

Appendix GTC – General Terms and Conditions

Section 1- General Information for All Bidders

As used herein, the “State” shall mean New York State.

Bracketed text [...] around a Section indicates that that Section may be negotiated between the parties at the discretion of NYSDOL.

1.1 Contract Award

Upon receipt of necessary State approvals an award letter will be issued by NYSDOL to the successful bidder advising them of a contract award. A contract defining all deliverables and the responsibilities of the contractor and NYSDOL will then be developed for signature by all parties and for approval and processing in accordance with State policy and practice.

Note: The contract does not become legally binding upon the State until it is **approved and** executed by the New York State Attorney General and the Office of the New York State Comptroller.

1.2 Cost of Proposal Preparation

NYSDOL will not be liable for any costs of work performed in the preparation and production of a proposal, or for any work performed prior to the formal execution of a contract. By submitting a proposal, bidders agree not to make any claims for, or have any right to, damages because of any misunderstanding or misrepresentation of the specifications, or because of any misinformation or lack of information.

1.3 Ownership of Proposals

All proposals and accompanying documentation will become the property of the State of New York and will not be returned. The content of each bidder’s proposal will be held in strict confidence during the bid evaluation process, and no details of the proposal will be discussed or disclosed outside of the evaluation process. The successful bidder’s proposal and a copy of the RFP will be made part of the agreement governing this procurement. Therefore, an official authorized to commit the bidder to a contract must sign the proposal.

1.4 Assurances

Bidder warrants that it has carefully reviewed the needs of the State as described in the RFP, its attachments and other communications related to the RFP and that it has familiarized itself with the specifications and requirements of the RFP and warrants that it can provide such services as represented in bidder's proposal. Bidder agrees that it will perform all of its obligations in the resultant contract in accordance with all applicable Federal, State, and local laws, regulations and policies now or hereafter in effect. Bidder affirms that the terms of the RFP and the attachments do not violate any contracts or agreements to which it is a party, and that its other contractual obligations will not adversely influence its capabilities to perform under the contract.

1.5 Electronic Files or Data

If electronic files are to be exchanged as a part of a proposal, they must conform to agency policy and guidelines.

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1.6 Conflict of Interest

- A. The bidder has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the bidder's performance of the services does not and will not create a conflict of interest with, nor position the bidder to breach any other contract currently in force with the State of New York, that the bidder will not act in any manner that is detrimental to any state project on which the bidder is rendering services.
- B. The bidder hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the bidder's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this agreement. The bidder shall have a duty to notify NYSDOL immediately of any actual or potential conflicts of interest.
- C. In conjunction with any subcontract under this agreement, the bidder shall obtain and deliver to NYSDOL, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The bidder shall also require in any subcontracting Agreement, greater than \$100,000, that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to NYSDOL a signed and completed Vendor Assurance of No Conflict of Interest or detrimental Effect form for each of its subcontractors prior to entering into a subcontract.
- D. NYSDOL and the bidder recognize that conflicts may occur in the future because the bidder may have existing, or establish new, relationships. NYSDOL will review the nature of any relationships and reserves the right to terminate this agreement for any reason, or for cause, if, in the judgment of NYSDOL, a real or potential conflict of interest cannot be cured.

1.7 Freedom of Information Law and Bidder's Proposals

The purpose of New York State's Freedom of Information Law (FOIL), which is contained in Public Officers Law (POL) Sections 84-90, is to promote the public's right to know the process of governmental decision making and to grant maximum public access to governmental records. Thus, a member of the public may submit a FOIL request for contracts awarded by the State or for the proposals submitted to the State in response to Requests for Proposals. After formal contract award, the proposal of the successful bidder and the proposals of non-successful bidders are subject to disclosure under FOIL. However, pursuant to POL Section 87(2) (d), a State agency may deny access to those portions of proposals or portions of a successful bidder's contract which "are trade secrets or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Please note that information which you may claim as proprietary, copyrighted or rights reserved is not necessarily protected from disclosure under FOIL.

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If there is information in your proposal which you claim meets the definition set forth in POL Section 87(2) (d), you must so inform us in a letter accompanying your proposal. **Requests for exemption must specifically identify the information and the section of the proposal that you are claiming meets the definition set forth in POL Section 87(2) (d). Blanket requests for exemption will not be considered.**

1.8 Equal Employment Opportunity (EEO)

By submission of its bid, the bidder warrants that it is an Equal Opportunity Employer and that it does not discriminate in its employment and business practices on any of the bases provided in the New York State Human Rights Law or any applicable federal laws. In addition, the successful bidder will agree to the assurances contained in the attached State and Federal Certifications.

1.9 Responsibility Determination

Article 11 of the New York State Finance Law requires that competitive bids be awarded to responsive and responsible bidders. In order to fulfill this requirement, you must complete the "Responsibility Questionnaire". By signing the bid proposal, you hereby authorize NYSDOL to review any records in its possession concerning your organization including, but not limited to, wage records, UI records, public works records, labor standards, and safety and health records. Based on the responses you provide, the State will determine whether your organization is a responsible bidder. In the event that a bidder is found to be not responsible, the bidder may be disqualified.

If you are disqualified based on a determination of non-responsibility, you will be notified in writing and may appeal the determination in writing within 10 days to NYSDOL. If you fail to identify a violation and NYSDOL discovers the failure to disclose such violation, your contract may be terminated immediately upon written notice.

The State recommends that bidders file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To be considered timely, questionnaires filed online require that the bidder certify the questionnaire no more than six months before the proposal due date. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at <http://www.osc.state.ny.us/vendrep> or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Bidders must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us. Bidders opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

Upon notification of award, the successful bidder may be required to update/recertify the Vendor Responsibility Questionnaire.

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1.10 Lobbying Law-Compliance with State Finance Law §§139-j, 139-k

It is the policy of NYSDOL to employ the best procurement practices as described in the State Finance Law and other applicable statutes. Pursuant to State Finance Law §§139-j and 139-k (the “Lobbying Law”), this solicitation includes and imposes certain restrictions on communications between NYSDOL and a bidder during the procurement process. A bidder is restricted from making contacts from the earliest written notice of intent to solicit offers through final award and approval of the contract resulting from this solicitation by NYSDOL and, if applicable, Office of the State Comptroller (the “restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff for this procurement, as of the date thereof, is identified in Section 1. NYSDOL are required to obtain certain information when contacted during the restricted period for the procurement and to record all contacts during the restricted period.

