STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

CONTRACT NUMBER C021937

INCOME VERIFICATION SERVICES

THIS AGREEMENT (hereinafter "Agreement" or “Contract”) is made by and between the New York State Office of Temporary and Disability Assistance (hereinafter “OTDA”), and the Contractor (“Contractor” also known as the “Offeror”) as defined in the IFB, is effective, upon approval by the New York State Office of the State Comptroller after execution by all parties.

WITNESSETH

WHEREAS, OTDA requires Income Verification Services;

WHEREAS, to meet this requirement OTDA, issued an Invitation for Bids (IFB) on February 27, 2017, for the purposes of entering into an Agreement for Income Verification Services;

WHEREAS, the Contractor reviewed and analyzed OTDA’s needs as contained in said IFB, and submitted a Proposal;

WHEREAS, the Contractor is engaged in the business of providing services, with the skills necessary to fulfill the needs pursuant to the terms of this AGREEMENT;

WHEREAS, OTDA, in reliance upon the expertise of the Contractor, selected the Contractor as the successful Offeror to the required services, and desires to engage the Contractor to fulfill OTDA’s needs under the terms and conditions hereinafter set forth; and

WHEREAS, the Contractor is ready, willing and able to provide such services.

NOW, THEREFORE, in consideration of the terms set forth and the mutual covenants and obligations of the parties, the parties do hereby agree as follows:
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ARTICLE I
AGREEMENT DURATION AND AMENDMENT

A. This Agreement shall commence upon approval of the Offices of the Attorney General and the State Comptroller, and continue for a period of five (5) years subject to the acceptance criteria and the termination provisions contained herein.

B. The Pricing submitted in Appendix P (Pricing Schedule), to include any rate increases authorized in Article III, will be effective for the term of this Agreement.

C. OTDA shall have the right to re-negotiate the terms and conditions of this Agreement in the event applicable New York State (“State”) or Federal policy, rules, regulations and guidelines are altered from those existing at the time of this Agreement in order to be in continuous compliance therewith. It shall be understood that, in the event OTDA and the Contractor are unable to mutually agree to a set of terms and conditions through re-negotiations, the terms and conditions required to continue the Agreement in compliance with revised State or Federal policy, rules, regulations and guidelines shall be decided by the Commissioner of the Office of Temporary and Disability Assistance or his/her duly authorized representative(s) or designee(s), in accordance with Disputes, Article XI of this Agreement.

This Agreement and any amendment hereof shall not be deemed executed, valid, or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by the Office of the State Comptroller pursuant to Section 112 of the State Finance Law, and filed in the Office of the State Comptroller.

ARTICLE II
DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

A. This Agreement shall be deemed to include only those documents expressly mentioned herein:

1. Appendix A – Standard Clauses for NYS Contracts;
2. Amendments to the Agreement (if any);
3. Agreement – (This Document);
4. Appendix I – New York State Insurance Requirements
5. Appendix P – Pricing Schedule;
6. Appendix W – Statement of Work;
7. Appendix Z – Minority and Women-Owned Business Enterprise (M/WBE) and Equal Employment Opportunity (EEO) Participation Requirements for All NYS Office of Temporary and Disability Assistance Contracts and Grants;
8. Questions and Answers to the IFB;
9. Attachment B – Amendment(s) and/or Addenda(s) to the Income Verification IFB;
10. Attachment C – The Income Verification IFB, Appendix R (References), Appendix E
11. Contractor’s Response to the IFB’s instruction for required forms, to include all forms listed in Appendix E, excluding Appendices I, P, W, and Y.

B. Conflicts between these documents shall be resolved in the following order of precedence:
   1. Appendix A – Standard Clauses for NYS Contracts;
   2. Amendments to the Agreement (if any);
   3. Agreement – (This Document);
   4. Appendix Z – Minority and Women-Owned Business Enterprise (M/WBE) and Equal Employment Opportunity (EEO) Participation Requirements for All NYS Office of Temporary and Disability Assistance Contracts and Grants;
   5. Appendix P – Pricing Schedule;
   6. Appendix W – Statement of Work;
   7. Appendix I – New York State Insurance Requirements
   8. Questions and Answers to the IFB
   9. Attachment B – Amendments to the Income Verification IFB; and
   10. Attachment C – The Income Verification IFB.

