligations under this Contract T000685, upon the consents necessary for such performance ("Required Consents"). ITS is responsible for promptly obtaining and providing to IBM all Required Consents necessary for IBM to provide the Services described in this Contract T000685. A Required Consent means any consents or approvals required to give IBM and its subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products ITS uses, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products.

Additionally, Required Consents includes all necessary informed consents and authorizations ITS and its participating testing sites must provide and obtain from Individual participants (i.e., Digital wallet end users) to enable IBM to perform the Services, including:

1) Providing Digital wallet Terms of Use for an individual to participate in the Digital Health Pass, which includes a link to ITS' privacy notice, and includes at a minimum the following information:

- ITS has engaged IBM as a third-party vendor to provide the Services, which includes generating vaccination and testing credentials and communicating with Individual participants as necessary;
- Informs the Individual participant certain personal data will be sent to IBM so IBM can perform the required services, including the Individual participant's name and, pursuant to the individual's consented-to Authorization, vaccination and testing results;
- Describes how the Individual participant's data will be processed, used, and disclosed, including a clear description that IBM as an authorized service provider can receive information as necessary to provide Services;

- The Application(s) are provided as is with no warranties, and that IBM as a third-party vendor assumes no liability to the End User;
- The Application is not intended to diagnose any diseases or other health conditions, including COVID-19, or identify personalized treatments; and

2) Obtaining informed medical consent for vaccination and testing; and

3) Obtaining a valid Authorization, if required under HIPAA or any other applicable data privacy law, enabling the release of individually identifiable information to IBM.

IBM will be relieved of the performance of any obligations that may be affected by ITS' failure to promptly provide any Required Consents to IBM. If additional Required Consents are identified during the course of IBM's performance under this Contract T000685, the Parties agree to revise the Contract T000685 in accordance with the procedure described in the "Procedure for Changes in Scope" section of the Contract.

1.8 DATA FILE CONTENT AND SECURITY

ITS is responsible for the actual content of any data file, selection and implementation of controls on its access and use, and security of stored data, to the extent and subject to the requirements for security applicable to ITS and to IBM contained in the T000685 agreement. Any NYS data provided to IBM by ITS in furtherance of IBM's services under this Contract T000685 is considered Confidential Information.

ITS warrants that, for purposes of this project, no personal data that is subject to i) European General Data Protection Regulation (EU/2016/679) (GDPR)); or ii) other data protection laws identified at <http://ibm.com/dpa/dpl> applies to the Content that ITS will provide to IBM. If either party determines that any Content provided by ITS contains GDPR data, IBM will immediately delete/destroy such data and will notify ITS.

1.9 ESTIMATED SCHEDULE

The Services under this Scope of Work are estimated to start on January 25, 2021 ("Start Date") with an end date of March 19, 2021 assuming written approval of this Contract T000685 in accordance with the approval requirements of T000685 by ITS and IBM, unless the Contract T000685 is otherwise terminated in accordance with the terms of the Agreement. Upon mutual agreement of the Parties, the term of this Contract T000685 may be extended for an additional time frame through use of a Project Change Request (PCR).

1.10 COMPLETION CRITERIA

IBM will have fulfilled its obligations under this SOW when any one of the following first occurs:

- IBM completes the IBM Responsibilities including the provision of the deliverables, if any; or
- 8 weeks since the start date has elapsed.

1.11 CHARGES

The Services will be conducted on a fixed price basis. The fixed price for performing the Services defined in the SOW will be \$2,500,000.

Deliverable Name	Deliverable Type	Payment Percent (% of Total Implementation Cost)	Deliverable Amount Payable	Target Completion Date
MVP Deployment		60.0%	\$ 1,500,000.00	3/1/21
Develop/Deploy Android Wallet	Activity/Milestone			
Rebrand Android Wallet for New York State	Activity/Milestone			
Enable Generation of COVID-19 test credentials	Activity/Milestone			

Revise/Deploy iOS application (Wallet / Verifier) to support testing credentials	Activity/Milestone			
Revise/Deploy Website Portal to support sending of testing credentials	Activity/Milestone			
Go Live		5.0%	\$ 125,000.00	3/1/21
MVP Launch (Go Live) and technical support of the Launch event	Activity/Milestone			
Post-Launch / Hypercare		35.0%	\$ 875,000.00	3/19/21
Support of defects identified during Launch and Post-Launch through the end of the Scope of Work period	Activity/Document/Milestone			
Per resource availability, support development of Release 2 functionality	Activity/Document/Milestone			
Total:		100.0%	\$ 2,500,000.00	

The fixed price for this project is based on a contiguous work schedule. Any adjustments to the Scope of Work (for example - project schedule or work products/deliverables) will be handled by the Project Change Control procedure and may result in an increase in charges and/or schedule.

1.12 INVOICES

All invoices are due in accordance with New York State Finance Law. Invoices will be remitted to New York State in accordance with the processes described in the "Electronic Contract Payments" section of the T000685 contract.

1.13 PRICING INCREASES

There are no pricing increases applicable to this project, unless the Parties agree to same in an authorized and approved Project Change Request.

Sample

Project Change Request PCR1_ - _____ to _____ SOW

By signing below, International Business Machines Corporation ("IBM") and the New York State ("NYS") Office of Information Technology Services ("ITS") agree to change the Scope of Work in Contract No. T000685 and any applicable terms, as follows:

1. Change In Scope: This Change Authorization No. PCR1-_____ ("PCR"), is issued pursuant to the Contract No. T000685 Scope of Work and the ITS and IBM T000685 Agreement as a whole ("Agreement"). ITS and IBM affirm and agree that through course of conduct and mutual agreement of the parties:

Description of Change: This PCR modifies and documents the T000685 SOW's extension from __/__/202__ through __/__/202__. The planned annual spend for IBM resources and the estimated hours for Fiscal Year 202__-__ are described below in this PCR. The IBM resources work on various NYS ITS Data Center Projects. These resources provide services to ITS on a Time and Materials basis.

The changes in this PCR modify the original T000685 SOW Section _____, specifically subsections ____ and _____. All other Terms and Conditions of the T000685 SOW will remain in effect.

The resources described in this PCR will provide Services according to the Terms and Conditions (assumptions, responsibilities, deliverables, and completion criteria) of the referenced T000685SOW, and the T000685 Agreement.

2. Changes To Estimated Schedule: No schedule changes will occur to the T000685 SOW as a result of this PCR.

3. Charges Resulting From PCR1-_____: \$_____,_____,_____ per year

For ITS FY202__-__, IBM estimates that the Charges for hourly Services are estimated to be \$_____,_____,_____ per year. The total hours for Services is estimated at _____,_____ hours of services per year at the hourly rates listed in the table that follows, titled "Hourly Model Pricing."

Hourly Model Pricing:

PCR1_ - _____	Skill Category	Model	Quantity	Estimated Annual Hours	202__ Rate	Annual Funding Total
1	Application Architect Support Specialists 1	-	1		\$. .	\$. . .
2	Application Architect Support Specialists 2	-	1		\$. .	\$. . .
	Sub Total					\$
	Total					\$

4. Each of us agrees that the complete agreement between us about this transaction consists of: (a) this Change Authorization No. PCR1_ - _____; (b) The T000685 Scope of Work; and (c) the ITS and IBM Agreement T000685 as a whole. It is understood and agreed that this PCR is placed under the terms and conditions of Agreement No. T000685 between IBM and ITS, as amended, and that the provisions of that Agreement supersede any inconsistent provisions of this PCR.

This PCR is executed pursuant to the terms of the ITS/IBM Agreement No. T000685.

IBM agrees to provide the Services described in this PCR provided ITS accept this PCR by signing in the space below. By signing, each signatory affirms they have received appropriate internal approvals to do so. For the ITS signatory, this requires written internal approval on an ITS Internal Review Form including at minimum approvals by representatives from ITS Data Center and/or Chief

Technical Office, ITS Finance, ITS Vendor Sourcing and Management Office, and ITS Division of Legal Affairs.

International Business Machines Corporation - FEIN No. 13-0871985
80 State Street, Albany, New York 12207

IBM SIGNATURE: [Signature]

DATE: 3-18-2021

PRINT NAME: JOHN E. MILWANEY

TITLE: CLIENT EXECUTIVE

ACKNOWLEDGEMENT OF CORPORATION - MUST BE SIGNED AND ACKNOWLEDGED WITHIN THE UNITED STATES

STATE OF NEW YORK

COUNTY OF SARATOGA

)
) *Scilicet*
)

On this 18th day of MARCH, 2021, before me personally came JOHN E. MILWANEY, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the CLIENT EXECUTIVE of International Business Machines Corporation, County of SARATOGA, and that (s)he executed the foregoing instrument in the name of International Business Machines Corporation and that (s)he executed the same as the act and deed for the uses and purposes mentioned therein.

[Signature]
Notary Public

NOTARY PUBLIC
Brent Pollak
REGISTRATION NUMBER 01PO6243343
STATE OF NEW YORK
COUNTY OF SARATOGA
MY COMMISSION EXPIRES:
06/20/2023

NYS Office of Information Technology Services - IBM Customer Number: 6651013
Empire State Plaza, Swan Street Building, Core 4
Albany, New York 12223

ITS SIGNATURE: Stuart Poole

DATE: 3/19/21

PRINT NAME: Stuart Poole

TITLE: Chief Financial Officer

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State

Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR

MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, 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 cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is

for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of

tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include

analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

Appendix B -Additional Standard Terms (COVID-19 Related Transactions)

1. REPRESENTATIONS, WARRANTIES AND COVENANTS:

1.1. Products. The Seller represents, warrants and covenants to the Buyer that:

~~(a) All Products (i) are brand new, unused, made of qualified materials, and conform to all of specifications and performance capabilities and standards as stipulated in this Contract; (ii) satisfy all Product Standards and Specifications; (iii) shall be delivered to the Buyer free and clear of any and all liens and encumbrances; (iv) shall have all applicable FDA approvals and/or CE Mark certifications; and (v) shall be manufactured by manufacturers that have obtained and maintain all applicable FDA approvals or CE Mark certifications, and such FDA approvals and CE Mark certifications described in the foregoing clauses (iv) and (v) are valid and in full force and effect.~~

~~(b) Seller (i) has provided Buyer with proof of all relevant FDA, CE Mark and other certifications to Buyer's reasonable satisfaction prior to the signing of this Contract; and (ii) shall promptly provide the Buyer with all additional documentation, information, drawings, photos, samples and other materials that may be requested by Buyer;~~

~~(c) All quantities of the Products provided under this Contract (i) have been and shall be manufactured in accordance with, and conform to and satisfy, all Product Standards and Specifications; and (ii) have been and shall be manufactured and shall be exported, shipped and delivered in accordance with the terms and conditions of this Contract and all applicable industry standards, laws and regulations;~~

~~(d) All quantities of the Products shall be of the same standard, specifications, performance and quality as required under this Contract, including, without limitation, to the extent identified or embodied in corresponding purchase orders, invoices, as well as documentation, drawings, photos and samples approved by the Buyer in writing; and~~

~~(e) The Seller shall promptly provide the Buyer with all documentation that may be requested by Buyer, including without limitation: (i) signed commercial invoice in three (3) originals and three (3) copies, indicating contract number and shipping mark; (ii) certificate of quality issued by the Seller in one (1) original and two (2) copies; and (iii) Packing list/Weight Memo issued by the Seller in three (3) originals and three (3) copies, indicating name, weight, and measurement of the shipped goods. Reserved.~~

1.2. Services.

~~(a) The Contractor warrants that it will perform all services in good faith, in a professional manner in accordance with applicable professional standards, and that all services will~~

~~conform in all material respects to the description of such services set forth in any accompanying statement of work, purchase order, or similar document. The Seller warrants that it will correct, at no charge the State, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.~~

~~(b) Contractor warrants and represents that all deliverables, as applicable, specified and furnished by or through Seller under any accompanying statement of work, purchase order, or similar document, shall meet the acceptance criteria set forth in such document and that services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards. Failure to do so may result in the State finding that Seller is in default. For purposes of this agreement, "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. Reserved~~

1.2-a Anti-Corruption and International Risk Compliance. The Seller further represents, warrants and covenants to the Buyer that:

(a) The Seller has not taken and will not take any action in connection with this Contract that would constitute a violation, or implicate the Buyer in a violation, of the U.S. Foreign Corrupt Practices Act, PRC Criminal Law, PRC Anti-Unfair Competition Act, or any other laws or regulations prohibiting public or private bribery and corruption applicable to the Seller (collectively, "Anti-Corruption Laws");

(b) None of the Seller's principals, owners, officers, directors, employees, or agents (including, to the Seller's knowledge based upon due inquiry, any Manufacturer or subcontractor) is a government official or an instrumentality of a government, except as previously disclosed to and approved by the Buyer. If, at any time during the term of this Contract, any of the Seller's principals, owners, officers, directors, employees, or agents, or to the Seller's knowledge, any Manufacturer or subcontractor, becomes a government official or instrumentality of the government, the Seller shall notify the Buyer immediately so that the Buyer may, and hereby reserves the right to, take whatever precautions and actions may be appropriate to assure compliance with Anti-Corruption Laws;

(c) In connection with the services and Products to be provided under this Contract, neither the Seller, nor any of its principals, owners, officers, directors, employees, or agents will provide, promise to provide, or will cause to be provided, and the Seller will use best efforts to ensure that no Manufacturer or any subcontractor will provide, promise to provide, or cause to be provided, directly or indirectly, anything of value to or for the use or benefit of (i) any government official; or (ii) any other person or entity; in

Appendix B -Additional Standard Terms (COVID-19 Related Transactions)

each case with the intent to obtain or keep business or to secure some other improper advantage, or which provision of an item of value otherwise would violate Anti-Corruption Laws;

(d) Neither the Seller, nor any of its principals, owners, officers, directors, employees, or agents (including, to the Seller's knowledge based upon due inquiry, any Manufacturer or subcontractor) is the subject of a pending investigation, notice, or inquiry by any governmental authority with respect to a violation or potential violation of Anti-Corruption Laws, and to the Seller's knowledge, no such investigation, notice, or inquiry is threatened;

(e) The operations of the Seller have been conducted at all times in compliance with the requirements of Anti-Money Laundering Law of the PRC, and all money laundering-related laws and regulations of other jurisdictions where the Seller conducts business or owns assets; and

(f) Neither the Seller, nor any of its principals, owners, officers, directors, employees, or agents (including, to the Seller's knowledge based upon due inquiry, any Manufacturer or subcontractor), is subject to any sanction administered by the Office of Foreign Assets Control of the United States Department of Treasury ("U.S. Economic Sanctions") and, in connection with this Contract and the provision of the Products, the Seller will take no action with or for the benefit of, and will not use any amounts payable under the Contract for the purposes of financing the activities of, any persons, entities and countries that are subject to U.S. Economic Sanctions (including but not limited to any entity resident in or organized under the laws of any jurisdiction subject to comprehensive embargoes under U.S. Economic Sanctions, which as of the date of this Contract include Cuba, Iran, Syria, North Korea, and the Crimea region of Ukraine).