NYSDOL is also required to make a determination of the responsibility of the bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period the bidder is debarred from obtaining governmental procurement contracts.

As part of the proposal, a bidder is expected to certify that it understands and agrees to comply with NYSDOL’s policy relative to permissible contacts during a governmental procurement pursuant to State Finance Law §139-j (3) and that all information provided to NYSDOL with respect to State Finance Law 139-k is complete, true, and accurate. Attachment “Bidders Affirmation of Understanding and Agreement” is included in this solicitation for this purpose. Failure of a bidder to comply with these provisions may result in the disqualification of the bidder’s proposal.

1.11 Sales Tax Registration Certification Requirement

Tax Law Section 5-a requires certain contractors to certify to the New York State Department of Taxation and Finance (DTF) whether or not the contractor and its affiliates are required to register to collect state sales and compensating use tax. Contractors must also certify to NYSDOL (the procuring agencies) that they have filed the certification with DTF and that it is true and complete. To make these certifications, a contractor must file a properly completed Form ST-220-TD with DTF provided in Attachment ST-220-TD “Contract Certification to New York State Department of Taxation and Finance” and a properly completed Form ST-220-CA provided in Attachment “Contractor Certification to Covered Agency” with NYSDOL. These requirements must be met before the contract can take effect.

A copy of Form ST-220-CA and the instructions for completing this form are attached to this RFP. If selected, the bidder will then be required to submit an original notarized ST-220-CA to NYSDOL. Bidders may call the New York State Department of Taxation and Finance at (518) 485-2889 for any and all questions regarding Tax Law Section 5-a. For additional information, please refer to Publication 223, Questions and Answers Concerning Tax Law Section 5-a (as amended, effective April 26, 2006), available at www.tax.ny.gov.

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The contractor's certification will be incorporated into the contract resulting from this RFP. If, during the term of the contract, the State discovers that a certification is false, such false certification will constitute a material breach of the contract and may, in the discretion of NYSDOL, result in contract termination.

1.12 Consultant Disclosure Legislation

In accordance with State Finance Law §§ 8, 22 and 163 as amended by Chapter 10 of the Laws of 2006, State contractors must disclose, by employment category, the number of persons employed to provide services under the contract, the number of hours worked, and the amount paid to contractor by NYSDOL as compensation for work performed by each employment category of employees. This will include information on any persons working under any subcontracts with contractor.

The State reserves the right to terminate any contract executed pursuant to this RFP in the event it is found that the Consultant Disclosure forms filed by contractor in accordance with State Finance Law were intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to contractor in accordance with the written notification terms of the contract.

By submitting a bid, the bidder certifies that all information provided to the State pursuant to State Finance Law § 163, as amended by Chapter 10 of the Laws of 2006, is complete, true, and accurate. Form A must be completed and returned by the ***successful*** bidder as part of the contract submission. ***Form B*** must be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). The successful bidder understands that they must file Form B, annually by May 15, with NYSDOL, the Department of Civil Service, and the Office of the State Comptroller.

1.13 Electronic Payments

Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the State, in the State's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Statewide Financial System's (SFS) website esupplier.sfs.ny.gov, by email at epunit@osc.state.ny.us, or by telephone at **1-866-370-4672**. Contractor acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

1.14 Reservation Clauses

- A. NYSDOL, in order to serve the best interests of the State, reserve the right to:
 - 1. Postpone or cancel this RFP upon notification to all bidders;

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2. Amend the specifications after their release with appropriate notice to all bidders;
 3. Request bidders to present supplemental information clarifying their proposal, either in writing or in formal presentation;
 4. Waive or modify minor irregularities in proposals received after prior notification to the bidder;
 5. Adjust or correct any arithmetic errors in the cost proposal, and correct typographical errors upon written notice to and with the concurrence of the bidder if errors exist in the proposal; and/or
 6. Accept all or part of a bidder's proposal in selecting the optimum approach.
 7. In the event a bidder fails to submit required legal/regulatory documents, attachments, and/or appendices, NYSDOL reserves the right to contact the bidder and request submission of missing mandatory documentation.
- B. NYSDOL also reserves the right to evaluate and/or reject any and all proposals received in response to this RFP, in whole or in part, and to waive immaterial technicalities, irregularities and omissions if such action is considered to be in the best interest of the State, including:
1. Contact bidders' references as a check on qualifications;
 2. Award the contract to other than the lowest bidder;
 3. Award contracts to more than one bidder;
 4. Negotiate with selected bidder prior to contract award;
 5. Negotiate with the next highest rated bidder if negotiating a contract with the selected bidder(s) cannot be accomplished within ~~30 days a reasonable period of time as solely determined by NYSDOL; however, the State reserves the right to extend for another period of 15 days (no bidder will have any rights against the State arising from such negotiations);~~
 6. Disqualify any bidder based on information brought to the attention of the State for false information or for omission of material information;
 7. Disqualify any bidders that are determined not to be responsive or responsible;
 8. Disqualify incomplete proposals or any bidder whose proposal fails to conform to RFP requirements;
 9. Reissue a modified version of this RFP. With regard to all modifications, clarifications, or revisions to this RFP which the State reserves the right to issue, any such modification issued on or before the due date for proposals shall go to all entities which have requested a copy of this RFP; after that date (or an amended date, as the case may be), notification will be only to bidders who have submitted proposals. Please note that the State's right to issue modifications, clarifications or revisions permits any addition or deletion of requirements as the State may deem appropriate, subject only to the bounds set forth in the Contract Reporter issuance;
 10. Amend the specifications contained herein after their release. In the event of such

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an amendment, all competing bidders will be notified in writing and any modified schedules will also be published in the New York State Contract Reporter website;

11. Eliminate any requirement(s) unmet by all bidders upon notice to all parties submitting proposals;
12. Alter any schedules or dates specified in this RFP to accommodate changes in existing conditions. In the event of such an amendment, all competing bidders will be so notified in writing;
13. Make any payment contingent upon the submission of specific deliverables; and
14. Require that all offers are held open for a period of 120 days unless otherwise expressly provided for in writing.

1.15 Debriefing/Protest Procedures

A. Scope

These procedures advise unsuccessful bidders how they may request a debriefing regarding the review conducted by NYSDOL of the bidder's proposal, or to file a protest challenging the award of a procurement contract by NYSDOL to another bidder. These procedures are issued so that:

1. Bidders are adequately notified of the process for: requesting a debriefing on the proposal they submitted, and/or filing a protest to challenge the award of a procurement contract to another bidder; and
2. NYSDOL can provide a timely response to such requests.