ARTICLE III
COMPENSATION

OTDA shall compensate the Contractor pursuant to this Agreement in accordance with the pricing contained in Appendix P (Pricing Schedule).

ARTICLE IV
PAYMENT AND INVOICES

A. Monthly invoicing will be submitted in arrears by the Contractor using the State of New York’s Claim for Payment form AC3293-S. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by the laws of the State. To ensure the timely processing and payment of contract invoices, they must be submitted to the Business Service Center (“BSC”).

B. Invoices must contain the following information:
   a. Date of Invoice
   b. Month and Year of Verifications
   c. Total Monthly Charge
   d. Total Number of SSN Searches (for reporting purposes only)
   e. Total Number of Valid Income Verifications
   f. Return time for each verification
Invoices must be submitted via one of the following methods:

1. Preferred Method: Email a .pdf copy of your signed invoice to the BSC at: 
   AccountsPayable@ogs.ny.gov with a subject field as follows: 
   Subject: Unit ID: TDA01 Contract # C021937
   
   **(NOTE: do not send a paper copy in addition to your emailed invoice.)**

2. Alternate Method: Mail invoices to BSC at the following U.S. postal address:
   NYS Office of Temporary and Disability Assistance
   Unit ID: TDA01
   c/o OGS BSC Accounts Payable
   Building 5, 5th Floor
   Albany, NY 12226-1900

Required Information for all Invoices:

   - Contractor’s SFS Vendor ID Number;
   - Invoice number and date;
   - Unit ID# TDA01;
   - Name of the NYS Agency to which you provided the services: (NYS OTDA);
   - Contract Number C021937; and
   - The period of service for which the claim is made or reference to deliverable completed.

If prompt payment or discounts are applicable, the terms of the discounts must be included on all invoices as well as the amounts due if OTDA meets the terms, and the date for which the prompt payment discount(s) expires.

Invoices that do not comply with the above guidelines will be returned to the Contractor for corrections.

In order for OTDA to provide the BSC with approval to process an invoice for payment, the Contractor needs to send the OTDA Program Manager a copy of the invoice sent to the BSC and all contractually required supporting documentation, such as reports, receipts, timecards and other schedules. **NOTE: Do NOT include contractually required supporting documentation with the invoice submitted to the BSC. Receipt of any required supporting documentation is required to allow timely payment of invoices. Lack of submission of any contractually required supporting documentation will “stop the clock” in determining the allowed thirty (30) day period for invoice payment.**

The Contractor will submit a copy of the invoices and the supporting documents required by OTDA to the following address, unless directed otherwise:

   - NYS Office of Temporary and Disability Assistance
     Attn: Karen Stern
     40 North Pearl Street,
     Albany, NY 12243

The State shall not be liable for the payment of any taxes under this Agreement, however designated, levied or imposed. No person, firm, or corporation is exempt from paying the State truck mileage and unemployment insurances taxes and other Federal, State, and local taxes to which the Contractor is subject.
The State represents that the Contractor is not liable for the payment of any transfer taxes including, but not limited to, sales taxes upon goods or services purchased for or provided for the State. For purposes of tax free transactions under the Internal Revenue Code, the New York State Registration Number is 14740026K.

Contractor shall comply with the State Comptroller’s procedures to authorize electronic payments. Authorization forms are available at the State Comptroller’s website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at (518) 474-4032. 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, unless payment by paper check is expressly authorized by OTDA, in OTDA’s sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices as established by the State Comptroller.

The Contractor shall also comply with the State Comptroller’s requirement to file a Substitute Form W-9. The form and the instructions for completing the W-9 can be found at the OSC’s website: http://grantsreform.ny.gov/sites/default/files/sub_w9.pdf.