1.3. Other. The Seller further represents, warrants and covenants to the Buyer that:

(a) The Seller (i) is a company duly organized and incorporated and validly existing under the laws of its incorporation; (ii) has the power and authority and the legal right to own and operate its property and assets, to carry on its business as it is now being conducted; (iii) has the corporate power and authority and the legal right to enter into this Contract and to perform its obligations hereunder, without any violation of its certificate of incorporation or by-laws or any law or regulation; and (iv) has taken all necessary corporate action on its part to authorize the execution and delivery of this Contract and the performance of its obligations hereunder;

(b) This Contract has been duly executed and delivered on behalf of the Seller, and constitutes a legal, valid, binding obligation, enforceable against the Seller in accordance with its terms;

(c) All necessary consents, approvals and authorizations of all governmental authorities and other persons and entities required to be obtained by the Seller in connection with the execution and delivery of this Contract and the consummation of the transactions contemplated hereby and the performance of its obligations hereunder have been obtained;

(d) The execution and delivery of this Contract do not conflict with nor violate any requirement of applicable laws or regulations or any contractual obligation of the Seller, including, without limitation, any export or customs restrictions that may apply to any of the Products.

(e) The Seller is in compliance with and shall comply with, and shall cause each Manufacturer to comply with, all applicable industry standards, laws and regulations in all applicable jurisdictions (including, without limitation, the United States and the PRC) relating to the Products to be supplied hereunder and the performance hereunder of Seller and each Manufacturer, including, without limitation, relating to (i) obtaining and maintaining all relevant licenses, permits, approvals and authorizations from applicable governmental authorities, and (ii) manufacturing, exportation, shipping and delivery of the Products.

2. EXPORTATION: The Seller shall be responsible for exportation of all quantities of the Products from the country in which the Manufacturer or any of the Products are located, and all customs clearance and related costs.

3. INSURANCE: The Seller shall obtain insurance of the Products for coverage during shipment until the Products are received in acceptable condition by the Buyer. Insurance coverage shall be in an amount of at least the sales price of the Products. Seller is responsible for all costs and expenses for obtaining insurance.

4. INSPECTION, ACCEPTANCE AND REJECTION:

4.1. Products. Prior to each shipment of a Product, the Seller shall make a precise and comprehensive inspection of the goods included in such shipment as regards their quality, specifications, performance and quantity and certify to the Buyer in writing that the goods are in strict compliance with the Product Standards and Specifications and this Contract.

The Buyer (and/or its designee) is entitled to inspect each Product prior to each shipment and delivery and/or after receipt of each Product. All quantities of the Product that have been or will be shipped or delivered shall remain the exact quality described in this Contract.

Within fourteen (14) days after receiving a shipment of the Products, the Buyer may inspect and check the quantity, appearance, quality and attached documents and all other aspects of the Products, including, without limitation,

Appendix B -Additional Standard Terms (COVID-19 Related Transactions)

regarding quality issues and conformance to the Product Standards and Specifications and this Contract. If the Buyer uncovers any quality issues or any non-conformance with the Product Standards and Specifications or this Contract, the Buyer will notify the Seller in writing. There shall be no deemed acceptance of any Product by the Buyer.

If the Buyer rejects any quantity of a Product, the Seller shall, within five (5) days after receipt of the Buyer's notice of rejection, at the Seller's sole cost and expense, replace the rejected Product with the same quantity of Product that satisfies with the quality requirements and conforms with the Product Standards and Specifications and this Contract. If the parties disagree on whether any quantity of the Product has any quality issues or any nonconformance with the Product Standards and Specifications or this Contract, the parties shall engage a third party quality inspection agency mutually agreed by the parties and located in the United States to inspect the Product. The decision of such quality inspection agency shall be final and binding on the parties.

4.2. Services. ~~For deliverable based services, the Seller will complete and submit to the State all deliverables in accordance with the timeline as prescribed in any statement of work, purchase order, or similar document. The acceptance criteria for each deliverable shall be its substantial conformance, to be determined at the discretion of the State, to the requirements and descriptions set forth in any statement of work, purchase order, or similar document. Notwithstanding anything to the contrary as may be contained in any statement of work, purchase order, or similar document, the State shall accrue no liability for payment for any deliverable supplied to the State without affirmative written acceptance of such deliverable by the State, and without consideration for any time limitation for State acceptance. Reserved.~~

5. PRICE AND TAXES: The price set forth in the Sales Contract includes, and the Seller shall be responsible for, all duties, customs, levies, charges, and sales, use, value add, withholding and other taxes relating to the sale and purchase of the Products. The Buyer shall not be responsible for paying any amount in connection with any Product other than the purchase price set forth in the Sales Contract. Reserved.

6. INDEMNIFICATION: The Seller shall indemnify, defend and hold harmless the Buyer and its affiliates, its and their officers, employees, contractors, consultants, customers, clients, agents and representatives, and users of any Product against all Losses arising out of or related to (i) any gross negligence, willful misconduct or fraud of the Seller or any Manufacturer or subcontractors, (ii) any breach of this Contract by the Seller or any Manufacturer or subcontractors, (iii) any death of, or injury to, any person, or damage to any property, resulting from the use of the

Product, or (iv) any infringement, misappropriation or other violation of any intellectual property or proprietary rights of any person or entity by the sale, use or other activities relating to any Product. The term "Loss" means any and all claims, losses, damages, liabilities, obligations, settlements, payments, awards, judgment, fines, penalties, deficiencies, costs and expenses, including, without limitation, all reasonable attorneys' fees, and costs and expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder. Reserved.

7. FORCE MAJEURE: The time for the performance of the Seller's obligations set forth in this Contract shall be extended for a period equal to the duration of any nonperformance caused directly by a Force Majeure Event; provided that the Seller uses best efforts to continue to perform in accordance with this Contract without delay. A "Force Majeure Event" means fire, flood, earthquake, typhoon, natural catastrophe, new publicly announced government orders that become effective after the effective date of this Contract, and any other circumstances, in each case, that (i) are beyond the Seller's reasonable control, (ii) could not have been prevented or circumvented by reasonable precautions, commercially accepted processes or use of substitute services, alternate sources, work around plans or other means, and (iii) occurs during the process of manufacturing or in the course of loading or transit and prevents the Seller's performance of such obligations. The Seller so prevented for a Force Majeure Event shall (A) within forty eight (48) hours upon the occurrence of such Force Majeure Event, inform the Buyer by email of the occurrence of such Force Majeure Event and (B) within fifteen (15) days upon the occurrence of such Force Majeure Event, provide the Buyer by mail with a relevant certificate issued by competent authorities as evidence thereof. If the nonperformance lasts for more than five (5) days, the parties shall immediately consult together in an effort to agree upon a revised contract basis. If the parties are unable to arrive at a mutually satisfactory solution within ten (10) days from the beginning of such consultation, then the Buyer may terminate the Contract in respect of the undelivered portion of any Product under this Contract by notifying the Seller in writing. Upon such termination, Buyer shall not be responsible for paying for any undelivered portion of the Products and the Seller shall refund the Buyer any overpayment in accordance with the second paragraph of Section 11 (Payment) below. Reserved.

8. QUANTITY, RISKS: During the special period of the Novel Coronavirus, when the actual delivery quantity deviates from the contract quantity, the total amount of price for the Products shall be settled according to the actual delivery quantity that has been accepted by the Buyer in writing in accordance with this Contract. All of the risks associated with the Products are borne by the Seller until

Appendix B -Additional Standard Terms (COVID-19 Related Transactions)

goods arrive at the location designated by the Buyer in writing.

9. TERMINATION: ~~The State of New York reserves the right to terminate the agreement, in whole or in part, upon thirty (30) days written notice for any reason, or immediately for cause. Upon notice of termination, the Seller shall stop work immediately and complete only that specific work, if any, subsequently approved by the State of New York. In the event of termination other than for cause, the Seller shall be entitled to compensation for services performed or products delivered through the date of termination that are accepted by the State of New York, and for any subsequent services that are accepted by the State of New York, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the State of New York. The Seller agrees to cooperate to the fullest respect with any successor consultants and contractors. As it relates to the purchase of COVID-19 related medical equipment, personal protective equipment, or substantially similar products, the State's right to terminate shall be upon 2 days written notice.~~

10. ASSIGNMENT AND SUBCONTRACTING: ~~The Seller shall not assign or transfer any of its rights or obligations under this Contract to any person or entity without the Buyer's prior written approval. Other than subcontracting manufacturing of the Products to the Manufacture identified in the Sales Contract, the Seller shall not subcontract any of its obligations under this Contract to any person or entity without the Buyer's prior written approval. The Seller shall be responsible and liable for all obligations under this Contract, whether performed by Manufacturers or any other subcontractors, and for the acts and omission of the Manufacturers and any other subcontractors in connection with this Contract. The Seller shall cause Manufacturers and subcontractors to comply with the terms and conditions of this Contract to the same extent the Seller would be responsible for its own compliance with the terms and conditions of this Contract. The Seller shall enforce all terms and conditions of all agreements with each Manufacturer and each subcontractor and shall monitor the activities of each Manufacturer and each subcontractors to ensure compliance with such agreements and the applicable terms and conditions of this Contract.~~

The Buyer may assign, transfer or subcontract, in whole or in part, any of its rights and obligations under this Contract to another entity. Reserved.

11. PAYMENT AND REFUND: All payments and refunds shall be made in US Dollars.

Payments will be made pursuant the Department of Health Purchase Order process, as modified by certain Executive Orders of the Governor of the State of New York relative to

the COVID-19 public health emergency (Executive Order 202 et seq.).

Notwithstanding anything that may be to the contrary, (i) the Buyer shall not be obligated to make any payment under this Contract unless the Seller has complied with all terms and conditions of this Contract, and (ii) in the event that the Seller fails to deliver any quantity of a Product on time or the Buyer rejects any quantity of a Product due to any quality issues or any non-conformance with the Product Standards and Specifications or otherwise under this Contract, the Buyer shall not be responsible for paying any amount for such quantity of the Product. To the extent the total amount of the Buyer's payments hereunder exceeds the price for the quantity of the Products delivered to and accepted by the Buyer, the Seller shall refund the Buyer such excess amount within five (5) days after request by the Buyer.

12. CONFIDENTIALITY: ~~The Seller shall (i) keep all information provided by the Buyer, the terms of this Contract, and the existence of this Contract (collectively, "Confidential Information") in strict confidence, and (ii) not disclose any Confidential Information to any person or entity without the Buyer's prior written approval. Without limiting the generality of the foregoing, without the Buyer's prior written approval, the Seller shall not issue any press release or disclose to any person or entity that it has supplied or will supply any of the Products. Reserved.~~

13. CHOICE OF LAW: This Contract shall be governed by and construed in accordance with the laws of the State of New York, the United States, except where Federal supremacy clause governs.

14. DISPUTE RESOLUTION: ~~All disputes arising from the execution of or in connection with the Contract shall be settled through friendly consultation between both parties. If the parties are unable to settle the dispute within ten (10) days after a party notifies the other party of any dispute, such dispute shall be settled by arbitration, which shall be administered by the International Chamber of Commerce in accordance with the ICC Rules of Arbitration before a panel of three arbitrators. Each of the Buyer and the Seller shall designate one arbitrator, and the two arbitrators so appointed shall jointly designate the third arbitrator. The place of arbitration shall be New York, New York, the United States. All proceedings and communications shall be in English. Judgment upon any award rendered may be entered in any court having jurisdiction over the relevant party or its assets. Nothing in this Contract shall prohibit the Buyer from seeking injunctive or other equitable relief from any court of competent jurisdiction in the event of a breach or prospective breach of this Contract by the Seller. Reserved.~~

Appendix B -Additional Standard Terms (COVID-19 Related Transactions)

15. MISCELLANEOUS:

15.1. Remedies Cumulative. All remedies provided for in this Contract will be cumulative and in addition to, and not in lieu of, any other remedies available to either party at law, in equity or otherwise.

15.2. No Waiver. Any failure of a party to exercise any right or to demand the performance by the other party of obligation hereunder shall not constitute a waiver of any rights or obligations provided for herein.

~~**15.3. Obligations to Perform.** The Seller shall have an unconditional and absolute obligations to continue to perform its obligations under this Contract, including, without limitation, during the pendency of any dispute. Reserved.~~

15.4. Equitable Remedies. The Seller acknowledges and agrees that any breach of this Contract could give rise to irreparable harm for which monetary damages would not be an adequate remedy and accordingly, in addition to any other remedies, the Buyer shall be entitled to seek specific performance, and preliminary, injunctive and other equitable relief without requirement to post any bond.