B. Policy

It is NYSDOL policy to employ the best procurement practices in support of agency operations and in accordance with applicable statute. This requires protecting the interests of taxpayers and promoting fairness in the procurement contracting process. To this end, an unsuccessful bidder shall be provided an opportunity to request a debriefing on its submitted proposal and to protest NYSDOL's award of a procurement contract to another bidder.

C. General Requirements

NYSDOL shall notify all bidders as to whether they are successful or unsuccessful with respect to a particular procurement for which they have submitted a bid or proposal. Any solicitation issued by NYSDOL with respect to a contract award shall include a notice that an unsuccessful bidder may request a debriefing regarding its submitted proposal and/or protest the contract award. Such notice shall advise that such request for a debriefing or protest shall be filed with NYSDOL contact person designated in the solicitation.

D. Procedure to Request a Debriefing

Upon request **and in accordance with State Finance Law §163(9)(C)**, NYSDOL will provide an unsuccessful bidder with an opportunity for a debriefing as to the process

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used in NYSDOL procurement or as to why its bid or proposal was unsuccessful.

In light of the restrictions on “contacts” under the Procurement Lobbying Law (State Finance Law §139-j) where appropriate, any request for a debriefing must be made to NYSDOL designated contact person for the procurement in question.

1. The unsuccessful bidder must request a debriefing within fifteen (15) business days of the date of notice of ~~the contract award~~ non-selection. (Note: In the event of a single/sole source or emergency contract, the notification will appear on the agency website.)
2. NYSDOL designated contact will coordinate an informal debriefing and respond within five (5) business days, with an explanation as to why the bidder was unsuccessful, in an effort to assist the bidder toward future success in competition. This information may include ranking of the bidder in technical and cost scoring. Note: Where a bidder is disqualified due to the failure to meet submission deadlines or mandatory requirements as stated in the solicitation, the debriefing will consist of an explanation of the circumstances of the disqualification.
3. Upon receipt of this information, the unsuccessful bidder may request a further debriefing/meeting to address specific bidder concerns. The unsuccessful bidder must request this further debriefing within five (5) business days of NYSDOL's initial debriefing response.

E. Procedure to Protest the Award of a Procurement Contract by NYSDOL

A participant in the procurement process or a party foreclosed from such participation by the actions of NYSDOL may file a formal written protest to challenge a contract award with NYSDOL in accordance with the procedures specified below.

1. Submission of Bid or Award Protests:

a) Deadline for Submission

i. Concerning Errors, Omissions, or Prejudice in the Bid Specifications:

A formal written protest concerning the drafting of the bid specifications must be received by NYSDOL at least ten (10) business days prior to the date set in the solicitation for the receipt of bids/proposals, unless the solicitation document stipulates otherwise. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, written protests concerning the specifications must be received by NYSDOL at least three (3) business days before the time designated in the solicitation for the receipt of bids.

ii. Concerning Proposed Contract Award:

A formal written protest to challenge a contract award must be received by NYSDOL within fifteen (15) business days of the date of notice of the contract award.

b) Transmittal

All protests must be submitted in writing to NYSDOL contact designated in

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the solicitation. The following statement must be clearly and prominently displayed on the envelope or package; the subject line, if sent by e-mail; or, if sent by facsimile transmission, on the fax cover sheet: “Bid Protest of NYSDOL Solicitation (RFP/Bid#)”.

c) Content

The protest must be in writing and include:

- i. A statement of all factual and/or legal grounds which form the basis for disagreement with a specification or a procurement determination;
- ii. A description of all remedies or relief requested; and
- iii. Copies of all applicable supporting documentation.

2. Review and Determination:

- a) NYSDOL will issue a response to a protest concerning errors, omissions, or prejudice in the bid specifications within three (3) business days after receipt of the protest.
- b) NYSDOL will issue a response to a protest concerning a contract award within five (5) business days after receipt of the protest.
- c) Protests shall be resolved through correspondence; however, NYSDOL may, in its sole discretion, request a meeting or conference call to discuss a written protest.
- d) NYSDOL shall send a copy of the decision to the protester or its agent.

3. Reservation of Rights and Responsibilities of NYSDOL

- a) Nothing shall preclude NYSDOL from obtaining additional information relevant to making its determination from the unsuccessful bidder, the successful bidder, or any other source NYSDOL deems appropriate.
- b) NYSDOL may, in their sole discretion, waive any deadline or requirements set forth in these procedures, or consider any materials submitted in writing, beyond the time period set forth herein.
- c) NYSDOL shall include the protest and its determination thereon in the procurement record relevant to the bid being protested.
- d) Nothing herein shall preclude NYSDOL from negotiating the terms and conditions of the contract with the successful bidder during the time period in which a protest may be filed, or during the resolution of a pending protest.

F. Appeal to the Office of the State Comptroller

If the unsuccessful bidder is not satisfied with NYSDOL’s determination on its protest, such bidder may appeal NYSDOL’s determination by filing a written appeal within ten (10) business days of its receipt of NYSDOL’s protest determination with the Office of the State Comptroller, in accordance with New York State Office of the State Comptroller Procurement and Disbursement Bulletin G-232 and OSC Contract Award Protest Procedures. These Contract Award Protest Procedures apply to all contracts subject to

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OSC approval under State Finance Law §112, or that is otherwise submitted to OSC for approval.

1.16 Certifications to Sexual Harassment Prevention

Pursuant to NY State Finance Law §139-l, all bidders must certify to implementing a sexual harassment prevention policy and training that complies with NY Labor Law § 201-g.

In order to comply with NY Labor Law § 201-g, bidders must implement sexual harassment prevention policy and training that complies, at a minimum, with NYS Department of Labor's model sexual harassment prevention policy and training.

The NYS Department of Labor's model sexual harassment prevention policy and training may be accessed at: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to NY State Finance Law §139-l, each bidder must be able certify to the following statement if awarded the contract: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law."

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Section 2- General Information for Successful Bidder

If the bidder is awarded a contract as a result of this RFP, the bidder will be required to accept all of the following as part of the contract. These terms are not negotiable – bidders may not set forth objections to these terms in their proposal, **except as explicitly set forth herein.**

2.1 Contract Amendment

Any changes to the contract awarded based on this RFP must be in writing with the mutual consent of both parties. All changes to the services and fees set forth in the RFP must be initiated through a written amendment agreed upon by the successful bidder and NYSDOL. Any and all changes to the contract are subject to the approval of the New York State Office of the State Comptroller.

