

## APPENDIX W

### OTDA INSURANCE REQUIREMENTS

Prior to the start of work the Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times policies of insurance as set forth in Appendix I, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" or better or as acceptable to OTDA.

The Agency may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the Agency to accept insurance placed with a non-authorized carrier under any circumstances.

The Contractor shall deliver to the OTDA evidence of such policies in a form acceptable to the Agency. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

#### **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. **Specific Coverages and Limits** below.*

**2. Policy Forms.** *Except as may be otherwise specifically provided herein or agreed to in writing by OTDA, policies must be written on an occurrence basis. Under certain circumstances, the Agency may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase, at its sole expense, Discovery Clause coverage sufficient to cover the 3-year period after completion of the contract. Written proof of this extended reporting period must be provided to the Agency prior to the policy's expiration or cancellation.*

**3. Certificates of Insurance/Notices.** *Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OTDA, before commencing any work under this contract. Certificates shall reference the contract number. Certificates shall be mailed to the:*

Laurie Eckert  
Office of Temporary and Disability Assistance  
40 North Pearl Street, 12A  
Albany, NY 12243

Unless otherwise agreed upon, 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, in which case notice shall be provided as required by law to OTDA, Attention – Laurie Eckert, at the above address. In addition, if required by the Agency, the Contractor shall deliver to the Agency within forty-five (45) days of such request a

copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

Certificates of Insurance shall:

- a. Be in the form approved by the Agency;
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract;
- c. Specify the Additional Insureds and Named Insureds as required herein;
- d. Refer to this contract by number and any other attachments on the face of the certificate;
- e. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit; and
- f. Be signed by an authorized representative of the insurance carrier or producer.

**ONLY** original documents (Certificates of Insurance and other attachments) will be accepted.

**4. Primary Coverage.** The liability and protective liability insurance policies shall provide primary and non-contributory coverage to OTDA for any claim arising from the Contractor's Work under this contract, or as a result of the Contractor's activities. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) so as to limit coverage against claims that arise out of the work, or that remove or modify the "insured contract" exception to the employers liability exclusion, or that do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors, are not acceptable.

**5. Policy Renewal/Expiration.** At least two weeks 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 the Agency than the expiring policies shall be delivered to the Agency in the manner required for service of notice in Paragraph A.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 the Agency, the Contractor shall immediately cease work under the contract. The Contractor shall not resume work under the contract until authorized to do so by the Agency. 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 the same in a form acceptable to the Agency, shall not give rise to a delay claim or any other claim against the Agency. Should the Contractor fail to provide or maintain any insurance required by this contract, or proof thereof is not provided to the Agency, the Agency may withhold further contract payments, and treat such failure as a breach or default of the contract, and/or, after providing written notice to the Contractor, *OTDA may* purchase insurance complying with the contract and charge back such purchase to the Contractor.

**6. Self-Insured Retention/Deductibles.** Certificates must indicate deductibles or self-insured retentions above \$100,000.00, which are subject to approval from the OTDA. Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

**7. Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall endeavor to impose 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 OTDA.

The types of insurance and minimum policy limits shall be as follows:

### **1. Commercial General Liability**

Commercial General Liability Insurance, (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract, using form CG 00 01 12 07 or a policy providing equivalent coverage. The limits under such policy shall not be less than the following:

Each Occurrence limit - \$1,000,000  
General Aggregate – \$2,000,000  
Products/Completed Operations – \$2,000,000  
Personal Advertising Injury – \$1,000,000  
Damage to Rented Premises – \$50,000  
Medical Expense – \$5,000

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

premises liability;  
independent contractors/subcontractors;  
blanket contractual liability, including tort liability of another assumed in a contract;  
defense and/or indemnification obligations, including obligations assumed under this contract;  
cross liability for additional insureds;  
products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract;  
explosion, collapse, and underground hazards, contractor means and methods;  
and  
liability resulting from Section 240 or Section 241 of the New York State Labor Law.11.

The following ISO forms must be endorsed to the policy if applicable:

- a. CG 20 10 11 85, or an equivalent – Additional Insured - Owner, Lessees or Contractors (Form B).
- b. CG 25 03 11 85 or an equivalent – Designated Construction Project(s) general aggregate limit (only required for construction contracts).