~~**15.5. This Contract.** This "Contract" means, collectively, the Sales Contract, together with (i) Appendix A, Standard Clauses for All New York State Contracts, a copy of which is available upon request or at <https://ogs.ny.gov/system/files/documents/2019/10/AppendixA-0.docx>, and (ii) this Appendix B. The Sales Contract shall be governed by Appendix A and this Appendix B, which are hereby incorporated into, and made a part of, the Sales Contract by reference. Upon signing the Sales Contract, the Seller shall be deemed to have accepted the terms and conditions of Appendix A and this Appendix B. In event of a conflict or ambiguity between or among the Sales Contract, Appendix A or this Appendix B, the order of precedence shall be as follows (from highest to lowest): (i) Appendix A, (ii) Appendix B and (iii) the Sales Contract; except that this Appendix B shall control with respect to provisions regarding dispute resolution. The terms and conditions included in any purchase orders or invoices shall not apply and shall not be deemed to be part of the Contract unless the Buyer has specifically agreed to such terms and conditions in writing. Reserved.~~

15.6. Construction. All the terms and conditions of this Contract are accepted by both parties. Each party acknowledges and agrees that the parties have participated jointly in the negotiation and drafting of this Contract. In the event an ambiguity arises, this Contract shall be construed as drafted jointly by both parties and no presumption or burden of proof shall arise favoring or disfavoring a party by virtue of authorship of any of the

provisions of this Contract.

This Contract is executed in the English language and shall be deemed to comprise the language mutually chosen by the parties. As used in this Contract, the singular shall include the plural and vice versa. The terms "include" and "including" shall be deemed to be immediately followed by the phrase "without limitation." The terms "herein" and similar terms shall be interpreted to refer to this entire Contract.

15.7. Amendment. This Contract may not be amended except by an instrument in writing signed by duly authorized representatives of both parties.

15.8. Further Assurance. The parties shall execute and deliver such further documents and take such further actions as may be necessary or appropriate to effectuate more fully this Contract and to carry out the transaction contemplated by this contract.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) MANDATORY TERMS AND CONDITIONS

1. Remedies.

In the event that Seller fails to observe or perform any term or condition of the Agreement and such failure remains uncured after 15 calendar days following written notice by the Commissioner of Health ("Commissioner"), the Commissioner may exercise all rights and remedies available at law or in equity.

2. Termination for Cause and Convenience.

Termination rights of the parties shall be as prescribed in section 9 of this agreement.

3. Equal Employment Opportunity

During the performance of this Agreement, the Seller agrees as follows:

(1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and

Appendix B -Additional Standard Terms (COVID-19 Related Transactions)

applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Seller will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Seller legal duty to furnish information.

(4) The Seller will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Seller's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Seller may be declared ineligible for further Government Agreements or federally assisted construction Agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Seller will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Seller becomes involved in, or is threatened with, a subcontractor or vendor as a result of such direction by the administering agency, the seller may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor, in obtaining the compliance of Sellers and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any Agreement or Agreement modification subject to Executive Order 11246 of September 24, 1965, with a Seller debarred from, or who has not demonstrated eligibility for, Government Agreements and federally assisted construction Agreements pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Sellers and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (Agreement, loan, insurance, guarantee); refrain

Appendix B -Additional Standard Terms (COVID-19 Related Transactions)

from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. Davis-Bacon Act.

a. All transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 CFR pt. 5 as may be applicable.

b. Sellers are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, Sellers are required to pay wages not less than once a week

5. Copeland Anti-Kickback Act.

a. Seller. The Seller shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.

b. Subcontracts. The Seller or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Seller shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Agreement clauses.

c. Breach. A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a Seller and subcontractor as provided in 29 C.F.R. §5.12.

6. Agreement Work Hours and Safety Standards Act.

1. Overtime requirements. No Seller or subcontractor for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Seller and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Seller and subcontractor shall be liable to the United States (in the case of work done under Agreement for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

3. Withholding of unpaid wages and liquidated damages. The State of New York shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Seller or subcontractor under any such Agreement or any other Federal Agreement with the same prime Seller, or any other federally-assisted Agreement subject to the Agreement Work Hours and Safety Standards Act, which is held by the same prime Seller, such sums as may be determined to be necessary to satisfy any liabilities of such Seller or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

4. Subcontracts. The Seller or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Seller shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7. Clean Air Act and The Federal Water Pollution Control Act.

Clean Air Act

1. The Seller agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.

2. The Seller agrees to report each violation to the State of New York and understands and agrees that the State of New York will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The Seller agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Appendix B -Additional Standard Terms (COVID-19 Related Transactions)

Federal Water Pollution Control Act

1. The Seller agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Seller agrees to report each violation to the State of New York and understands and agrees that the State of New York will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Seller agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

8. Debarment and Suspension.

1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Seller is required to verify that none of the Seller's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Seller must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the State of New York. If it is later determined that the Seller did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Seller agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any Agreement that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. Byrd Anti-Lobbying Amendment.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a

Member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

- a. Required Certification. If applicable, Sellers must sign and submit to the State of New York entity the attached certification - FEMA APPENDIX 1

10. Procurement of Recovered Materials.

- (i) In the performance of this Agreement, the Seller shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired--

- Competitively within a timeframe providing for compliance with the Agreement performance schedule.
- Meeting Agreement performance requirements; or
- At a reasonable price.

- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

- (iii) The Seller also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Access To Records.

- (1) The Seller agrees to provide the State of New York, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Seller which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

- (2) The Seller agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed

- (3) The Seller agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

- (4) In compliance with the Disaster Recovery Act of 2018, the State of New York and the Seller acknowledge

Appendix B -Additional Standard Terms (COVID-19 Related Transactions)

and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

11. Changes.

a. Standard. To be eligible for FEMA assistance under the State of New York's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

12. DHS Seal, Logo, and Flags.

The Seller shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

13. Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. The Seller will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

14. No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Seller, or any other party pertaining to any matter resulting from the Agreement.

15. Program Fraud and False or Fraudulent Statements or Related Acts.

The Seller acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Seller's actions pertaining to this Agreement.

Appendix B -Additional Standard Terms (COVID-19 Related Transactions)

FEMA APPENDIX 1

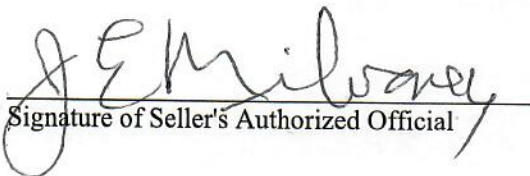
44 C.F.R. PART 18 - CERTIFICATION REGARDING LOBBYING

In accordance with 44 C.F.R. PART 18, the Seller further certifies to the best of his or her knowledge and belief, 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Agreement, grant, loan, 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 Agreement, grant, loan, or cooperative agreement, the undersigned shall complete 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 included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Agreements under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Seller certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Seller understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.


Signature of Seller's Authorized Official

JOHN E. MILWANEY CLIENT EXECUTIVE
Name and Title of Seller's Authorized Official

Date: 3-18-2021

Appendix C - Contractor's Insurance Requirements

During the term of this Contract, the Contractor shall maintain in force, at its sole cost and expense policies of insurance as required by this section. All insurance required by this section shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. ITS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

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

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

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

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Section B-*Insurance Requirements*.
- 2. Policy Forms.** Except as otherwise specifically provided herein, or agreed to in the Contract, all policies of insurance required by this section shall be written on an occurrence basis.
- 3. Certificate of Insurance/Notices.** The Contractor shall provide ITS with a Certificate or Certificates of Insurance, in a form satisfactory to ITS (e.g., an ACORD certificate), after renewal or upon request. Certificates shall reference the Contract number and shall name the New York State Office of Information Technology Services, Empire State Plaza, Swan Street, Core 4, Albany New York, 12220 as the certificate holder.

Certificates of Insurance shall:

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

Only original documents (Certificates and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

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

4. ***Forms and Endorsements.*** For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Contractor shall provide ITS, after renewal or upon request, with a Schedule of Forms and Endorsements and, upon request, all Forms and Endorsements, unless otherwise agreed to in the Contract. The Forms and Endorsements shall provide evidence of compliance with the requirements of this Contract. Only original documents or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.
5. ***Primary Coverage.*** All Commercial General Liability and Automobile Liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State, ITS, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other Commercial General Liability and Automobile Liability insurance maintained by the State, ITS, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.
6. ***Breach for Lack of Proof of Coverage.*** The failure to comply with the requirements of this section at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the State, ITS, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.
7. ***Self-Insured Retention/Deductibles.*** The Contractor shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator may be provided upon request.
8. ***Subcontractors.*** Prior to the commencement of any work by a subcontractor, the Contractor shall require such subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that subcontractor.
9. ***Waiver of Subrogation.*** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the State, ITS, and any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to ITS upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
10. ***Additional Insured.*** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor (and subcontractor, if applicable) shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insureds: The State of New York, the New York State Office of Information Technology Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to ITS after renewal and/or upon request. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, Contractor shall be obligated to defend and indemnify the

above-named additional insureds with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Contractor would have been required to pursuant to this section had Contractor obtained such insurance policies.

11. *Excess/Umbrella Liability Policies.* Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided after renewal and/or upon request.

12. *Notice of Cancellation or Non-Renewal.* Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide ITS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Contract.

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

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

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

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to ITS, ITS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

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

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

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

Aggregate limits shall apply on a per location basis, or as otherwise agreed to in the Contract. This aggregate limit

applies separately to each location at which the insured works.

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

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

2. ***Comprehensive Business Automobile Liability Insurance*** covering liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by ITS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to ITS in accordance with the insurance requirements of the Contract.

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

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

Data Breach and Privacy/Cyber Liability		
Software		\$1,000,000
Hardware		\$1,000,000
Cloud *	Low Risk	\$2,000,000

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

Said insurance shall provide coverage for damages arising from, but not limited to the following:

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

If the policy is written on a claims made basis, Contractor must submit to ITS an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

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

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

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

1. Consulting;
2. Data processing;

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

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

If the policy is written on a claims made basis, Contractor must submit to ITS an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

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

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

Crime Insurance on a “loss sustained form” or “loss discovered form” must provide coverage for Third-party Fidelity.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Vendor’s and Contractor’s insurer as a result of this Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Vendor and Contractor as a result of this Contract.
- The policy shall include coverage for third-party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the State of New York, the New York State Office of Information Technology Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees as “Loss Payees” for all Third-party coverage secured. An Endorsement naming as Loss Payees “The State of New York, the New York State Office of Information Technology Services, any entity authorized by law or regulation to

use this Contract and their officers, agents and employees” shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.

- The policy shall not contain a condition requiring an arrest and conviction.

6. *Workers’ Compensation Insurance & Disability Benefits Coverage:* Sections 57 and 220 of the New York State Workers’ Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of any contract renewal.** Proof of workers’ compensation and disability benefits coverage, or proof of exemption must be submitted to ITS at the time of policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage.**

Proof of Compliance with the Workers’ Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers’ Compensation Board’s website (www.wcb.ny.gov);
- Form C-105.2 (9/07), *Certificate of Workers’ Compensation Insurance*, sent to ITS by the Contractor’s insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to ITS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers’ Compensation Self-Insurance*, available from the New York State Workers’ Compensation Board’s Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers’ Compensation Group Self-Insurance*, available from the Contractor’s Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers’ Compensation Board’s website (www.wcb.ny.gov);
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to ITS by the Contractor’s insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers’ Compensation Board’s Self-Insurance Office.

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

Appendix D: IBM Cloud Services Agreement

Complete Agreement: This Cloud Services Agreement (CSA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this CSA (together, the Agreement) under which Client may order Cloud Services.

Transaction Documents: Transaction Documents (TDs) detail the specifics of transactions, such as charges and a description of and information about the Cloud Services. Examples of TDs include statements of work, service descriptions, ordering documents and invoices. There may be more than one TD applicable to a transaction.

Attachments: Documents identified as Attachments provide supplemental terms that apply across certain types of transactions such as a solution attachment.

Any conflicting terms in an Attachment or TD that override terms of this CSA will be identified in the TD or Attachment accepted by the Client and only apply to the specific transaction.