2.2 Compliance with New York State Policy and Law – Appendix A

All work conducted under the contract must be in compliance with the procedures set forth in this RFP under the General Terms and Conditions. In addition, the successful bidder must agree to the terms specified in the document entitled “**Appendix A**, Standard Clauses for all New York State Contracts.” The State does not allow any modifications to this document. **Appendix A** will be incorporated, in its entirety, into any contract resulting from this RFP.

2.3 Electronic Files or Data

If electronic files are to be exchanged as a part of the contract, they must conform to agency requirements, policy and guidelines.

2.4 Prompt Payment Provisions

The payment of interest on certain payments due and owed by the State may be made in accordance with the criteria established in Article XI-A of the State Finance Law.

2.5 Travel

For approved contracts that permit the reimbursement of travel expenses, the successful bidder shall only be reimbursed for mileage, lodging, and meals (if applicable) to the extent authorized by the NYS Office of the State Comptroller.

2.6 Minority and Women-Owned Business Enterprise and Equal Employment Opportunity Participation and Service-Disabled Veteran-Owned Businesses Participation

SEE APPENDIX MWBE – MWBE/EEO Requirements and Procedures

SEE APPENDIX SDVOB – SDVOB Requirements and Procedures

2.7 Insurance

Following contract award, and prior to the commencement of the work to be performed by the contractor hereunder, the contractor shall procure at its sole cost and expense, and shall

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maintain in force at all times during the term of this contract, policies of insurance as herein set forth below, **or their reasonable equivalent as determined by NYSDOL**, written by companies authorized or licensed by the New York State Department of Financial Services to issue insurance in the State and with an A.M. Best Company rating of at least “A-,” “Class VII” as set forth in the most recently published Best’s Insurance Report. If during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance must be replaced no later than the renewal date of the policy with an insurer rated at least “A-,” “Class VII” in the most recently published Best’s Insurance Report.

The contractor shall deliver to NYSDOL evidence of such policies in a form acceptable to NYSDOL. These policies must be written in accordance with the requirements herein, as applicable. Acceptance and/or approval by NYSDOL do not and shall not be construed to relieve contractor of any obligations, responsibilities or liabilities under the contract.

General Conditions

- A. **Conditions Applicable to Insurance.** All policies of insurance required by this contract must meet the following requirements:
1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the contractor are specified in Paragraph B, *Insurance Requirements*, below.
 2. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by NYSDOL, policies must be written on an occurrence basis.
 3. **Certificates of Insurance/Notices.** Prior to the commencement of the work to be performed by the contractor hereunder, the contractor must file with The People of the State of New York, NYSDOL, Certificates of Insurance evidencing compliance with all requirements contained in the contract. Such certificates must be of form and substance acceptable to NYSDOL. Thereafter, contractor shall provide such Certificates within three (3) business days of request. Certificates shall reference the contract number. **ALL OF THE FORMS, EXCEPT CE-200, SI-12 & DB-155, MUST NAME:** The People of the State of New York and New York State Department of Labor, Harriman State Office Campus, Bldg. 12, Room 454, Albany, New York 12240. (Each entity being listed as a Certificate Holder) Certificates shall be submitted to the lead agency, NYS Department of Labor, Attention: Purchase and Contracts, Harriman State Office Campus, Bldg. 12, Room 454, Albany, New York 12240.
 - a) Unless otherwise agreed to, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice, except for non-payment, which notice shall be provided as required by law to NYSDOL, evidenced by return receipt of United States Certified Mail. 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 period of time such coverages are required to be in effect. Not less

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than thirty (30) days prior to the expiration date or renewal date, the contractor shall supply NYSDOL updated replacement Certificates of Insurance, and amendatory endorsements.

- b) Certificates of Insurance shall:
- i. Be in the form approved by NYSDOL.
 - ii. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
 - iii. Specify the Additional Insureds and Named Insureds as required herein.
 - iv. Refer to the contract by number and any other attachments on the face of the certificate, and
 - v. Be signed by an authorized representative of the insurance carrier or producer.
4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to NYSDOL for any claim arising from the contractor's work under this contract, or as a result of the contractor's activities. Any other insurance maintained by NYSDOL shall be excess of and shall not contribute with the contractor's insurance regardless of the "other insurance" clause contained in NYSDOL's own policy of insurance.
5. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to NYSDOL than the expiring policies shall be delivered to NYSDOL in the manner required for service of notice in Paragraph I.3. *Certificates of Insurance/Notices* above. 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 the contract or proof thereof is not provided to NYSDOL, the contractor shall immediately cease work. The contractor shall not resume work until authorized to do so by NYSDOL. Any delay, time lost, or additional cost incurred as a result of the contractor not having insurance required by the contract or not providing proof of same in a form acceptable to NYSDOL, shall not give rise to a delay claim or any other claim against NYSDOL. Should the contractor fail to provide or maintain any insurance required by this contract, or proof thereof is not provided, NYSDOL may withhold further contract payments, treat such failure as a breach or default of the contract.
6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from NYSDOL. The contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention. The contractor must be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject.

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7. **Subcontractors.** Should the contractor engage a Subcontractor, the contractor shall require all Subcontractors, prior to commencement of an agreement between contractor and the Subcontractor, to secure and keep in force during the term of this contract the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to NYSDOL.

8. **Additional Insured.** For all insurance required by the contract, except for Workers Compensation, Disability or Professional Liability coverage, the contractor shall cause to be included in each of its policies Insurance Service Officer (ISO) form CG 20 10 11 85 (or a form or forms that provide equivalent coverage) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insureds: The People of the State of New York, the New York Department of Labor, 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 NYSDOL following contract award and prior to commencement of the work to be performed by the contractor hereunder, and thereafter upon renewal and/or within three (3) days of 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 insured in the same manner that contractor would have been required to pursuant to this section had contractor obtained such insurance policies.

As clarification, “The People of the State of New York” means the State of New York and its subsidiary governmental entities. This is the name in which the State, as a governmental entity, enters into contracts, takes title to property, and initiates legal actions. Using the term “People” does not mean that the insured is insuring all residents of New York State; rather, it means that the State government is being insured.

By requiring insurance, the State does not represent that certain coverage and limits will necessarily be adequate to protect the contractor and such coverage limits shall not be deemed a limitation on the contractor’s liability to the state under the Contract Agreement.