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall name the Office of Temporary and Disability Assistance as Additional Insured, and such coverage shall be extended to afford Additional Insured status to those entities during the

Products/Completed Operations term. This coverage is applicable for contracts involving the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure.

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 OTDA. Any other insurance maintained by OTDA 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 (ies) of insurance, if applicable. When the work involves construction or demolition within 50 feet of rail stations, yards, tracks, or other railroad property, the exclusion for work done within 50 feet of railroad property (the "Railroad" exclusion) must be deleted. Also see requirements for Railroad Protective Liability insurance.

## **2. Workers' Compensation**

For work to be performed in New York State, the Contractor shall provide and maintain full New York State (NYS listed in item 3a of the policy's Information Page) coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

If the contract involves work on or near a shoreline, a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Acts policy as applicable must be provided. Any waiver of this requirement must be approved by OTDA and will only be granted in unique or unusual circumstances.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

- (1) C-105.2 (Sept. 2007, or most current version) – Certificate of Workers' Compensation Insurance,
- (2) U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund,
- (3) GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance, or
- (4) CE-200 – Attestation of Exemption – When Contractor meets the requirements.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

## **3. Disability Benefits**

For work to be performed in New York State, 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 New York State Disability Benefits Law. Any waiver of this requirement must be approved by OTDA and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chairman of the Workers' Compensation Board:

- (1) DB-120.1 (May 2006 or most current version) – Certificate of Insurance Coverage under the New York State Disability Benefits Law,
- (2) DB-155 – Certificate of Disability Self Insurance, or
- (3) CE-200 – Certificate of Attestation of Exemption.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

#### **4. Commercial Automobile Liability**

Commercial Auto Liability insurance covering liability arising out of the use of any motor vehicle in connection with the contract, 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 shall have a combined single limit for Bodily Injury and Property Damage of at least one million dollars (\$1,000,000) and shall name OTDA as additional insured. The limits may be provided through a combination of primary and umbrella/excess liability policies. If the contract involves the removal of hazardous waste or otherwise transporting hazardous materials, pollution liability coverage for covered autos shall be provided by form CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached.

#### **5. Professional Liability**

The 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 this contract, Professional Liability Insurance in the amount of one million dollars (\$1,000,000), issued to and covering damage for liability imposed on the Contractor 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 Contractor shall purchase, at its sole expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

If applicable, the Contractor shall provide coverage for its 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.

#### **6. Crime**

CRIME INSURANCE, on "loss sustained form" in an amount not less than fifty thousand (\$50,000) dollars, including coverage for:

- Employee Theft;
- Forgery or Alteration;
- Inside the Premises - Theft of Money and Securities;
- Inside the Premises- Robbery or Safe Burglary of Other Property;
- Outside the Premises;

- Computer Fraud; and
- Money Orders and Counterfeit Paper Currency.
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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 three years with respect to events which occurred but were not reported during the term of the policy. It is important to remember for this line of coverage that no two policies are identical and terminology can be confusing. Due to this fact and the potential risks including security, privacy, media/content, regulatory actions; consultation with your respective Insurance Analyst and Legal counsel is recommended.

OTDA, including its affiliates and subsidiaries, must be included as "Loss Payees" as respects this specific amount as their interests may appear. Any warranties required by the insurer must be disclosed and complied with. Said insurance shall extend coverage to include the principals.

## **7. Umbrella and Excess Liability**

When the limits of the CGL, Auto, and/or Employers' Liability policies procured are insufficient to meet the limits specified, the Contractor shall procure and maintain Commercial Umbrella and/or Excess Liability policies with limits in excess of the primary; provided, however, that the total amount of insurance coverage is at least equal to the requirements set forth above. Such policies shall follow the same form as the primary. Any insurance maintained by the OTDA or any additional insured shall be considered in excess of and shall not contribute with any other insurance procured and maintained by the Contractor including primary, umbrella and excess liability regardless of the other insurance clause contained in either parties policy.