1. Cloud Services

a. IBM Cloud Services	<ul style="list-style-type: none"> IBM Cloud Services are “as a service” IBM offerings that IBM makes available via a network, such as software as a service, platform as a service, or infrastructure as a service. Each IBM Cloud Service is described in a TD. IBM Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance. Technical support and service level commitments, if any, are specified in an Attachment or TD.
b. Non-IBM Services	<ul style="list-style-type: none"> IBM may offer third party Cloud Services, or IBM Cloud Services may enable access to third party Cloud Services (Non-IBM Services). A TD will identify any applicable third party terms that govern Client’s use of Non-IBM Services. Use of Non-IBM Services constitutes Client’s agreement with the third party terms. IBM is not a party to any third party terms and is not responsible for Non-IBM Services.
c. Order Acceptance	<ul style="list-style-type: none"> Client accepts the applicable Attachment or TD for Cloud Services by ordering, enrolling, using, or making a payment. IBM accepts Client’s order by confirming the order or enabling access.
d. What IBM Provides	<ul style="list-style-type: none"> IBM provides the facilities, personnel, equipment, software, and other resources necessary for IBM to provide IBM Cloud Services. IBM provides generally available user guides and documentation to support Client’s use of IBM Cloud Services.
e. Enabling Software	<ul style="list-style-type: none"> Enabling Software is software that Client downloads to Client systems that facilitates the use of a Cloud Service and will be identified in a TD. Enabling Software is not part of the Cloud Service and Client may use Enabling Software only in connection with use of the Cloud Service in accordance with any licensing terms specified in a TD. The licensing terms will specify applicable warranties, if any. Otherwise, Enabling Software is provided as is, without warranties of any kind.
f. What Client Provides	<ul style="list-style-type: none"> Client will provide hardware, software and connectivity to access and use the Cloud Services, including any required Client-specific URL addresses and associated certificates.
g. Right to Use and Client Responsibilities	<ul style="list-style-type: none"> Client’s authorized users may access Cloud Services only to the extent of authorizations Client acquires. Client is responsible for the use of Cloud Services by any user who accesses the Cloud Services with Client’s account credentials.
h. Acceptable Use Terms	<ul style="list-style-type: none"> Cloud Services may not be used for unlawful, harmful, obscene, offensive, or fraudulent Content or activity. Examples of prohibited activities are advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive, or deceptive messages, introducing viruses or harmful code, or violating third party rights. Client may not use Cloud Services if failure or interruption of the Cloud Services could lead to death, serious bodily injury, or property or environmental damage. Client may not: <ul style="list-style-type: none"> (1) reverse engineer any portion of a Cloud Service; (2) assign or resell direct access to a Cloud Service to a third party outside Client’s Enterprise; or (3) combine a Cloud Service with Client’s value add to create a Client branded solution that Client markets to its end user customers unless otherwise agreed by IBM in writing.

i. Preview Cloud Services	<ul style="list-style-type: none"> Cloud Services or features of Cloud Services are considered "preview" when IBM makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality. Examples of preview Cloud Services include beta, trial, no-charge, or preview-designated Cloud Services. Any preview Cloud Service is excluded from available service level agreements and may not be supported. IBM may change or discontinue a preview Cloud Service at any time and without notice. IBM is not obligated to release preview Cloud Services or make an equivalent service generally available.
---------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2. Content and Data Protection

a. Content Client Provides	<ul style="list-style-type: none"> Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to IBM Cloud Services. Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the IBM Cloud Services. Use of the IBM Cloud Services will not affect Client's ownership or license rights in Content.
b. Use of Content	<ul style="list-style-type: none"> IBM, its affiliates, and contractors of either, will access and use the Content solely for the purpose of providing and managing the IBM Cloud Service. IBM will treat Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services.
c. Client Responsibilities	<ul style="list-style-type: none"> Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the IBM Cloud Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access, or inputs individuals' information, including personal or other regulated data, for processing in the IBM Cloud Services. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the IBM Cloud Services, Client will not provide, allow access to, or input the Content for processing in the IBM Cloud Services unless specifically permitted in the applicable TD or unless IBM has first agreed in writing to implement additional security and other measures.
d. Data Protection	<ul style="list-style-type: none"> IBM Data Security and Privacy Principles (DSP), at http://www.ibm.com/cloud/data-security, apply for standard IBM Cloud Services that are generally available. Specific security features and functions of an IBM Cloud Service will be described in the applicable Attachment or TD. Client is responsible for selecting, ordering, enabling, and using available data protection features appropriate to support Client's use of the Cloud Services. Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use. Client acknowledges that the Cloud Services used meet Client's requirements and processing instructions required to comply with applicable laws.
e. IBM's Data Processing Addendum	<ul style="list-style-type: none"> IBM's Data Processing Addendum (DPA) is found at http://ibm.com/dpa. Each IBM Cloud Service has a DPA Exhibit that specifies how IBM will process Client's data. The DPA and applicable DPA Exhibit(s) apply to personal data contained in Content, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679); or ii) other data protection laws identified at http://www.ibm.com/dpa/dpl apply. Upon request by either party, IBM, Client or affiliates of either, will enter into additional agreements as required by law in the prescribed form for the protection of regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.
f. Removal of Content	<ul style="list-style-type: none"> For IBM Cloud Services with self-managed features, Client can remove Content at any time. Otherwise, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the IBM Cloud Services, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content; however, some Content may remain in the IBM Cloud Services backup files until expiration of such files as governed by IBM's backup retention practices.

3. Changes and Withdrawal of Cloud Services

a. IBM Right to Change Cloud Services	<ul style="list-style-type: none">At any time and at IBM's discretion, IBM may change:<ul style="list-style-type: none">(1) the IBM Cloud Services, including the corresponding published descriptions; and(2) the DSP and other published data security and privacy documentation for the IBM Cloud Services. <p>The intent of any change to the above will be to:</p> <ul style="list-style-type: none">(1) make available additional features and functionality;(2) improve and clarify existing commitments; or(3) maintain alignment to current adopted operational and security standards or applicable laws. <ul style="list-style-type: none">The intent is not to degrade the security or data protection features or functionality of the IBM Cloud Services.Changes to the published descriptions, DSP, or published other documents as specified above, will be effective when published or on the specified effective date.Any changes that do not meet conditions specified above will only take effect, and Client accepts, upon:<ul style="list-style-type: none">(1) a new order;(2) the term renewal date for the Cloud Services that automatically renew; or(3) notification from IBM of the change effective date for ongoing services that do not have a specified term.
b. Withdrawal of a Cloud Service	<ul style="list-style-type: none">IBM may withdraw an IBM Cloud Services on 12 months' notice.IBM will continue to provide withdrawn IBM Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering.Non-IBM Services may be discontinued at any time if the third party discontinues or IBM no longer makes available such services.

4. Warranties

a. IBM Warrants	<ul style="list-style-type: none">IBM warrants that it provides IBM Cloud Services or other IBM services using commercially reasonable care and skill and as described in the applicable TD.These warranties end when the IBM Cloud Services or other IBM services end.These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non- infringement, and fitness for a particular purpose.
b. Warranty Limitations	<ul style="list-style-type: none">IBM does not warrant uninterrupted or error-free operation of the IBM Cloud Services.IBM does not warrant it will correct all defects.While IBM endeavors to provide security measures to keep all data secure, IBM does not warrant IBM can prevent all third party disruptions or unauthorized third party access.IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with written instructions provided by IBM.IBM makes preview Cloud Services or Non-IBM Services under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM Services.

5. Charges, Taxes, and Payment

a. Charges	<ul style="list-style-type: none"> Client agrees to pay all applicable charges specified in a TD and charges for use in excess of authorizations. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM and late payment fees may apply. Prepaid services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid, except as provided in the Agreement. If IBM commits to pricing as specified in a TD, IBM will not change such pricing during the specified term. If there is not a specified commitment, then IBM may change pricing on thirty days' notice.
b. Withholding Taxes	<ul style="list-style-type: none"> Client agrees to: <ul style="list-style-type: none"> (1) pay withholding tax directly to the appropriate government entity where required by law; (2) furnish a tax certificate evidencing such payment to IBM; (3) pay IBM only the net proceeds after tax; and (4) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents. Where taxes are based upon the location(s) receiving the benefit of the Cloud Services, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.
c. Invoicing	<ul style="list-style-type: none"> IBM will invoice: <ul style="list-style-type: none"> (1) recurring charges at the beginning of the selected billing frequency term; (2) overage and usage charges in arrears; and (3) one-time charges upon IBM's acceptance of an order.

6. Liability and Indemnity

a. Liability for Damages	<ul style="list-style-type: none"> IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the service that is the subject of the claim, regardless of the basis of the claim. IBM will not be liable for special, incidental, exemplary, indirect or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.
b. What Damages are Not Limited	<ul style="list-style-type: none"> The following amounts are not subject to the above cap: <ul style="list-style-type: none"> (1) third party payments referred to in the Infringement Claims subsection below; and (2) damages that cannot be limited under applicable law.
c. Infringement Claims	<ul style="list-style-type: none"> If a third party asserts a claim against Client that the IBM Cloud Service infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM. To obtain IBM's defense against and payment of infringement claims, Client must promptly: <ul style="list-style-type: none"> (1) notify IBM in writing of the claim;

	<ul style="list-style-type: none"> (2) supply information requested by IBM; and (3) allow IBM to control, and reasonably cooperate in, the defense and settlement, including mitigation efforts. <ul style="list-style-type: none"> • IBM's defense and payment obligations for infringement claims extend to claims based on Open Source Code that IBM selects and embeds in the IBM Cloud Services. Open Source Code is software code licensed from a third party meeting the Open Source Definition defined at https://opensource.org/osd.
d. Claims Not Covered	<ul style="list-style-type: none"> • IBM has no responsibility for claims based on: <ul style="list-style-type: none"> (1) non-IBM products and services, including Non-IBM Services; (2) items not provided by IBM; or (3) any violation of law or third party rights caused by Content, materials, designs, or specifications.

7. Term and Termination

a. Term of a Cloud Service	<ul style="list-style-type: none"> • The term begins on the date IBM notifies Client that Client can access the Cloud Services. • The ordering TD will specify whether the Cloud Services renew automatically, proceed on a continuous use basis, or terminate at the end of the term. • For automatic renewal, unless Client provides written notice of non-renewal to IBM or the IBM Business Partner involved in the Cloud Services at least 30 days prior to the term expiration date, the Cloud Services will automatically renew for the specified term. • For continuous use, the Cloud Services will continue to be available on a month to month basis until Client provides 30 days written termination notice to IBM or the IBM Business Partner involved in the Cloud Services. The Cloud Services will remain available until the end of the calendar month after the 30-day period.
b. Suspension of an IBM Cloud Service	<ul style="list-style-type: none"> • IBM may suspend or limit, to the extent necessary, Client's use of an IBM Cloud Service if IBM reasonably determines there is a: <ul style="list-style-type: none"> (1) material breach of Client's obligations; (2) security breach; (3) violation of law; or (4) breach of the Acceptable Use Terms. • IBM will provide notice prior to a suspension as commercially reasonable. • If the cause of a suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the IBM Cloud Services. If Client fails to take such actions within a reasonable time, IBM may terminate the IBM Cloud Services.
c. Termination of Cloud Services	<ul style="list-style-type: none"> • Client may terminate the IBM Cloud Services on 30 days' notice: <ul style="list-style-type: none"> (1) at the written recommendation of a government or regulatory agency following a change in either applicable law or the IBM Cloud Services; (2) if a change to the IBM Cloud Services causes Client to be noncompliant with applicable laws; or (3) if IBM notifies Client of a change to the IBM Cloud Services that has a material adverse effect on Client's use of the IBM Cloud Services, provided that IBM will have 90 days to work with Client to minimize such effect. • In the event of any such Client termination above or a similar termination of a Non-IBM Service, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. • Client may terminate the IBM Cloud Services for material breach of IBM's obligations by giving notice and reasonable time to comply. • If the Cloud Services are terminated for any other reason, Client will pay to IBM, on the date of termination, the total amounts due per the Agreement.

	<ul style="list-style-type: none"> Upon termination, IBM may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.
d. Termination of this CSA	<ul style="list-style-type: none"> Either party may terminate this CSA: <ol style="list-style-type: none"> without cause on at least 30 days' notice to the other after expiration or termination of its obligations under the Agreement; or immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees. Termination of this CSA does not terminate TDs, and provisions of this CSA as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms. Failure to pay is a material breach.

8. Governing Laws and Geographic Scope

a. Compliance With Laws	<ul style="list-style-type: none"> Each party is responsible for complying with: <ol style="list-style-type: none"> laws and regulations applicable to its business and Content; and import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.
b. Applicable Laws	<ul style="list-style-type: none"> Both parties agree to the application of the laws of the State of New York, United States, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country of Client's business address. If Client or any user exports or imports Content or uses any portion of the Cloud Services outside the country of Client's business address, IBM will not serve as the exporter or importer, except as required by data protection laws. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

9. General

a. IBM's role	<ul style="list-style-type: none"> IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary. IBM does not undertake to perform any of Client's regulatory obligations or assume any responsibility for Client's business or operations, and Client is responsible for its use of Cloud Services. IBM is acting as an information technology provider only. IBM's direction, suggested usage, or guidance or use of the Cloud Services do not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client and its authorized users are responsible for the use of the Cloud Services within any professional practice and should obtain their own expert advice. Each party is responsible for determining the assignment of its and its affiliates personnel, and their respective contractors, and for their direction, control, and compensation.
b. CSA Changes	<ul style="list-style-type: none"> IBM may change this CSA by providing Client at least three months' notice. CSA changes are not retroactive. They will only apply as of the effective date to:

	<ul style="list-style-type: none"> (1) new orders; (2) continuous Cloud Services that do not expire; and (3) renewals. <ul style="list-style-type: none"> For transactions with a defined renewable contract period stated in a TD, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders, continuing use after the change effective date, or allowing transactions to renew after receipt of the change notice. Except as provided in this section and the Changes and Withdrawal of Cloud Services section above, all other changes to the Agreement must be in writing accepted by both parties.
c. Business Conduct	<ul style="list-style-type: none"> maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud. IBM and its personnel comply with such policies and require contractors to have similar policies.
d. Business Contact and Account Usage Information	<ul style="list-style-type: none"> IBM, its affiliates, and contractors of either require use of business contact information and certain account usage information. This information is not Content. Business contact information is used to communicate and manage business dealings with the Client. Examples of business contact information include name, business telephone, address, email, and user ID. Account usage information is required to enable, provide, manage, support, administer, and improve Cloud Services. Examples of account usage information include digital information gathered using tracking technologies, such as cookies and web beacons during use of the IBM Cloud Services. The IBM Privacy Statement at https://www.ibm.com/privacy/ provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. When Client provides information to IBM and notice to, or consent by, the individuals is required for such processing, Client will notify individuals and obtain consent.
e. IBM Business Partners	<ul style="list-style-type: none"> IBM Business Partners who use or make available Cloud Services are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings. If IBM notifies Client their current IBM Business Partner will no longer resell Cloud Services, Client may select to acquire auto renewing or continuous use Cloud Services directly from IBM or from another authorized IBM Business Partner.
f. Assignment	<ul style="list-style-type: none"> Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. IBM may assign rights to receive payments. IBM will remain responsible to perform its obligations. Assignments by IBM in conjunction with the sale of the portion of IBM's business that includes the Cloud Services is not restricted. IBM may share this Agreement and related documents in conjunction with any assignment.
g. Enterprise Companies	<ul style="list-style-type: none"> This CSA applies to IBM and Client (accepting this CSA) and their respective Enterprise companies that provide or acquire Cloud Services under this CSA. The parties shall coordinate the activities of their own Enterprise companies under the CSA. Enterprise companies include: <ul style="list-style-type: none"> (1) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares); and (2) any other entity that controls, is controlled by, or is under common control with Client or IBM and has signed a participation agreement.
h. Notices and Administration	<ul style="list-style-type: none"> All notices under the Agreement must be in writing and sent to the business address specified for the Agreement, unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions, or representations between the parties. Where approval, acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.
i. Cause of Action	<ul style="list-style-type: none"> No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations.
j. Global Resources	<ul style="list-style-type: none"> IBM may use personnel and resources in locations worldwide, including contractors, to support the delivery of IBM Cloud Services. Client's use of the Cloud Services may result in the transfer of Content, including personal data, across

	<ul style="list-style-type: none"> country borders. A list of countries where Content may be transferred and processed for an IBM Cloud Service is included in the applicable TD. IBM is responsible for the obligations under the Agreement even if IBM uses a contractor and will have appropriate agreements in place to enable IBM to meet its obligations for the IBM Cloud Services.
k. Other Services	<ul style="list-style-type: none"> IBM may offer additional customization, configuration, or other services to support Cloud Services, as detailed in a TD.