9. **Waiver of Subrogation.** Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer’s right of subrogation against NYSDOL, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if contractor waives or has waived before the casualty, the right of recovery against NYSDOL or (ii) any other form of permission for the release of NYSDOL. The contractor shall provide a Waiver of Subrogation Endorsement upon tentative award and within three (3) days of request.

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Waiver of Subrogation Endorsement. The CGL aggregate shall be endorsed to apply on a **per project basis** for contracts. Policies shall be endorsed to name The People of the State of New York, the New York State Department of Labor, as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respect to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with, any other insurance maintained by NYSDOL. Any other insurance maintained by NYSDOL shall be excess of and shall not contribute with the contractor’s or subcontractor’s insurance, regardless of the “Other Insurance” clause contained in either party’s policy of insurance.

10. **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 upon request.
11. **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 People of the State of New York, NYSDOL, 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.
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 NYSDOL with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of the contract.

B. Insurance Requirements

The contractor must cause all insurance to be in full force and effect as of the commencement date of this contract and to remain in full force and effect throughout the term of this contract and as further required by this contract. **As further required by this contract, Products - Completed Operations coverage will be maintained for a period of not less than 3 years from the time this contract is completed or through the end of the manufacturers stated warranty period whichever is later.** The contractor must not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

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The contractor, throughout the term of this contract, or as otherwise required by this contract, 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 (limits may be provided through a combination of primary and umbrella/excess policies):

1. **Commercial General Liability Insurance** with a limit of not less than ~~\$2,000,000~~ **\$5,000,000** for each occurrence. Such liability shall be written on the ISO occurrence form **CG 00 01 01 96**, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.
 - a) For construction contracts only, if such insurance contains an aggregate limit, it shall apply separately on a per job basis.
 - b) Policy shall include bodily injury, property damage and broad form contractual liability coverage.
 - c) General Aggregate \$5,000,000
 - d) Products – Completed Operations Aggregate \$2,000,000
 - e) Personal and Advertising Injury \$1,000,000
 - f) Coverage shall include, but not be limited to, the following:
 - i. premises liability;
 - ii. independent contractors;
 - iii. blanket contractual liability, including tort liability of another assumed in a contract;
 - iv. defense and/or indemnification obligations, including obligations assumed under this contract;
 - v. cross liability for Additional Insureds;
 - vi. products/completed operations for a term of no less than 5 years, commencing upon acceptance of the work, as required by the contract; and
 - vii. contractor means and methods.
 - g) The following ISO forms must be endorsed to the policy:
 - i. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
 - ii. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)

C. Business Automobile Liability

Commercial Auto Liability insurance covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy

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shall have a combined single limit for Bodily Injury and Property Damage of at least \$1,000,000 and shall name NYSDOL as additional insured. The limits may be provided through a combination of primary and umbrella/excess liability policies.

D. Professional Liability

The Professional and any professional sub-consultant retained by the Professional to work on the Contract shall procure and maintain during and for a period of three (3) years after completion of this Contract, Professional Liability Insurance in the amount of \$1,000,000 issued to and covering damage for liability imposed on the Professional by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract. The professional liability insurance may be issued on a claims-made policy form, in which case the Professional shall purchase at its sole expense, with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

If applicable, the Professional shall provide coverage of the Professional's negligent act, error or omission in rendering or failing to render professional services required by this Contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants.

E. Technology Errors and Omissions Insurance

Contractor and any subcontractor retained by the contractor to work on the contract shall procure and maintain during, and for a period of three (3) years after completion of the contract, Technology Errors and Omissions Insurance in the amount of \$5,000,000 for each claim, and \$10,000,000.00 in aggregate for claims for damages arising from computer related services including the following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer hardware or software developed, manufactured, distributed, licensed, marketed or sold. The Technology Errors and Omissions Insurance may be issued on a claims-made policy form, in which case the contractor shall purchase at its sole cost and expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

F. Cyber Liability Insurance

Contractor and any subcontractor retained by the contractor to work on the contract shall procure and maintain during, and for a period of three (3) years after completion of the contract, Cyber Liability Insurance for claims and losses with respect to network or data risks (such as data breaches, release of confidential information, unauthorized access/use of Information, and identity theft) with minimum limits of not less than \$5,000,000 for each claim, and \$10,000,000 in aggregate. The Cyber Liability Insurance may be issued on a claims-made policy form, in which case the Vendor shall purchase at its sole cost and expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.]

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2.8 Workers' Compensation Law

Compliance with requirement for workers' compensation and disability benefits insurance coverage: After receipt of contract award letter, successful bidder **must** provide NYSDOL with proof of compliance with workers' compensation and disability insurance coverage requirements set forth in Sections 57 and 220(8) of the Workers' Compensation Law.

To comply with the coverage provisions of Section 57 businesses must be legally exempt from obtaining workers' compensation insurance coverage; or obtain such coverage from insurance carriers; or be self-insured or participate in an authorized group self-insurance plan. Successful bidder **must** provide one of the following forms to the Department:

- **C-105.2** Certificate of workers' compensation insurance (business' insurance carrier should be able to provide this form to NYSDOL)
- **SI-12** Certificate of workers' compensation self-insurance or Form GSI-105.2 Certificate of Participation in Workers' Compensation Group Self-Insurance (business contacts the Workers Compensation Board's (WCB) self-insurance office at 518-402-0247)
- **GSI-105.2** Certificate of participation in workers' compensation group self-insurance or **Form U-26.3** issued by the State Insurance Fund (business' group self-insurance administrator should be able to provide this form to NYSDOL).
- **CE-200** Certificate of Attestation of Exemption, which replaces Form WC/DB-100 for applicants seeking exemptions starting on Dec. 1, 2008 (available at:

<http://www.wcb.ny.gov>

To comply with the coverage provisions of Section 220(8) businesses may be legally exempt from obtaining disability insurance coverage; obtain such coverage from insurance carriers; or be self-insured. Successful bidder **must** provide one of the following forms to NYSDOL:

- **DB-120.1** Certificate of disability benefits insurance, or
- **DB-155** Certificate of disability benefits self-insurance (business contacts the WCB's self-insurance office at 518-402-0247).
- **CE-200** (noted above).

Contracts will not be forwarded to the successful bidder until they have provided NYSDOL with proof of compliance with workers' compensation and disability insurance coverage requirements set forth above.

2.9 Publicity

Publicity includes, but is not limited to, news conferences, news releases, advertising, brochures, reports, discussions and/or presentations at conferences or meetings. The inclusion of agency materials, agency name(s), or other such reference to New York State and/or NYSDOL in any document or forum is considered publicity. News releases or any other public announcements regarding this project may not be released without prior approval from NYSDOL.