ARTICLE V
MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISE (M/WBE) REPORTING REQUIREMENTS

The Contractor shall comply with New York State Executive Law Article 15-A, Appendix Z, and OTDA’s New York State Contract System compliance and reporting requirements as set forth below:

A. OTDA has developed compliance requirements to ensure that (i) all contractors as defined under Executive Law § 310 (3) (to include those who submit bids/proposals in an effort to be selected for contract award as well as those successful Offerors/ proposers with whom OTDA enters into State Contracts, as defined in Executive Law § 310 (13) [hereinafter “Contractors"], as well as proposed or actual "Subcontractors", as defined in Executive Law § 310 (14) shall comply with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, and, (ii) the meaningful participation of certified Minority or Women-owned Business Enterprises (s) in the OTDA procurement process. Contractors participating in and/or selected for procurement opportunities with OTDA shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for Minority and Women Business Enterprises, including but not limited to the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-145. Please refer to Appendix Z, attached and incorporated by reference herein, for the specific EEO/requirements.

B. To streamline M/WBE compliance tracking, vendors may now report payments and track goals using an electronic monitoring and compliance system. The New York State Contract System will allow vendors to electronically update their contact information, provide subcontractor payment data for contract audits and provide revenue and payment data for concession audits. The system will also allow Subcontractors to enter the system to verify receipt of Contractor payments. Data is to be submitted without change to the Contractor’s M/WBE Utilization Plan nor the M/WBE participation goals as specified in the IFB or contract,

C. Please refer to Appendix Z for the specific EEO/ requirements and associated forms required by this procurement. These forms are to be submitted without change to the MWBE participation goals as specified in the IFB or contract, unless otherwise authorized by OTDA. The forms that are identified in Appendix Z are also available on OTDA’s Internet site at [http://otda.ny.gov/contracts/mwbe/forms.asp](http://otda.ny.gov/contracts/mwbe/forms.asp).

For purposes of this contract, OTDA hereby establishes an overall goal of 0% for participation, 0% for New York State certified Minority Business Enterprise (“MBE”) participation and 0% for New York State certified Women Business Enterprise (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A contractor (“Contractor”) on the subject contract (“Contract”) must document its good faith efforts to provide meaningful participation by as subcontractors or suppliers in the performance of the Contract and the Contractor agrees that OTDA may withhold payment pending receipt of the required documentation. The New York State M/WBE Directory can be viewed at: [https://ny.newnycontracts.com](https://ny.newnycontracts.com). For guidance on how OTDA will determine a Contractor’s “good faith efforts,” refer to 5 NYCRR §142.8.

ARTICLE VI

SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES (SDVOBs)

UTILIZATION

1. Contractor agrees, to the maximum extent practical and consistent with legal requirements of the State Finance Law, the Executive Law and any implementing regulations, to use NYS certified Service-Disabled Veteran-Owned Business Enterprises (SDVOBs) in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs.

2. Contractor acknowledges being subject to the provisions of Executive Law Article 17-B and the applicable regulations (9 NYCRR Part 252), and that the directory of NYS certified SDVOBs is located at: [https://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf](https://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf).

3. Contractor acknowledges that the SDVOB utilization goal for this Agreement is 0%.

4. Contractor further acknowledges that this requirement is separate and distinct from the similar requirement elsewhere in this Agreement to utilize small, minority and women-owned businesses(s), consistent with current State law (Executive Law, Article 15-A).

5. Contractor agrees to report on actual participation by each SDVOB during the term of the contract to OTDA on a quarterly basis according to policies and procedures to be set by OTDA.

6. Contractor agrees that, following contract execution, if OTDA determines that the contractor may not have acted in good faith, has failed, is failing, or is refusing to comply with the participation or utilization contractual goals for SDVOB participation, OTDA may, after giving the contractor an opportunity to be heard, make a determination that Contractor has failed to meet the contract goals and may be in breach of contract.
Upon determination that the Contractor is in breach of contract, as set forth in this Article, OTDA may require the submission of a corrective action plan for meeting the contractual goals, and may also assess actual damages as authorized by regulation [9NYCRR Section 252.2 (s)] based on the actual cost incurred by the State agency, related to the State agency’s expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified service-disabled veteran-owned business enterprise programmatic goals.