IBM Watson Works

This Service Description describes the Cloud Service. The applicable order documents provide pricing and additional details about Client's order.

1. Cloud Service

IBM Watson Works is delivered as a solution suite of Cloud Services aimed to help Clients manage workplace re-entry, facilities management and maintenance, workplace safety, and individual care management to help Clients address the current COVID-19 pandemic, as well as after the COVID-19, as permitted by applicable laws. IBM Watson Works is offered in five key applications:

- IBM Watson Works – TRIRIGA SaaS
- IBM Watson Works – TRIRIGA Building Insights
- IBM Watson Works – Maximo Worker Insights
- IBM Watson Works – Watson Care Manager
- IBM Watson Works – Return-to-Workplace Advisor
- IBM Watson Works – Digital Health Pass

Each of the Cloud Services are further described below.

1.1 Offerings

The Client may select from the following available offerings.

1.1.1 IBM Watson Works – TRIRIGA SaaS

IBM Watson Works – TRIRIGA SaaS is a Cloud Service which enables the lifecycle of facilities and real estate management based on the number of individuals planned for occupancy to a location, which are represented through a data repository with unique records for each individual enabled through integration with the Client's enterprise directory, Human Resources Management System (HRMS), or equivalent system. Examples of an Individual include but are not limited to employees, students, vendors, or contractors.

Clients who enable the Cloud Service for all Individuals planned to a location(s) are entitled to the full suite of capabilities to use, implement business processes, and administer the Cloud Service. Permissions of Individuals are configurable by the Client through administration of user security groups.

The following applications are offered as part of this Cloud Service:

- **Capital projects**
Enable capital project planning; identify funding priorities within capital programs; provide integrated processes and analytics.
- **Space management**
Identify opportunities for better facility utilization and occupancy management; enable department accountability for space use; view uploaded floor plans; assist with relocation processes; analyze strategic space planning; space and asset reservation management; track budgets, costs and schedules.
- **Facility maintenance**
Use condition-based facility assessments; provide financial and environmental impact analysis to help with capital planning; manage facilities maintenance service requests; automate facility maintenance services; use business analytics to identify performance of facilities, assets, resources and facility maintenance processes.
- **Energy management**
Manage enterprise carbon accounting and environmental investment analysis; provide financial and environmental impact analysis to improve capital planning; use financial and environmental impact analysis to improve capital planning; use analytics to identify potential work tasks for equipment.

- **Application administration**
Manage the underlying real estate, facility and asset portfolio data; manage user access; extend applications using technology platform; interface via Web Service over a VPN connection.
- **TRIRIGA Assistant**
Powered by IBM Watson and integrated with IBM TRIRIGA to enable a natural language user experience via chat. This assistant can help employees to book meeting rooms, submit service requests or lookup information about spaces or employees.

Depending on the Client's needs, the following can be enabled:

- **SFTP Accounts**
The Secure File Transfer Protocol (SFTP) server account (SFTP Account) Cloud Service facilitates data access and data transfer over a Secure Shell (SSH) data stream. The SFTP Account can also be used to view log files on Client's environments for troubleshooting and development purposes. Each SFTP Account is a separate instance. A maximum of 5 SFTP Accounts can be created.
- **VPN IPsec Tunnel Setup**
An IPsec site-to-site VPN tunnel is used to encrypt traffic between secure IPsec Gateways. The VPN IPsec Tunnel will permit site-to-site traffic between the Client networks and the Cloud Service. This can be used to support certain integrations, read-only database access, LDAP synchronization and other communications that are unable to run over HTTPS/SSL.
- **IP Allowlist**
Each IP Allowlist entitlement provides configured access to a specific environment from a Client defined and approved list of trusted IP addresses or IP ranges only.

1.1.2 IBM Watson Works – Watson Care Manager

IBM Watson Works – Watson Care Manager ("WCM") provides the Client a highly efficient care coordination and case management solution that makes personalized care management scalable. WCM combines case management best practices, automated workflows and insights to enable case managers to create individualized care plans addressing all determinants of health and engage individuals for better health. WCM includes the following features and functions:

- **Individual Summary**
View a comprehensive summary using information that spans across systems and information provided by care providers to create a view of an Individual's status.
- **Intelligent Care Best Practices**
Utilizes industry standard interventions available for case managers to select appropriate interventions to scale best practices.
- **Structured Programs & Business Processes**
Deliver guided content and workflow to case managers, providers and others to automate interactions and activities across programs and processes to improve care team efficiency and effectiveness.
- **Person Centered Care Planning**
Support the development, management, and sharing of individualized care plans, including outcome goals and barriers, interventions by the care team, and engaging an Individual on his or her care plan tasks.
- **Program Enrollment**
Manage the referral and enrollment of Individuals and groups of Individuals (cohorts) into care or services programs.
- **Care Team Management**
Assign, manage, and view the key stakeholders involved in the care of an Individual.
- **Health Data Interoperability**
Collect and update information on an Individual in WCM from external systems or from certain other IBM offerings, as available and provided that Client has obtained all necessary permissions from Individual and provided any required notice.

- **System Configuration and Administration**
Configure the care management platform, including: custom data fields, program workflows, assessments, questionnaires, contact tracing forms, care plans configurations, teams, recommendations, goals and preconfigured action libraries, as needed for the Client's use case.

Depending on the Client's needs, the following capabilities are included in WCM and can be enabled upon Client's request:

- **IBM Watson Care Manager Reporting with Cognos**
Build, manage, and run Care Management Dashboards and Reports using IBM Cognos Reporting tool with the Watson Care Manager data.
- **IBM Watson Care Manager Connect-Providers**
Connect-P enables community service providers to configure and manage their own profiles and service listings. They can collaborate with care team members and offer their services for selection by care team members.
- **IBM Watson Care Manager Community Service Referral**
Enables care team members to send enquiries to community service providers, manage provider responses and approval of offers.
- **IBM Watson Care Manager Connect-I**

Enables individuals to engage and collaborate with care team members on their care plans.

Users of Watson Care Manager would manually add data or leverage APIs to pull in related case data to support the management of impacted Individuals.

Notwithstanding anything contrary to the Agreement, for purposes of IBM Watson Works – Watson Care Manager in this Service Description, the Client will also determine Content for the case management system related to the Client's assessments, questionnaires, contact tracing forms, custom data fields, and care plan configurations as needed for their use case.

1.1.3 IBM Watson Works – Maximo Worker Insights with IoT Platform

IBM Watson Works – Maximo Worker Insights with IoT Platform collects and analyzes data, such as location, weather, and sensor data to help Clients customize protection for their workers.

IBM Watson Works – Maximo Worker Insights with IoT Platform includes the embedded IBM Watson IoT Platform Connection Service. Clients do not need to purchase IBM Watson IoT Platform Connection Service separately.

The following table shows the consumption included in this Cloud Service per Individual.

Size of message (KB)	Maximum message rate (msgs/day)	Retention in Cloudant (days)	% of storage or raw data into Cloudant	Retention in DB2 Warehouse (months)	% of transfer for raw to analytical data	Retention in ObjectStore (months)
0.2	5760	30	10%	3	100%	12

The included capacity of IBM Watson IoT Platform Connection Service components is specified in Section 5.

For purposes of IBM Watson Works – Maximo Worker Insights with IoT Platform, a "Worker" as referenced in the application shall constitute an Individual.

1.1.4 IBM Watson Works – TRIRIGA Building Insights with IoT Platform

This Cloud Service allows the Client to connect and collect occupancy data from various sensing technologies, to monitor occupancy levels of the location instrumented. In the event where entitlement is exceeded, additional entitlement will need to be purchased.

This Cloud Service requires entitlement to one of the following prerequisites:

- IBM Watson Works – TRIRIGA SaaS
- IBM Facilities and Real Estate Management on Cloud – TRIRIGA
- IBM TRIRIGA Facilities Manager

Entitlement for IBM Watson Works – TRIRIGA Building Insights with IoT Platform is determined by each Individual occupant planned or associated to a location(s) as defined in pre-requisite product, which is imported by the Cloud Service for data processing.

In addition, the Client can optionally configure and connect presence sensing devices through the Watson IoT Platform, which equal no more than the total number of Individuals entitled, with a maximum capacity per single presence sensing device of 1440 messages sent per day at a size of 0.5KB per message.

1.1.5 IBM Watson Works – TRIRIGA Building Insights Non-Production Environment

Clients may acquire a non-production environment of the Cloud Service for internal testing and evaluation purposes, such as to test the connection of any presence sensing technologies.

This Cloud Service requires entitlement to one of the following prerequisites:

- IBM Watson Works – TRIRIGA SaaS
- IBM Facilities and Real Estate Management on Cloud – TRIRIGA
- IBM TRIRIGA Facilities Manager

Entitlement for IBM Watson Works – TRIRIGA Building Insights Non-Production Environment is determined by each Individual occupant planned or associated to a location(s) as defined in pre-requisite product, which is imported by the Cloud Service for data processing.

In addition, the Client can optionally configure and connect presence sensing devices through the Watson IoT Platform, which equal no more than the total number of Individuals entitled, with a maximum capacity per single presence sensing device of 1440 messages sent per day at a size of 0.5KB per message.

1.1.6 IBM Watson Works – Return-to-Workplace Advisor Applications

IBM Watson Works – Return-to-Workplace Advisor Applications is a Cloud Service to help provide (i) data-driven decision making by Client on when to return employees to the workplace during the COVID-19 pandemic and (ii) workforce support related to COVID-19. The Cloud Service can include a Command Center Application, Health Check Application with Employee Status Report API and Identities Status Report API (as defined below). For purposes of IBM Watson Works – Return-to-Workplace Advisor Applications, references below to "End User" shall mean Individual.

- IBM Watson Works – Return-to-Workplace Advisor Command Center
The IBM Return-to-Workplace Advisor Command Center application ("Command Center") provides Clients with the ability to understand (i) community risk in the areas where worksites are located, (ii) workforce availability, and (iii) population vulnerability in order to promote health and wellness at worksites ((ii) and (iii) require the use of the associated Health Check Application). A "Command Center End User" may be an employee or contractor of Client.

- IBM Watson Works – Return-to-Workplace Advisor Health Check
The IBM Return-to-Workplace Advisor Health Check application ("Health Check") incorporates data provided by the Client with data gathered from the End User to (i) provide the End User with the ability to understand their risk of severe symptoms if they contract COVID-19 and (ii) routinely assess End User work pass status, which indicates whether the End User should report to the worksite each day based on the Client's policies.

The "Employee Status Report API" is an API that allows Client to call End User work pass status and supporting category information that the work pass status is based on such as diagnosis, major symptoms, minor symptom or exposure.

The "Identities Status Report API" is an API that allows Client to make an API call to see all End Users that are green, red, or unreported (meaning the End User did not execute the check-in process in the Health Check application); as well as supporting category information such as diagnosed, major symptoms, minor symptoms or exposure.

Based on Client's need, the following configurations of the Cloud Service can be enabled:

- a. Command Center
IBM will provide Command Center Application End Users with access to the Analytics Application.
- b. Health Check
IBM will provide End Users with access to the Workforce Application.

c. **Health Check Understanding Your Risk Questionnaire**

IBM will provide in the Health Check Application a questionnaire to gather information about their health to inform End User about risk of severe symptoms if they contract COVID-19. If Client purchases the Analytics Application, an aggregate summary of this information will be included.

APIs for this Cloud Service are continuously developed and maintained. Interfaces for such APIs can be made available.

1.1.7 IBM Watson Works – Return-to-Workplace Advisor API-Only

The IBM Return-to-Workplace Advisor API-Only solution provides Clients the Community Risk API. The Community Risk API calculates the risk value by comparing recent positively reported COVID-19 case numbers against specific thresholds and observing their recent trends. Default values for thresholds are selected based on typical numbers observed with respect to regions that are re-opening.

1.1.8 IBM Watson Works – Digital Health Pass

IBM Watson Works – Digital Health Pass is a Cloud Service designed to support organizations in operationalizing data-driven policies to bring people back to a physical location leveraging verifiable health credentials. Built on IBM Blockchain technology and advanced cryptographics techniques, the solution enables organizations to verify tamperproof credentials for employees, customers and visitors entering their site based on criteria specified by the organization, in a privacy-preserving manner.