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2.10 Americans with Disabilities Act (ADA)

The successful bidder must comply with all applicable requirements of the Americans with Disabilities Act (ADA), codified at Title 42 of the United States Code, Section 12101 et seq., the ADA Amendments Act of 2008 (ADAAA), (Pub.L. 110-325, effective January 1, 2009) and associated regulations, including, but not limited to, those located in 28 C.F.R. Part 36. The successful bidder must comply with all applicable requirements of the New York State Human Rights Law, codified in the Executive Law Sections 290 to 301 and applicable regulations implemented pursuant to that law. The successful bidder must warrant to NYSDOL that the successful bidder is in compliance with both the ADA and its regulations and the New York State Human Rights Law and its regulations.

Any products developed as a result of this RFP must be in a format that can be converted for use by individuals with disabilities to meet the reasonable accommodation standards established by the ADA and ADAAA, and any applicable regulations.

2.11 Remedies for Breach

It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law. In the event of contractor's material breach, which remains incurred for more than thirty (30) days after written notice to the contractor, the Commissioner may pursue any of the actions in "A" through "D" below:

A. Cover/Substitute Performance

In the event of contractor's material breach, the Commissioner may, with or without formally bidding same:

1. Purchase from other sources; or
2. If, after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement product of equal or comparable quality, the Commissioner is unsuccessful, the Commissioner may acquire replacement of lesser or greater quality.

Such purchases may, in the discretion of the Commissioner, be deducted from the contract quantity and payments due contractor.

B. Withholding of Payment(s)

In any case where a question of non-performance by contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

C. Reimbursement of Costs Incurred

The contractor agrees to reimburse NYSDOL promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the contract price, the contractor shall have no claim to the difference. The contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the contractor, all costs and expenses expended or incurred by NYSDOL in connection therewith, including

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reasonable attorney's fees, shall be paid by the contractor.

D. Deduction/Credit

Sums due as a result of these remedies may be deducted or offset by NYSDOL from payments due, or to become due, the contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the contractor shall pay to NYSDOL the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution and/or liquidated damages, which arise from the administration of the contract.

2.12 Outstanding Liabilities

All outstanding liabilities and UI contributions, if any, due to NYSDOL from the contractor, or from contractor's partners, officers, agents or Subcontractors engaged in providing services under the contract other than contributions being contested by any such party, must be satisfied prior to contract execution or a payment schedule arranged for timely satisfaction of such outstanding liabilities.

2.13 Public Officers Law and Ethics Requirements

"No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party, chairman or firm or Association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law."

A State officer or employee may not solicit, accept or receive a gift of more than nominal value from, among others, any person or entity registered as a lobbyist or a client. New York Public Officers Law §73(5). It is also unlawful for a registered lobbyist or client to offer or provide such a gift to a public official. New York Legislative Law §1-m. Gifts of any value cannot be solicited, accepted or received, if doing so would constitute or create a conflict or appearance of such a conflict with the proper discharge of the employee's duties. It is the Department of Labor's policy not to accept anything, regardless of the value. Please be advised that offering, providing, soliciting, accepting or receiving complimentary attendance to certain kinds of events, such as receptions at which hors d'oeuvres or alcoholic beverages are served, may constitute a violation of the Legislative Law and/or the Public Officers Law provisions with respect to unlawful gifts." Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law §73(8), former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their

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separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a “lifetime bar” from appearing before the 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 State Agency or Authority.

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 New York Public Officers Law, 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.

2.14 Independent Contractor

It is understood and agreed that the legal status of the contractor, its agents, officers and employees and/or subcontractors under this contract is that of an independent contractor, and in no manner shall they be deemed employees of the State, and therefore are not entitled to any of the benefits associated with such employment. 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 UI, and to provide the State with certification of such insurance upon request. The contractor remains responsible for all applicable federal, state and local taxes, and all Federal Insurance Contribution Act (FICA) contributions.

2.15 Non-Waiver

The failure by NYSDOL to require performance of any provision of the resultant contract shall not affect NYSDOL’s right to require performance at any time thereafter, nor shall a waiver of

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any breach or default of the resultant contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

2.16 Vendor Responsibility

A. General Responsibility

The contractor shall at all times during the contract term remain responsible. The contractor agrees, if requested by the NYSDOL Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

B. Suspension of Work (for Non-Responsibility)

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

C. Termination (for Non-Responsibility)

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

2.17 Integration, Merger & Order of Precedence

This bid and any resultant contract shall incorporate by reference the following documents as if set forth herein at length and constitute the entire Agreement between parties.

In the event of any discrepancy, disagreement or ambiguity between this Agreement and any Appendices, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

- A. Appendix A
- B. This Agreement including all Appendices, Attachments, and Exhibits
- C. RFPs including Questions and Answers and all Appendices, Attachments, Exhibits, and Certifications
- D. The successful bidder's proposal (subject to bidder's withdrawal of any and all proposed mark-ups to the draft contract contained within the proposal)
- E. Negotiated banking services schedules, if any.

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The parties understand and agree that any and all deviations or exceptions taken by contractor to the Department's RFP are hereby withdrawn except only to the extent that such exceptions or deviations have been explicitly incorporated into this Agreement.

2.18 Primary Contractor

The State requires that the contract for the services addressed in this RFP be issued to one primary contractor. This contractor shall be responsible for the development, implementation and maintenance of all services in this contract offer. The bidder must identify all other service providers and equipment manufacturers being used to meet contractual obligations. As the prime contractor, it will be the responsibility of the successful bidder to maintain those services and equipment, if applicable, and to be the sole point of contact with such manufacturers and service providers with respect to contractual obligations. All contractors must be aware of, and apply, the requirements of the Omnibus Procurement Act of 1992 shown in **Appendix A** of this RFP.

2.19 Subcontracting

The contractor's use of subcontractors shall not diminish the contractor's obligations to complete the work in accordance with the contract. The contractor shall control, coordinate and be responsible for the work of subcontractors. The contractor shall be responsible for informing subcontractors by written contract of the terms, conditions and requirements of the contract. The State reserves the right to approve all subcontractors prior to their assumption of duties on behalf of the contractor.