Information about SDVOB certification and set asides for SDVOB participation in public procurement can be found at: http://www.ogs.ny.gov/Core/SDVOBA.asp, which provides certification information and guidance for State agencies in making determinations and administering set asides for procurements from SDVOBs.

ARTICLE VII
NOTICES

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- via certified or registered United States mail, return receipt requested,
- by facsimile transmission,
- by personal delivery,
- by expedited delivery service, or
- by e-mail.

Such notices to OTDA shall be addressed as follows, unless directed otherwise:

State of New York Office of Temporary and Disability Assistance
A & QI-Program Integrity
Attn: Karen Stern
40 North Pearl Street
Albany, New York 12212
Telephone Number: (518) 408-5258
E-Mail Address: Karen.Stern@otda.ny.gov

Such notices to the Contractor shall be addressed to persons so designated in the NOTICE TO OFFEROR’S section of the IFB.

Should either party change their contact information, notification must be sent of such change to the other party within fifteen (15) business days of such change.

Unless otherwise noted, all communications with the Contractor shall be to the person designated in the IFB document section INFORMATION REQUIRED FROM OFFEROR.

Unless specified otherwise in this Agreement, notices shall be effective when received.
ARTICLE VIII
SERVICES

OTDA hereby retains the Contractor to perform the services, and the Contractor hereby agrees to perform the services, which shall include all deliverables, work and/or work products, as described in SECTION 4 of the IFB, and attached herein as Appendix W (Scope of Work).

The Contractor assumes sole and complete responsibility for the cost and timely accomplishment of all of its activities and duties required by this Agreement and will carry out those activities and duties in a competent and timely manner.

The Contractor warrants that the services provided using the equipment and software or required follow-on products (software), along with support for said services and products, will be available for the term of this Agreement.

No aspect of Contractor performance under this Agreement will be contingent upon OTDA personnel or the availability of OTDA resources.

Any and all work performed outside the scope of this Agreement or without the consent of OTDA shall not be subject to charge by the Contractor.

Nothing contained herein shall prohibit OTDA from contracting at any time with a third party or from performing any of the work itself or through other State entities, for any services that otherwise may be requested or required of the Contractor pursuant to this Agreement, and the Contractor shall not assert an exclusive right to perform such services.

ARTICLE IX
COOPERATION

The Contractor and OTDA and their respective agents, employees, and subcontractors shall cooperate with each other to the fullest extent in connection with the Services to be provided under this Agreement. Pursuant to the terms and conditions of this Agreement and all appendices hereto, OTDA shall supply and make available necessary information and personnel to assist the Contractor to perform the Services contemplated hereunder.

ARTICLE X
RELATIONSHIP OF THE PARTIES; RIGHTS TO WORK PRODUCT

The relationship of the Contractor, its staff, and its subcontractors to OTDA shall be that of an independent contractor, and not that of an agent or employee of OTDA. The Contractor, as an independent contractor, shall not have the authority to contract for or bind OTDA for any purpose whatsoever. The Contractor covenants and agrees that its staff and subcontractors will not hold themselves out as agents, officers, or employees of OTDA, and that they will not make any claim, demand, or application for any right or privilege applicable to any officer or employee of OTDA, including but not limited to, Workers’ Compensation coverage, Social Security coverage, or Retirement System benefits.