IBM Watson Works – Digital Health Pass supports three types of roles:

- **Individuals** (holders) manage their credentials and share them with organizations as needed to gain entry to a physical location such as a workplace, school, stadium or airline flight, by using an encrypted digital wallet on their smartphone. Individuals in membership-based use cases (such as employees, students, etc.) have a unique membership ID (such as an employee or student ID). Individuals in event-driven use cases (such as taking flights, attending sport events/concerts/conventions, etc.) are defined as unique ticket holders or unique attendees.
- **Issuers** are organizations that contribute credentials for an individual that could include test results, temperature checks, health surveys and so on.
- **Verifiers** are organizations that define the requirements needed to enter a specific location, and check the validity of individual's credentials to allow access.

The IBM Watson Works – Digital Health Pass Cloud Service includes a Digital Health Pass Platform and API Services, Mobile and Cloud Software Development Kit (SDK), and Holder Wallet and Verifier Applications.

- Digital Health Pass Platform and API Services address the core requirements of credential generation, exchange and verification.
- Mobile and Cloud Software Development Kit to enable solution development.
- Out-of-the-box Holder Wallet and Verifier Application to address standard use cases for Verifiers who do not require additional customization.

If a Verifier is interested in integrating IBM Watson Works – Digital Health Pass capabilities into their existing workflow and user experience, customization services can be provided for the Verifier application and/or the Holder Wallet via a separate transaction.

1.2 Optional Services

1.2.1 IBM Watson Works – TRIRIGA SaaS Add-on Reporting

IBM Watson Works – TRIRIGA SaaS Add-on Reporting Instance provides a single Production environment for all users with enhanced reporting and data visualization capabilities in the Client's Production environment. This Cloud Service entitled the Client to one Non-Production instance of IBM Watson Works – TRIRIGA Add-on Reporting Non-Production Environment, additional Non-Production instances of this Cloud Service must be purchased separately for the Client's additional Non-Production environments.

1.2.2 IBM Watson Works – TRIRIGA Add-on Reporting Non-Production Environment

IBM Watson Works – TRIRIGA Add-on Reporting Non-Production Environment provides an additional single instance for enhanced reporting and data visualization capabilities in the Client's Non-Production environments.

1.2.3 IBM Watson Works – TRIRIGA SaaS Non-Production Environment

IBM Watson Works – TRIRIGA SaaS Non-Production Environment provides Client with an additional Non-production instance of the Cloud Service. This Cloud Service does not include high availability or the same frequency of backup as provided with the Production Instance. For performance reasons, no more than 30 users can use the Non-Production Environment simultaneously in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means.

1.2.4 IBM Watson Works – TRIRIGA SaaS Lease Volume

This Cloud Service supports transaction management, lease administration and lease accounting; use business analytics to identify performance of real estate assets, leases, providers and processes. Based upon the number of leases processed by the Cloud Service, the Client's production environment will be appropriately sized and configured to accommodate that number of leases.

1.2.5 IBM Watson Works – Watson Care Manager Non-Production Environment

This Cloud Service provides a separate Instance that can only be used for non-production activities such as training and testing. Any data and configurations on the Non-Production environment are not synchronized with the Client's Production operational environment.

1.2.6 IBM Watson Works – Maximo Worker Insights with IoT Platform Capacity Units

Clients of IBM Watson Works – Maximo Worker Insights with IoT Platform can procure additional capacity above the included capacity entitlement through purchase of monthly subscription of Capacity Units. Capacity Units for IBM Watson IoT Platform Connection Service components is specified in Section 5.

If the Client's usage of the entitled Cloud Service exceeds the included consumption entitlement and additional Capacity Units the Client has subscribed to, they will be charged on a Pay per Use basis for the applicable Capacity Unit(s) to cover the excess capacity used in a given month.

1.2.7 IBM Watson Works – Maximo Worker Insights Non-Production Environment

IBM Watson Works – Maximo Worker Insights Non-Production Environment is a shared multi-tenant Instance of the IBM Maximo Worker Insights offering entitled by the total number of Individuals to be utilized for non-production activities. This includes the embedded IBM Watson IoT Platform Connection Service.

The included capacity of IBM Watson IoT Platform Connection Service components is specified in Section 5.

1.2.8 IBM Watson Works – TRIRIGA Building Insights with IoT Platform Capacity Units

Clients of IBM Watson Works – TRIRIGA Building Insights with IoT Platform can procure additional capacity above the included capacity entitlement through purchase of monthly subscription of Capacity Units. Capacity Units for IBM Watson IoT Platform Connection Service components is specified in Section 5.

If the Client's usage of the entitled Cloud Service exceeds the included consumption entitlement and additional Capacity Units the Client has subscribed to, they will be charged on a Pay per Use basis for the applicable Capacity Unit(s) to cover the excess capacity used in a given month.

1.2.9 IBM Watson Works – Return-to-Workplace Advisor Non-Production Environment

A separate instance of the Cloud Service that can be used for activities such as training and testing. Any data and configurations on the Non-Production environment are not synchronized with the Client's Production operational environment.

1.3 Acceleration Services

1.3.1 IBM Watson Works – Return-to-Workplace Advisor Applications One Time Setup

A one-time setup fee will be assessed if Client chooses to enable configurable options for IBM Watson Works – Return-to-Workplace Advisor Applications and API Only. Options include configurations / provisioning of the Command Center and/or Health Check Application, Risk Questionnaire, and use of APIs, enablement of Watson Citizen Chat Bot, and other client specific text or policy URLs.

2. Data Processing and Protection Data Sheets

IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and the Data Processing and Protection Data Sheet(s) (referred to as data sheet(s) or DPA Exhibit(s)) in the links below provide additional data protection information for the Cloud Services and its options regarding the types of Content that may be processed, the processing activities involved, the data protection features, and specifics on retention and return of Content. The DPA applies to personal data contained in Content, if and to the extent i) the European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at <http://www.ibm.com/dpa/dpl> apply.

The following data sheets are for the individual offerings which make up this Cloud Service:

- For IBM Watson Works – Maximo Worker Insights with IoT Platform, see IBM Maximo Worker Insights.
<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=463A0E004A4811E79342EA59690D4322>
- For IBM Watson Works – TRIRIGA Building Insights with IoT Platform, see IBM TRIRIGA Building Insights.
<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=3547276046E911E8ADCBA344DE8FB657>
- For IBM Watson Works – Watson Care Manager, see IBM Watson Care Manager.
<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=17DD9310198511E58E7C5F10B0A7B6E3>
- For IBM Watson Works – TRIRIGA SaaS, see IBM Facilities and Real Estate Management on Cloud.
<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=1410822896601>
- For IBM Watson Works – Return-to-Workplace Advisor, see IBM Return-to-Workplace Advisor.
<https://www.ibm.com/software/reports/compatibility/clarity-reports/report/html/softwareReqsForProduct?deliverableId=08C83F10834311EAA2EA904442C32E11>
- For IBM Watson Works – Digital Health Pass, see IBM Digital Health Pass.
<https://www.ibm.com/support/customer/csol/contractexplorer/cloud/datasheets/0E5F8C80C77711EA92B4FC8223E18670/en>

3. Service Levels and Technical Support

3.1 Service Level Agreement

IBM provides the Client with the following availability service level agreement (SLA). IBM will apply the highest applicable compensation based on the individual offering availability of each applicable offering within the Cloud Service (as defined in Section 1.1) as shown in the table below. The availability percentage is calculated as the total number of minutes in a contracted month, minus the total number of minutes of Service Down in the contracted month, divided by the total number of minutes in the contracted month. The Service Down definition, the claim process and how to contact IBM regarding service availability issues are in IBM's Cloud Service support handbook at https://www.ibm.com/software/support/saas_support_overview.html.

Availability	Credit (% of monthly subscription fee*)
Less than 99.9%	2%
Less than 99.0%	5%
Less than 95.0%	10%

* The subscription fee is the contracted price for the month which is subject to the claim.

3.2 Technical Support

Technical support for the Cloud Service, including support contact details, severity levels, support hours of availability, response times, and other support information and processes, is found by selecting the Cloud Service in the IBM support guide available at <https://www.ibm.com/support/home/pages/support-guide/>.

4. Charges

4.1 Charge Metrics

The charge metric(s) for the Cloud Service are specified in the Transaction Document.

The following charge metrics apply to this Cloud Service:

- Individual is a single human or thing managed or processed by the Cloud Service.
- Instance is each access to specific configuration of the Cloud Services.
- Item is an occurrence of a specific item that is processed by, managed by, or related to the use of the Cloud Service. For this Cloud Service, Item is a lease.
- Capacity Unit is an independent measure of capacity related to the use of the Cloud Services.

5. Additional Terms

For Cloud Service Agreements (or equivalent base cloud agreements) executed prior to January 1, 2019, the terms available at <https://www.ibm.com/acs> apply.

5.1 General

5.1.1 Medical Device Disclaimer

IBM is acting as an information technology provider only. IBM does not purport to be engaged in the practice of medicine or any other professional clinical or licensed activity, and the Cloud Service, all components thereof and future updates thereto, and all deliverables of related IBM professional services are not designed or intended to constitute protocols for delivering medical care, a substitute for professional medical advice, diagnosis or treatment or judgment, a drug, drug-adjunct technology, or drug development tool subject to quality system requirements or medical device as defined under the laws of any jurisdiction. As between IBM and Client, Client is solely responsible for complying with all such laws and regulations relative to Client's use of the Cloud Service and IBM's professional services.

5.1.2 Data Governance

Client is responsible for designing, updating and enforcing data governance policies for Content ("Data Governance Policies"), which must include at least: documentation about which authorized users may access specific categories or types of Content, any authorized user-specific access restrictions, and documentation of any data elements that should be excluded prior to configuration of a Cloud Service, and that Client is authorized to design, update, and enforce such policies.

5.1.3 Data Sources

If Content is transferred from another data source, changes to Data Sources or changes to implement new codes or functionality may cause compatibility issues with the Cloud Service for which IBM is not responsible. At Client's request, IBM will perform services to resolve the compatibility issues caused by such changes pursuant to a separate scope of work and for an additional charge.

5.1.4 Non-Production Limitation

If the Cloud Service is designated as "Non-Production" (for example, for limited pilots or proof-of-concepts), the Cloud Service can be used by Client only for internal non-production activities, including testing, performance tuning, fault diagnosis, internal benchmarking, staging, quality assurance activity and/or developing internally-used additions or extensions to the Cloud Services using published application programming interfaces. Client is not authorized to use any part of the Cloud Service for any other purpose without acquiring the appropriate production entitlements. The Service Level Terms in Section 3.1 do not apply to Non-Production use of the Cloud Service.

Users of an optional Non-Production Environment (s) of the Cloud Services must be entitled to the equivalent base offerings, specifically:

- IBM Watson Works – IBM TRIRIGA SaaS
- IBM Watson Works – IBM TRIRIGA Building Insights with IoT Platform
- IBM Watson Works – IBM Maximo Worker Insights with IoT Platform
- IBM Watson Works – Watson Care Manager
- IBM Watson Works – Return-to-Workplace Advisor

For example, a user of IBM Watson Works – IBM Maximo Worker Insights Non Production Environment must also be entitled to the equivalent base offering, IBM Watson Works – IBM Maximo Worker Insights with IoT Platform.

5.1.5 Enabling Software

The Cloud Service contains the following Enabling Software:

- a. IBM Watson Works – Maximo Worker Insights with IoT Platform
 - IOT Analytics Python libraries
- b. IBM Watson Works – TRIRIGA SaaS
 - TRIRIGA CAD Integrator
 - TRIRIGA Outlook plug-in
 - TRIRIGA Connector for BIM

5.1.6 Extensions

Any extensions built on top of the Cloud Services provided as part of the IBM Watson Works solution must be hosted, managed and maintained by the service provider who delivered the extension. This includes extension testing periodically to ensure it works with the latest update to the Cloud Services.

5.1.7 Third Party Sensing Technologies

If Client selects IBM Watson Works – TRIRIGA Building Insights with IoT Platform or IBM Watson Works – Maximo Worker Insights with IoT Platform, IBM may arrange for Cloud Service integration with certain third-party sensing technologies. Such integration may allow Client to transfer certain data from third-party presence sensing technologies such as a service provider or device vendor, to the Cloud Service. Client is solely responsible for entering into written agreements with such third parties, which govern Client's use of such technologies, as well as the governance model applying to the data transfer into the Cloud Service. IBM is not responsible for such technologies nor is it responsible for the associated Application Programming Interfaces or other gateways to transmit such data into the cloud Service.

5.1.8 Compliance

The Client acknowledges its responsibility and it agrees to comply with all applicable privacy and employment related laws and regulations, including, if applicable, the Health Insurance Portability and Accountability Act (HIPAA), the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Genetic Information Nondiscrimination Act (GINA), the Family Educational Rights and Privacy Act (FERPA), the California Consumer Protection Act (CCPA), GDPR, and any local public health guidance that may be applicable.

5.1.9 Entitlement Details for Subscription and Capacity Units

Service	Units	Included	Capacity Unit
Watson IoT Platform – Data Exchanged	Per MB of data	0.58	410.26
Cloudant for IBM Cloud DB – Data Storage	Per MB of storage	1.16	546.13
Db2 Warehouse on Cloud – Data Storage	Per MB of storage	2.18	470.80
Cloud Object Storage – Data Storage	Per MB of storage	6.98	18,204.44

Service	Units	Included	Capacity Unit
Cloud Object Storage – Data Retrieval	Per MB of download	0.70	6068.15
Event Streams – Number of Messages	Number of messages	5952	6,000,000
Note: Following data refers to the instance, not related to number of devices			
Cloudant for IBM Cloud – Data Storage	MB of storage	10,240.00	
AppID – Authorized Users (Operators)	Number of authorized users	5	243
AppID – Authenticated Events (Operators)	Number of authenticated events	6200	134
Secure Gateway – Number of Gateways	Number of gateways	1	50 CUs = 1 gateway
Secure Gateway – Data Transmitted	MB of data transmitted	512.00	546.13
Event Streams – Number of Partitions	Number of partitions	4	20 CUs = 1 partition

* Note: IBM Db2 Warehouse on Cloud is previously known as IBM dashDB for Analytics.