2.20 Dispute Resolution

The parties will endeavor in good faith to resolve any disagreement between them. The contractor and the State agree to use the following procedure to review their performance or to resolve disputes. **The State reserves the right to include the State of New York Office of the State Comptroller in any discussions and/or communications that relate to items A through D, below, in connection with any disputes between the parties.**

- A. Problems which cannot be solved by supervisory staff will be set down in writing and submitted to the designated State and contractor representatives for resolution.
- B. Disputes which cannot be resolved by the designated State and contractor representatives will be resolved by the Commissioner of the Department of Labor, or the Commissioner's designee.
- C. If the contractor does not agree with the findings of the Commissioner of the Department of Labor, or the Commissioner's designee, the contractor may pursue any legal or equitable remedies it may have.
- D. During the course of the disagreement, or if the contractor pursues any legal or equitable remedy outside the State, it will continue to provide services according to the contract until such proceedings are concluded, provided the State continues to make the required payments under the contract.

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2.21 Patent and Copyright Infringements

The contractor must fully indemnify, defend and save harmless the State, its officers, employees, and agents, from and against any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses), arising out of or related to any claim of, or action for, infringement of a patent, or of any copyright, trademark, trade secret or other third party intellectual property rights in each case to the extent caused by intellectual property provided by or through contractor and used to perform the services, without limitation. The foregoing provisions of this paragraph will not apply to the State's misuse or modification of such intellectual property, the State's failure to use corrections or enhancements made available by the contractor; the State use of the intellectual property in combination with any product or information not provided by the contractor, where such misuse, modification or combination gives rise to the infringement. The State will give the contractor:

- A. Prompt written notice of any action, claim or threat of infringement suit, or other suit;
- B. The opportunity to take over, settle or defend such action, claim, or suit at the contractor's sole expense; and
- C. Assistance in the defense of any such action at the expense of the contractor.

In the event that an action at law or in equity is commenced against the State or NYSDOL arising out of the performance of this Agreement by the contractor, its officers, partners, employees, subcontractors, or agents and if the 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 herein, the contractor, after receiving notice of such action, must immediately notify the State, in writing, specifying to what extent the contractor believes it is obligated to defend and indemnify under the terms and conditions of this Agreement.

2.22 [General Indemnification and Liability Terms

- A. Neither the contractor, nor the State shall be liable for any delay or failure in performance beyond its control resulting from acts of war, hostility or sabotage; act of God; electrical, internet, or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. If such event continues for more than ninety (90) days, either party may terminate all or any agreed upon portion of the service(s) immediately upon written notice. This Article does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures, or the State's obligation to pay for service(s) provided by the contractor which have been approved by the State.
- B. The contractor shall be fully liable for any act or omission of the contractor, its employees, subsidiaries, affiliates, partners, agents and subcontractors, and shall fully indemnify, defend and hold harmless the State, their officials, agents and employees, without limitation, from suits, actions, damages and costs of every name and description (including reasonable attorney's fees and expenses) arising from personal injury (including wrongful death) and/or damage to real or tangible personal property (including

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electronic systems, software, and databases) caused by act or omission of the contractor, its employees, subsidiaries, affiliates, partners, agents or subcontractors; provided, however, that the contractor shall not be obligated to indemnify the State for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

The State shall give the contractor:

1. prompt written notice of any action, claim, suit, proceeding, or threat of such action relating to the agreement;
 2. the opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at contractor's sole expense; and
 3. reasonable assistance in the defense of any such action at the expense of contractor.
- C. For all other claims, liabilities, and expenses arising under or related to the agreement where liability is not otherwise set forth in the agreement as being without limitation, and regardless of the basis on which the claim is made, the contractor shall be fully liable for any act or omission of the contractor, its employees, subsidiaries, affiliates, partners, agents or subcontractors. Such liability by contractor for direct damages under this Agreement shall not exceed, in aggregate, the greater of **twice** the dollar amount of this Agreement, or **five (5) ~~two (2)~~** times the charges paid to the contractor as of the date the claim arose. Unless otherwise specifically stated herein, neither party shall be liable for consequential, indirect, punitive, special, or economic consequential damages, even if such party has been advised of the possibility of such damages.]
- D. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings, even if such party has been advised of the possibility of such damages.
- E. The State may, in addition to other legal remedies available to it, retain from amounts otherwise due contractor such money as may be necessary to satisfy any indemnified claim for damages and the like asserted against contractor.]

2.23 General Confidentiality, Non-Disclosure, Information Security, Ownership, and Security

A. Definition

The term "Confidential Information" shall mean any and all information which is accessed, disclosed by either party ("Owner") to the other ("Recipient") verbally, electronically, visually, or in written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).

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B. Treatment of Confidential Information

Owner's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than those in this Section and who have a justified business "need to know." This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law provided notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.

C. Confidentiality of UI and Tax Information

The contractor must comply with all confidentiality provisions of the New York State Labor Law and the New York State Tax Law governing the confidentiality of State UI and tax information, and with all New York State Department of Labor and/or New York State Department of Tax and Finance rules, policies and procedures implementing such provisions (see e.g., Labor Law Section 537 and Tax Law Section 697) and other applicable laws.

1. All information about the State's UI benefit operations not covered by the State confidentiality rules described above must be kept confidential as if such information was so covered.
2. The contractor must cause all officers, employees, agents, partners and subcontractors engaged in providing services under the contract to sign an agreement, provided by the State, to adhere to the confidentiality provisions of the Labor Law and the Tax Law, prior to working on the project.

D. Confidentiality Agreement

The contractor understands that in the performance of the service(s) under the agreement, the contractor, its employees, directors, officers and subcontractors may receive or have access to Confidential Information, and agrees that the contractor, its employees, directors, officers and subcontractors are: (i) required to take all appropriate action to protect the confidentiality of all Confidential Information supplied to it or developed by it during the course of its performance under the agreement; (ii) required to abide by all State confidentiality policies and procedures; and (iii) prohibited from copying, removing, communicating, or otherwise revealing any Confidential Information of State. The contractor further agrees to sign a Confidentiality Agreement provided or approved by the State and setting forth the obligations of the contractor to preserve the confidentiality of such Confidential Information prior to having access to any such information, which shall include the requirement that all employees, directors, officers and subcontractors of the contractor who are engaged in the performance of the agreement, or who otherwise have access to Confidential Information, will sign the Non-Disclosure Agreement provided or approved by

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the State setting forth their obligations to preserve the confidentiality of such Confidential Information prior to having access to any such information.

For purposes of this Section, Confidential Information shall include, but not be limited to:

1. Personal information about individuals, e.g., home addresses, home telephone numbers, social security numbers, payroll information, account numbers, health status, etc.
2. Computer codes or other electronic or non-electronic information, the disclosure of which could jeopardize the security of the State's computer systems.
3. Any other material designated by the State, verbally or in writing, as being "Confidential".