All work performed by Contractor, its staff, and its subcontractors for OTDA under this Agreement, including all deliverables, supporting materials, modifications, customizations, custom programs, tools, data, modules, components, and any properties embodied therein and furnished to OTDA under this Agreement by or through Contractor, its staff, and its subcontractors is a work for hire. Such work is specially ordered and commissioned for use as contributions to a collective work, or is other such work as specified by the U.S. Copyright Act [17 U.S.C. § 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York. Furthermore, OTDA and the Contractor agree title and ownership shall pass to the State of New York upon
acceptance of the work. The Contractor, its staff, and its subcontractors who have been or may be used in regard to the Agreement forfeit all claims of title or ownership to work produced under this Agreement. Any and all reports and other materials (preliminary, final and otherwise), analyses and data (whether statistical or otherwise), transmitted to OTDA by the Contractor shall become the sole and exclusive property of OTDA for such use as OTDA shall deem appropriate, other than Contractor’s work papers, which Contractor may retain.

Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in the course of Contractor’s business.

ARTICLE XI
DISPUTES

A. This disputes provision shall apply to any dispute of the parties relating to performance under the Agreement except liquidated damages. Any dispute concerning any question of fact or law arising under the Agreement, which is not disposed of, by mutual agreement of the parties shall be initially decided by the adjudicator designee (hereinafter “Designee”) of the Director the Bureau of Contract Management (hereinafter “Director”). The Director shall also designate the person who will present OTDA’s position in the dispute (hereinafter “Advocate”).

B. Within thirty (30) calendar days of such designations, the Advocate will state and brief the Designee on OTDA’s position on the dispute. The Contractor will then have thirty (30) calendar days to make its submission; the submission may include any material the Contractor deems relevant to the dispute. All documents may be sent either by surface mail, by carrier, or electronically.

C. The Advocate will have a right to submit a response to the Contractor’s submission. The response must be limited to the material rebutting evidence and arguments that have been raised by the Contractor in its most recent submission and must be submitted within fifteen (15) calendar days of receipt of the Contractor’s submission. If the Advocate submits a response, the Contractor will have thirty (30) calendar days to prepare and submit a response to the Advocate’s rebuttal submission. This response shall consist wholly of material which responds to evidence or arguments raised in the Advocate’s rebuttal. Any actual submission by the Advocate shall generate a right of rebuttal by the Contractor.

D. The Advocate and the Contractor will be informed in writing by the Designee when the submission process is deemed complete. The Designee shall have the right to take administrative notice of relevant matters of law and fact as he/she believes appropriate, in accordance with general principles of Administrative Law.

E. The Designee will prepare and forward the recommended written decision to the Director. The Director shall: (a) evaluate the Designee’s findings and recommendations, (b) review the materials presented by the Contractor and the Advocate, (c) if necessary, consult with agency Counsel, and (d) prepare a response to the dispute either ratifying, modifying, or reversing the recommended decision. The Director’s decision will be rendered within forty-five (45) calendar days of the date when the submission process is deemed complete.

F. A copy of the Director’s decision stating the reason(s) upon which it is based and informing the Contractor of the right to appeal an unfavorable decision to the General Counsel of OTDA, will be issued to both parties. The dispute decision shall be deemed a final and
conclusive agency decision unless a written notice of appeal is received no more than fifteen (15) calendar days after the date the decision is received by the Contractor. Such notice of appeal must be filed with the General Counsel of OTDA.

G. The General Counsel of OTDA or his/her designee(s) shall hear and make a final decision on all appeals. A formal dispute appeal may not introduce new facts unless responding to facts or issues unknown to the Contractor prior to the final dispute decision. The General Counsel’s decision will be rendered within thirty (30) calendar days of the date that the notice of appeal is received by the General Counsel.

H. If the Contractor is unwilling to accept the decision rendered through this procedure or if a decision is not made within ninety (90) calendar days after the record is deemed final, it may then pursue its normal legal remedies de novo, but it is specifically agreed that any and all reports rendered through this procedure shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Agreement by the State shall govern operation thereunder and the Contractor and OTDA shall continue to perform under the Contract.

I. The Director and General Counsel shall have the power to change any or all of their designees or otherwise alter the rules of proceeding upon written notice to the Contractor.