5.1.10 Use Restrictions

Client agrees that each offering selected shall be used in accordance to the following use restrictions.

a. Purpose Limitation

Any use of IBM Watson Works for the following purposes is strictly prohibited:

- (1) use related to facial recognition purposes;
- (2) use intended to or which has the effect of unfairly discriminating against individuals or groups based on protected characteristics or categories;
- (3) fully automated decision making that adversely impacts an individual's legal rights or otherwise creates or modifies a binding, enforceable obligation; and
- (4) enforcement or investigation of violations of criminal or regulatory laws, regulations, rules, procedures or equivalent.

b. Acknowledgment

The Parties acknowledge and agree that neither IBM nor the IBM Watson Works offering can prevent infection, injury or death as a result of COVID-19 or other natural cause, and IBM is not responsible for such occurrences.

c. Safeguards and Restrictions

Client agrees to implement the following safeguards and restrictions for the use of IBM Watson Works:

(1) Notice

Client is responsible to provide timely notice to individuals to permit them to exercise their rights connected to the processing of personal data in IBM Watson Works especially regarding, but not limited to, exposure notification and/or collection of health data, biometric data or geolocation data of individuals. In particular, Client agrees to further provide end-users with clear descriptions of the specific purpose for collecting and processing such data, how their personal data will be processed, including information describing the COVID-19 purpose for which personal data is processed, the particular types of data to be processed, specific access restrictions and protections for the data, and information regarding data retention.

(2) Data Minimization

Client agrees to collect only the minimum personal data necessary to achieve the purpose set out in Section 5.1.10(a).

(3) Restricting Access

Client agrees to implement appropriate technical and organizational measures to restrict access to IBM Watson Works and personal data collected or processed in connection with such IBM Watson Works.

5.1.11 Use Restrictions – Minors

The Cloud Service is not intended for use by minors or anyone under the age of sixteen (16) years old.

5.1.12 Intended Use

Client will defend, indemnify and hold harmless IBM, its affiliates, contractors and suppliers, from claims brought by any third party relating to death, bodily injury, or property or environmental damage arising from Client's use of the Cloud Service or Client's violation of law or regulation.

5.2 IBM Watson Works – Watson Care Manager Additional Terms

5.2.1 Non-IBM Services (Provided As-Is)

Google Maps

Client acknowledges and agrees that it will, and will ensure its authorized users will, comply with the then current terms at the URLs listed below when using the Google Maps functionality embedded in the Cloud Service. Google Maps means the Google service at <https://www.google.com/maps>.

- Google Maps / Google Earth Additional Terms of Service at http://maps.google.com/help/terms_maps.html.
- Google Maps / Google Earth Legal Notices at http://maps.google.com/help/legalnotices_maps.html.
- Google Maps Acceptable Use Policy at https://enterprise.google.com/maps/terms/universal_aup.html.

5.3 IBM Watson Works – TRIRIGA SaaS Additional Terms

5.3.1 IBM Watson Works – TRIRIGA SaaS Upgrade Responsibilities

This Cloud Service utilizes a continuous delivery model, with different rules for on-going platform (database and middleware layers) and application updates. Platform updates are performed by IBM periodically and at IBM's sole discretion for all Cloud Service Clients. Clients cannot access or change configuration parameters at the platform layer.

IBM is responsible to update, maintain, and change configuration parameters at the database and middleware layers only. Client is responsible to perform application upgrades and update, maintain, and change configuration parameters at the application layer, using the IBM TRIRIGA Application Builder tools included with the Cloud Service. Client is also responsible to update, maintain, and change configuration parameters for integrations, using the IBM TRIRIGA Connector for Business Application tools included with the Cloud Service.

5.4 IBM Watson Works – Return-to-Workplace Advisor Additional Terms

5.4.1 Territory Restriction

IBM Watson Works – Return-to-Workplace Advisor **is only intended for use in the United States**. Any use outside of the United States is subject to IBM's review and approval.

5.4.2 IBM Watson Works – Return-to-Workplace Advisor Configuration Input

Client will provide input requested by IBM to allow for appropriate configuration of this Cloud Service including the following:

Configuration Option	Impact to Health Check Application
Company Level: Company News Link	If enabled, the link provided by the Client will be accessible to the End User
Company Level: Watson Citizen Chatbot	If enabled, the Watson Citizen Chatbot will be accessible to the End User.
Company Level: Work Pass Status Message	The status label provided will be the message content the End User sees for a status of "report to work" or a status of "do not report to work".

Configuration Option	Impact to Health Check Application
Company Level: Action Text	The action text provided will be the message content the End User sees for a status of "report to work" or a status of "do not report to work".
Company Level: Instructions Text	The instructions text provided will be the message content the End User sees for a status of "report to work" or a status of "do not report to work".
Employee Level: Job Role	Represents essential versus non-essential workforce personnel. If no job role is provided, then it is assumed that the workforce personnel is non-essential and not a critical infrastructure worker.
Employee Level: Disclaimers	The Client must provide disclaimer content.
Employee Level: Configurable symptom check in	Items on the symptom list may be configured and the logic may be configured to define what mix of user input results in red/green statuses.
Employee Level: Terms of Use	The Client must provide Terms of Use content (See Appendix A for minimum required Terms of Use flowdown).
Employee Level: Self Clearance	The logic may be configured to define what mix of End User input results in red/green work pass statuses.
Analytics Application: Suppression Policy	Client may configure cell size suppression policy, provided Client does not go below the minimum threshold set by IBM for the display of aggregate, de-identified data in the Adviser Application.
Analytics Application: Workplace threshold settings	The Client provides thresholds that reflect level of workforce availability risk for low, medium and high settings.

5.4.3 Data Processing Protection and Other Data Provisions

Client will not re-identify, attempt to re-identify, or allow re-identification of any individual in the Analytics Application. If the identity of any person is discovered inadvertently through the dashboard, Client will immediately delete or destroy such information.

Client agrees to ensure that the Terms of Use and disclaimer content that are configured provide Workforce Application End Users with terms which incorporate the items set forth in Appendix A, as required under applicable laws, to allow IBM to provide the Cloud Service. Additionally, Client's privacy notice must describe what data will be collected and how the data, including status updates (approved, unapproved, unreported) will be collected, processed, used, and disclosed. The Terms of Use and privacy notice must include a clear description that IBM as an authorized service provider can receive and disclose such data through the Application to provide the agreed-upon services, including as applicable, to Client's authorized personnel for follow up communications and contact tracing.

Client agrees that the aggregate, de-identified data given to Client related to the Understanding Your Risks questionnaire will be used solely to promote health and wellness at worksites and will not be used to take any adverse employment-actions.

At the Client's option, IBM Watson Works – Return-to-Workplace Advisor may include an IBM Watson Assistant chatbot. IBM uses Content, such as End User inputs to the chatbot, and other information collected by the Watson Assistant chatbot for research, testing and offering development related to Watson Assistant. If Client does not want IBM to use such Content and other information collected by the Watson Assistant chatbot, then Client must elect not to have the Watson Assistant chatbot implemented for IBM Watson Works – Return-to-Workplace Advisor.

5.4.4 Warranties and Disclaimers

If the Client is an educational institution, then Client represents and warrants that the services provided through the Application and by IBM in its role as an information technology provider meet the definitions of "school official" and "legitimate educational interest" under FERPA, and as described in Client's annual notification of FERPA rights.

Client is solely responsible for any decisions made using the Cloud Service that may impact End Users, including but not limited to employment decisions made by Client or joint employer of an End User and represents and warrants that all such decisions will be made in accordance with applicable laws. This Cloud Service compiles data provided by multiple third party sources including state and local public sources; federal public health authorities such as the CDC; published scientific literature; and other public sources. These sources update and report data on various regular and irregular schedules, so from time to

time there may be discrepancies between data reported in the Cloud Service and data reported by individual sources. The data includes COVID-19 information sourced from government websites that has not been independently verified. Further, data collected within Client's implementation of IBM Watson Works – Return-to-Workplace Advisor is provided by Client's employees and others, and therefore the data may not be accurate and IBM makes no representation on the accuracy or inaccuracy of that data. Any community risk predictive scores that may be provided in the Cloud Service are based upon these third party sources. IBM does not warrant the accuracy or reliability of such predictive scores.

5.5 IBM Watson Works – Digital Health Pass Additional Terms

5.5.1 Territory Restriction

IBM Watson Works – Digital Health Pass **is only intended for use in the United States**. Any use outside of the United States is subject to IBM's review and approval.

6. Overriding Terms

6.1 Data Use

The following prevails over anything to the contrary in the Content and Data Protection section of the base Cloud Service terms between the parties: IBM will not use or disclose the results arising from Client's use of the Cloud Service that are unique to Client's Content (Insights) or that otherwise identify Client. IBM may however use Content and other information (except for Insights) that results from Content in the course of providing the Cloud Service subject to removing personal identifiers; so that any personal data can no longer be attributed to a specific individual without the use of additional information. IBM will use such data only for research, testing, and development or offering development. See additional terms in Section 5.4.3 above regarding IBM Watson Works – Return-to-Workplace Advisor data use.

6.2 IBM Watson Works – Return-to-Workplace Advisor Warranty

The following prevails over anything to the contrary in the Warranties section of the base Cloud Service terms between the parties:

The use of IBM Watson Works – Return-to-Workplace Advisor is at Client's own risk and the data and other information included in the Cloud Service is provided on an "as is" basis. IBM expressly disclaims any and all liability for use of IBM Watson Works – Return-to-Workplace Advisor by Client or any end user.

IBM Watson Works – Return-to-Workplace Advisor Terms of Use (TOU) and Disclaimer Flowdowns

[For U.S. use only]

Client must provide Terms of Use (TOU) for the Health Check Application to ensure Client obtains necessary permissions from and provides privacy notice(s) to the End User, as required under applicable laws, to allow IBM to provide the Cloud Service. Appendix A is not to be relied upon as a complete list of all the provisions that should be included in the TOU. The TOU must include at a minimum the following provisions:

- Explain that Client has engaged IBM as a third party vendor to provide the Return-to-Workplace Advisor Application and tell the End User what data will be sent to IBM as a vendor to the Client, which may include End User's associated workplace, job role, and name, in order for to provide services to the Client.
- Include a link to Client's privacy notice.
- Describe what personal data will be collected including an individual's positive COVID-19 status, Application use and work pass status (approved, unapproved, unreported) and how the data will be collected, processed, used, and disclosed through the Application, including if any data will be used for any other application or system such as another Watson Works offering.
- Include a clear description that IBM as an authorized service provider can receive and disclose such data through the Application to provide the agreed-upon services, including as applicable, to Client's authorized personnel or third parties for follow up communications, contact tracing, or other service using another application or system.
- Client must make clear to the End User that they are not providing protected health information for health care treatment, payment, or operations (as defined under HIPAA) through the Application, and any information provided to the Application will not be subject to federal U.S. health privacy laws such as HIPAA.
- Client must clearly state that the Applications are provided as is with no warranties and that IBM as a third-party vendor has no liability to the End User.
- Client must include a disclaimer that states that the Application "compiles data provided by multiple third-party sources including state and local public sources; federal public health authorities such as the CDC; published scientific literature; and other public sources. These sources update and report data on various regular and irregular schedules, so from time to time there may be discrepancies between data reported here and data reported by individual sources".
- Client must include content for a disclaimer provided to End Users before they respond to Check-in Questions, which describes:
 - the personal data that will be sent to Client and any authorized third parties from the End User's responses, including an End User's positive COVID-19 status;
 - that de-identified, aggregate data that will be provided to Client for the Health Check Application; and
 - how Client intends to use and share the information, as permitted under applicable laws and this Agreement.
- Client must include a disclaimer that states that the Application "does not diagnose whether end user or other personnel have a disease or other health conditions, including COVID-19, or identify personalized treatments".

Appendix F-1 – Health Participant Use of Portal

The following is a sample of the terms that an individual first accessing the Internet portal to the Digital Health Pass will see:

"This screening website will allow you to confirm a recent negative COVID-19 test result or vaccination status and demonstrate this information to third parties.

To facilitate this confirmation, the website collects your COVID-19 status, and website use-for the sole purpose of your receiving a Excelsior Pass the essential information from you, which may include questions such as: First Name; Last name; Date of Birth; Zip Code; vaccination location or COVID-19 test location; vaccination type or COVID-19 test type; and vaccination date or COVID-19 test date.

Based on this information, the application queries the New York State-hosted database through an interface and returns to you and active or inactive pass.

Your completion of this screening website results in the disclosure of personal information and constitutes your consent to the collection and disclosure of such information by New York State ("NYS") for the purposes of providing your COVID-19 test results or vaccination status, follow up communications, contact tracing, or similar services. The application may be hosted by third parties working with NYS. Certain information you provide to, or that is collected by, the application may be shared with these third parties. These third parties shall limit their use of the information solely to the purposes described, with access only to the results provided and not to the underlying data.

The information you provide will be retained by NYS only for the purposes described herein.

The information you provide may also be subject to any applicable privacy and security laws such as New York State's Internet Security and Privacy Act, Freedom of Information Law, and Personal Privacy Protection Law. NYS may disclose personal information without applicant consent if the collection or disclosure is: (1) necessary to perform the statutory duties of NYS, or necessary for NYS to operate a program authorized by law, or authorized by state or federal statute or regulation; (2) made pursuant to a court order or by law; (3) for the purpose of validating the identity of the applicant; or (4) information to be used solely for statistical purposes that is in a form that cannot be used to identify any particular person. Information collected from you is not subject to disclosure for purposes other than those outlined above without your consent or unless required by law.