E. Security

The contractor shall be required to comply with all applicable facility and information security policies and procedures (both present and future) of the State in performing the service(s) under this agreement.

The contractor may not connect any non-State computer or telecommunications equipment to the State network; personal and corporate laptop computers are included in this prohibition.

Neither the contractor nor any of its officers, directors, employees, subsidiaries, affiliates, partners, agents or subcontractors, shall at any time, either during the term of or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the service(s) performed or data collected under the agreement, without prior written approval of the State, unless otherwise required by law.

The contractor agrees that it is responsible for complying with such security procedures and any amendments thereto. If such procedures are violated, each party agrees to promptly notify the other of any such breach. The State and the contractor shall mutually agree to any security procedures that are applicable to service(s) provided hereunder.]

F. Survival

The provisions of this Section ~~2.23~~ **5.2.24** shall survive termination or expiration of this Contract.

2.24 Breach or Security Incident

All successful bidder staff having access to Confidential Information must sign a Non-Disclosure Agreement prior to having access to such Confidential Information.

- A. Upon notification of award the successful bidder must provide the State with a copy of its breach policy/protocol, and verify that its employees and agents are aware of its obligations regarding its breach policy/protocol.
- B. The successful bidder must agree to be responsible for complying with any and all notifications and other required actions pursuant to State Technology Law Section 208 and/or General Business Law Section 899-aa, together with all costs attendant to such

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notices.

- C. The successful bidder must agree to the following

“Breach”: Breach is defined as such term is defined at Section 208(1) (b) of the State Technology Law and Section 899-aa(c) of the General Business Law.

“Security Incident”: In the absence of direct evidence of a Breach, a Security Incident is defined as any occurrence where it can be reasonably assumed that Private Information (as such term is defined at Section 208(a) of the State Technology Law), Personal Information (as such term is defined at Section 202(5) of the State Technology Law), sensitive data or information, confidential data or information, and/or protected data or information was exposed, accessed or disclosed without authorization.

With respect to a Breach, the successful bidder agrees to abide by all requirements of Section 899-aa of the General Business Law and Section 208 of the State Technology Law. In addition to any notice required under Section 899-aa of the General Business Law and Section 208 of the State Technology Law, successful Bidder agrees to notify NYSDOL of the Breach. Successful bidder agrees to commence an investigation as to the scope of the Breach, and take any and all steps to restore security to NYSDOL data. Successful bidder must provide, at no cost to NYSDOL, contemporaneous copies of any documents produced by any such investigation and any forensic reports (including but not limited to audits and security reports) prepared due to the Breach. With respect to a Security Incident, the successful bidder must agree to immediately (within 24-hours of discovery of the Security Incident or facts from which it is reasonable to conclude that such Security Incident has occurred) notify the State of the Security Incident and immediately (within 48 hours) and at its own cost, commence an investigation as to the scope of the Security Incident, and take any and all steps to restore security to the State’s data. The successful bidder must provide, at no cost to the State, contemporaneous copies of any documents produced by any such investigation and any forensic reports (including but not limited to audits and security reports) prepared due to the Security Incident. The successful bidder must first consult with the State prior to notifying any individual whose private information, personal information, sensitive data or information, confidential data or information, and/or protected data or information has been subject to a Security Incident.

1. Unless directed by a law enforcement agency, the successful bidder must first consult with the State prior to informing the Consumer Protection Board, the Attorney General’s Office, the NYS Office of Information Technology Services, or any consumer protection agencies of the Security Incident.
2. If requested by the State, the successful bidder must agree to provide, as soon as practicable and at its own cost, notice to any and all individuals whose private information, personal information, sensitive data or information, confidential data or information, and/or protected data or information has been subject to a Security Incident.

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3. In the event of notification to any individual of Security Incident, the successful bidder must agree to pay the costs of any actions required (including but not limited to notification costs and fraud prevention/notification services) for each individual notified.
- D. The provisions of this Section ~~2.24~~ ~~5-2-25~~ shall survive termination or expiration of this Contract.
- E. **The Successful Bidder's liability for compliance with the requirements of this Section shall be without limitation.**

Section 3- Termination Options

The contract resulting from this RFP shall be subject to the following termination provisions:

3.1 Mutual Consent

The resulting contract may be terminated by mutual consent of the contracting parties.

3.2 Convenience

NYSDOL shall have the absolute right to terminate the resulting contract (and any or all services provided for in the Contract) for convenience upon thirty (30) days written notice to the contractor. Notice of Contract Termination shall be effective upon dispatch. **In the event that NYSDOL exercises the right to terminate for convenience, the amount payable to the Contractor shall be the amounts payable for services rendered prior to the date of such termination, and agreed upon costs associated with winding down the Contract, which may include costs to transition to another Service provider.**

3.3 Cause

NYSDOL shall have the absolute right to terminate the resulting contract for cause upon the failure of the contractor to comply with the terms and provisions of the contract. In that event, NYSDOL will give the contractor written notice specifying the contractor's failure via registered or certified mail with return receipt requested. Notice of Contract Termination shall be effective immediately upon dispatch. NYSDOL may, in its sole discretion, elect to suspend contract performance or provide a cure period prior to termination.

3.4 Bankruptcy

Upon the filing of a petition in bankruptcy or insolvency by or against the contractor, the resulting contract shall be terminated immediately without termination costs to the State.

3.5 Funds Availability

In the event that funds become unavailable, the State shall deem the resulting contract terminated immediately without termination costs.

3.6 Lobbying Law

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

3.7 Consultant Disclosure Legislation

NYSDOL reserves the right to terminate the resulting contract in the event it is found that the Consultant Disclosure forms filed by the contractor in accordance with New York State Finance Laws §§ 8, 22 and 163 were intentionally false or intentionally incomplete. Upon such finding, NYSDOL may exercise its termination right for cause by providing written notification to the contractor in accordance with the terms of the contract.

3.8 Public Officers Law

NYSDOL reserves the right to terminate the resulting contract in the event it is found that the contractor has violated any part of the Public Officers Law or Legislative Law. Upon such finding, NYSDOL may exercise its termination right for cause by providing written notification to the contractor in accordance with the terms of the contract.

Bidder Responsibility

~~By submitting a proposal in response to this RFP, the bidder represents that it has read and agrees to all the terms and conditions noted above in addition to the attached Appendix A, Standard Clauses for New York State Contracts~~