Disclaimers

The website:

- *does not diagnose whether you or other individuals have a disease or other health conditions, including COVID-19, or identify personalized treatments;*
- *is not provided to you by a health care provider, so, as such, you are not providing protected health information for health care treatment, payment, or operations (as defined under Health Insurance Portability and Accountability Act (HIPAA));*
- *compiles data provided by multiple third-party sources including state and local public sources; federal public health authorities such as the Centers for Disease Control (CDC); published scientific literature; and other public sources. These sources update and report data on various regular and irregular schedules, so from time to time there may be discrepancies between data reported here and data reported by individual sources; and*
- *is provided "as is" with no warranties provided to you by New York State or its third-party partners.*

By using this website, you are consenting to the disclosure of the information you have provided, consistent with the protections described above and solely for the purposes outlined above, as well as any NYS information confirming your COVID-19 test results or vaccination status, to and among NYS and its commercial and government partners.

Privacy Policy:

Privacy policy link: [Link will be embedded in the screen that the individual accesses]"

Appendix F-2 – Verifier's Use of Scanner Application

The following is a sample of the terms that an entity verifying COVID-19 status will see:

"This Scanner application will allow you to confirm whether an individual meets the criteria established by the New York State Department of Health ("NYSDOH") to enter a venue under the NY State Excelsior Pass Program ("Excelsior Pass Program").

Upon scanning a credential that an individual will display to you, your application will confirm whether that individual meets the NYSDOH criteria. Please note that a negative response on the application does not mean the individual has COVID-19.

In addition to the confirmation, your application will display personally identifying information, which you can verify against identification documents that the individual produces at the venue. Such identifying information may include:

- *Full name*
- *Date of birth*

Individuals who download and install the Excelsior Pass screening application consent to the disclosure of the above identifying information for the strictly limited purpose of a one-time identity verification to confirm whether an individual meets the criteria necessary to enter the venue. As a Scanner, you may only use this information for a one-time identity verification and confirmation that the person meets the criteria. Information may not be used for any other purposes, including, but not limited to, marketing or sales. Information cannot be shared with any third parties, unless explicitly required by law.

Accordingly, no information gained from the Excelsior Pass may be stored in any system of records outside the Scanner application, unless otherwise required by law, regulation, rule, or executive order. Any information required by law, regulation, rule or executive order to be stored outside of the Scanner application must not be used or disclosed for any purposes other than the explicit legally required purpose and must be deleted after 30 days. Such systems must adhere to all industry standards for security, including, but not limited to, the New York General Business Law 899-bb. Any breach of such systems must be reported pursuant to New York General Business Law Section 899-aa. Any misuse of information is grounds for removal of you, your business, and/or or venue from the Excelsior Pass.

If you are setting up the Scanner application on behalf of your company, you must keep records of those employees who had access to the application. Such records must be kept for at least 30 days and must be made available to NYS upon request.

By clicking consent and setting up your Scanner Account, you agree to these Terms and Conditions.

Privacy Policy:

Privacy policy link: *[Link will be embedded in the screen that the entity accesses]"*

Appendix F-3 – Health Participant's Use of Wallet Application

The following is a sample of the terms that an individual using a mobile wallet application for their Digital Health Pass will see:

"This NYS Excelsior Pass application will allow you to display a credential to be scanned by an individual to determine whether you meet the criteria established by the NYSDOH to enter a venue under the NYS State Excelsior Pass Program ("Excelsior Pass").

*Upon displaying your credential, an individual will scan your credential, and their application will confirm whether you meet the NYSDOH criteria. Please note that a **negative response on the application does not mean that you have COVID-19.***

In addition to the confirmation, their application will display your personally identifying information, which they can verify against identification documents that you produce at the venue. Such identifying information may include:

- *Full name*
- *Date of birth*

By downloading and installing the Excelsior Pass application, you consent to the disclosure of the above identifying information for the strictly limited purpose of a one-time identity verification to confirm whether you meet the criteria necessary to enter the venue. The individual who scans your credential may only use this information for a one-time identity verification and confirmation that you meet the criteria. Information may not be used for any other purposes, including, but not limited to, marketing or sales. Information cannot be shared with any third parties, unless explicitly required by law.

Accordingly, no information gained from the Excelsior Pass may be stored in any system of records outside the Application, unless otherwise required by law, regulation, rule, or executive order. Any information required by law, regulation, rule or executive order to be stored outside of the Scanner application must not be used or disclosed for any purposes other than the explicit legally required purpose and must be deleted after 30 days. Such systems must adhere to all industry standards for security, including, but not limited to, the New York General Business Law 899-bb. Any breach of such systems must be reported pursuant to New York General Business Law Section 899-aa. Any misuse of information is grounds for removal of you, your business, and/or or venue from the Excelsior Pass program.

By clicking consent and setting up your Account, you agree to these Terms and Conditions.

Privacy Policy:

Privacy policy link: *[Link will be embedded in the screen that the individual accesses]"*

Appendix G: Safeguarding Federal Tax Information (FTI)

I. PERFORMANCE

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be performed under the supervision of the contractor or the contractor's responsible employees.
- (2) The contractor and the contractor's employees with access to or who use Federal Tax Information¹ (FTI) must meet the background check requirements defined in IRS Publication 1075.
- (3) Any FTI made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.
- (4) All FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any FTI or IRS Data² remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI or IRS Data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (8) No work involving FTI furnished under this contract will be subcontracted without prior written approval of the IRS.
- (9) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (10) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.
- (11) (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of any person to whom FTI is or may be disclosed shall be notified in writing by such person that the FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such FTI for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

¹ Federal Tax Information (FTI) consists of federal tax returns and return information (and information derived from it).

² Data is a representation of facts, concept, information, or instruction suitable for communication, processing, or interpretation by people or information systems.

Appendix G: Safeguarding Federal Tax Information (FTI)

(2) Each officer or employee of any person to whom FTI is or may be disclosed shall be notified in writing by such person that any FTI made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1) provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS Data. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A. (See, IRS Publication 1075: *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See, IRS Publication 1075: *Section 10, Reporting Improper Inspections or Disclosures*). For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process, or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

I have read and received this FTI Appendix

Contractor

Consultant

Appendix H: Estimated Pricing

Cost Summary:

Cost Summary	
Category	Total
a. One Time - Implementation Costs (fixed)	\$2,500,000.00
b. Three (3) year Software Licensing Costs (estimated)	\$12,300,000.00
c. Phase 2 Implementation- Optional Services (estimated)	\$2,181,000.00
Total Cost	\$16,981,000.00

a. Implementation Costs (fixed price deliverables):

#	Deliverable Name	Deliverable Type	Payment Percent (% of Total Implementation Cost)	Deliverable Amount Payable	Target Completion Date
	MVP Deployment		60.0%	1,500,000.00	3/1/2021
1	Develop/Deploy Android Wallet	Activity/Milestone			
2	Rebrand Android Wallet for New York State	Activity/Milestone			
3	Enable Generation of COVID-19 test credentials	Activity/Milestone			
4	Revise/Deploy iOS application (Wallet / Verifier) to support testing credentials	Activity/Milestone			
5	Revise/Deploy Website Portal to support sending of testing credentials	Activity/Milestone			
	Go Live		5.0%	\$125,000.00	3/1/2021
6	MVP Launch (Go Live) and technical support of the Launch event	Activity/Milestone			
	Post-Launch / Hypercare		35.0%	\$875,000.00	3/19/2021
7	Support of defects identified during Launch and Post-Launch through the end of the Scope of Work period	Activity/Document/Milestone			
8	Per resource availability, support development of Release 2 functionality	Activity/Document/Milestone			
	Total:		100.0%	2,500,000.00	

Appendix H: Estimated Pricing

b. Three (3) year Software Licensing Costs

*(*Note: ITS will pay a fixed \$200,000 per month, up to 2 million licenses, and an additional \$.05 per license thereafter, for IBM Digital Health Pass (part numbers D04MUZX and D04MVZX), subject to the cancellation provisions of the contract. Range calculations are for contract value estimation purposes only.)*

Software Licensing				
# Licenses	Price Per User	Licensing Model Term Estimations	(Monthly) Licensing Costs (\$ US)	(Annual) Licensing Costs (\$ US)
1 - 2,000,000	All-Inclusive up to 2 million, \$200,000 monthly fixed	Year 1 (up to 2 Million)	\$200,000.00	\$2,400,000.00
5,000,000	\$200,000 monthly fixed plus 0.05 additional cost per health pass credential recipient over 2,000,000	Year 2 (estimated 5 Million)	\$350,000.00	\$4,200,000.00
7,500,000	\$200,000 monthly fixed plus 0.05 additional cost per health pass credential recipient over 2,000,000	Year 3 (estimated 7.5 million)	\$475,000.00	\$5,700,000.00
>10,000,001	No additional charge over 10,000,000 health pass credential recipients	Year 3 (estimated 10 million) No extra charge	\$600,000.00	Note: Subject to amendment or extension of the Contract. >10m not included in estimated total, beyond initial 3-year contract term.
			Total:	\$12,300,000.00

Digital Health Pass license subscription includes unlimited COVID Testing and COVID Vaccine credential (2 credential types) generation for Digital Health Pass holders through the State of New York.

NYS usage above 2 million health pass recipients will be billed monthly. There will be no additional charges for usage above 10 million COVID Digital Health Pass recipients, not to exceed 20 million pass recipients. For usage between 2M and 10M users, monthly charges shall be based on the number of recipients on the final day of that month.

Use of IBM Digital Health Pass verification service is free without limit for authorized NYS users of one (1) IBM built NYS verifier application. This covers scanning of all NYS-issued COVID health passes as well as use of the IBM built NYS verifier application to scan passes issued by other states participating in the IBM Digital Health Pass network. Additional verification charges apply for customized uses of IBM Digital Health Pass verification service such as integration with ticketing systems or other verifiers not using the NYS verifier application.

Ongoing Maintenance and Support of the IBM Digital Health Pass subscription is included in the subscription cost per the IBM service description. Level 1 support (end user call center support for both pass holders and verification entities) is a NYS responsibility that may be provided by IBM under a separate arrangement and is not part of the Digital Health Pass license subscription. Support for Custom Products developed under this Agreement shall be provided for in a Project Change Request reasonably agreed to by the Parties in accordance with the requirements of Section 5 ("Scope of Work") and other provisions of this Agreement.

Appendix H: Estimated Pricing

c. Phase 2 Implementation- Optional Services (estimated)

Phase 2 Implementation - Optional Service Rates				
		<i>US-Based</i>	<i>US-Based Staffing Center</i>	<i>Global-Based Staffing Center</i>
Position Title	Fully Loaded Hourly Rate DHP Discounted Rate @ 20%	DHP Discounted Rate @ 2%	DHP Discounted Rate @ 20%	DHP Discounted Rate @ 35%
Programmer I	\$103.20	\$126.42	\$103.20	\$83.85
Programmer II	\$144.00	\$176.40	\$144.00	\$117.00
Programmer III	\$195.20	\$239.12	\$195.20	\$158.60
Programmer IV	\$250.40	\$306.74	\$250.40	\$203.45
Programmer V	\$276.00	\$338.10	\$276.00	\$224.25
Analyst II	\$144.00	\$176.40	\$144.00	\$117.00
Analyst III	\$195.20	\$239.12	\$195.20	\$158.60
Analyst IV	\$250.40	\$306.74	\$250.40	\$203.45
Analyst V	\$276.00	\$338.10	\$276.00	\$224.25
Project Manager II	\$164.80	\$201.88	\$164.80	\$133.90
Project Manager III	\$208.00	\$254.80	\$208.00	\$169.00
Project Manager IV	\$263.20	\$322.42	\$263.20	\$213.85
Project Manager V	\$297.60	\$364.56	\$297.60	\$241.80
Specialist III	\$195.20	\$239.12	\$195.20	\$158.60
Specialist IV	\$250.40	\$306.74	\$250.40	\$203.45
Specialist V	\$276.00	\$338.10	\$276.00	\$224.25
Average rate of all titles	\$218.10			
For evaluation purposes only, assume 10,000 hours over 3 years, DHP discounted @ 20%	10,000			
Total Cost for evaluation purposes only	\$2,181,000.00			



Office of Information Technology Services

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

M/WBE AND EEO POLICY STATEMENT

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

M/WBE

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

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

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this EEO statement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work performed in connection with this State contract.

Agreed to this _____ day of _____, 20____

By: _____

Print: _____ Title: _____

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

SIGNATURE PAGE - ITS CONTRACT No. T000685

IN WITNESS WHEREOF, each of the Parties has caused this Contract No. T000685 inclusive of its above appendices and attachments to be executed in its name and behalf by its duly authorized representatives on the day and year appearing below their respective signatures.

International Business Machines Corporation - Federal Tax Identification Number: 13-0871985

SIGNATURE: 

DATE: 3-18-2021

PRINT NAME: JOHN E. MILVANY

TITLE: CLIENT EXECUTIVE


ACKNOWLEDGEMENT OF CORPORATION - MUST BE SIGNED AND ACKNOWLEDGED WITHIN THE UNITED STATES

STATE OF NEW YORK

COUNTY OF SARATOGA

)
) *Scilicet*
)

On this 18th day of MARCH, 2021, before me personally came JOHN E. MILVANY to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the CLIENT EXECUTIVE of International Business Machines Corporation, County of SARATOGA, and that (s)he executed the foregoing instrument in the name of IBM and that (s)he executed the same as the act and deed for the uses and purposes mentioned therein.


Notary Public

NOTARY PUBLIC
Brent Pollak
REGISTRATION NUMBER 01PO6243343
STATE OF NEW YORK
COUNTY OF SARATOGA
MY COMMISSION EXPIRES:
06/20/2023

Agency Certification: "In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this Contract."

NYS Office of Information Technology Services

SIGNATURE: 

DATE: 19 MAR 21

PRINT NAME: Stuart Pook

TITLE: Chief Financial Officer