J. The Contractor shall be required to bring all legal proceedings relating to this Agreement against OTDA or the State of New York in the Supreme Court of the State of New York in the County of Albany or the New York State Court of Claims, or other court of competent jurisdiction within the State of New York.

ARTICLE XII
CONFLICT OF INTEREST

A. The Contractor has provided a form (“Vendor Assurance of No Conflict of Interest or Detrimental Effect”), signed by an authorized legal representative, authorized to bind the Contractor contractually, attesting that the Contractor’s performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with the State of New York, and that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

B. The Contractor 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 Contractor’s satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. The Contractor shall have a duty to notify OTDA immediately of any actual or potential conflicts of interest by completing and submitting an updated form entitled, “Contractor’s Certification/Acknowledgements/Understanding”. The Contractor shall also notify OTDA of any new potential conflicts of interest and of any new contractor staff that are prior OTDA employees during the term of the contract, by submitting an updated form entitled, “Contractor’s Certification/Acknowledgements/Understanding”.

C. In conjunction with any subcontract under this Agreement, the Contractor shall obtain and deliver to OTDA, 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(s) authorized to bind the subcontractor contractually. The Contractor shall
also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to OTDA 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. OTDA and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. OTDA 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 OTDA, a real or potential conflict of interest cannot be cured.

**ARTICLE XIII**

**PUBLIC OFFICERS LAW**

The Contractor agrees not to engage in any conduct that the Contractor knows would violate or would assist an employee of OTDA in violating Sections §73 and §74 of the Public Officers Law.

Contractors, consultants, vendors, and subcontractors may hire former OTDA employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of OTDA may neither appear nor practice before OTDA, nor receive compensation for services rendered on a matter before OTDA, for a period of two (2) years following their separation from OTDA service. In addition, former OTDA employees are subject to a “lifetime bar” from appearing before OTDA or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with OTDA.

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 OTDA, and who are assigned to perform services under this Agreement, shall be assigned in accordance with all Ethics Requirements. During the Agreement Term, no person who is employed by the Contractor or its subcontractors and who is disqualified from providing services under this Agreement pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its subcontractors derived from this Agreement. The Contractor shall identify and provide the OTDA with notice of those employees of the Contractor and its subcontractors who are former employees of the OTDA, that will be assigned to perform services under this Agreement, and make sure that such employees comply with all applicable laws and prohibitions. OTDA may request that the Contractor provide it with whatever information OTDA deems appropriate about each such person’s engagement, work cooperatively with OTDA to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by OTDA, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. OTDA 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. OTDA shall have the right to terminate this Agreement at any time, if any work performed hereunder is in conflict with any of the Ethics Requirements.

During the term of this Agreement, the Contractor shall identify and provide OTDA with notice of the addition of new employees of the Contractor and its subcontractors, who are former employees of the OTDA, that will be assigned to perform services under this Agreement by completing and submitting an updated form entitled, “Contractor’s Certification/Acknowledgements/Understanding”.

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Any termination of this Agreement by OTDA under this Article shall be deemed to be a termination of the Agreement for cause. The remedies set forth in this section shall be in addition to any other remedy available to OTDA under the Agreement or under any other provisions of law.

ARTICLE XIV
CONFIDENTIALITY, BACKGROUND INVESTIGATIONS, AND SECURITY

A. Definition

The term “Confidential Information” shall mean any and all information which is disclosed by OTDA to the Contractor verbally, electronically, visually, or in written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary.

For purposes of this Agreement, 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, financial information, health information, and eligibility and benefit information (Disability Assistance, Temporary Assistance, SNAP, Medicaid etc).

2. Computer codes or other electronic or non-electronic information, the disclosure of which could jeopardize the security of OTDA’s computer systems.

3. Any other material designated by OTDA, verbally or in writing, as being “Confidential.”

Confidential Information shall be treated as strictly confidential and shall not be disclosed 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 Contractor with respect to Confidential Information which it can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by Contractor without an obligation to maintain its confidentiality prior to receipt from OTDA; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Contractor 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 written notice is promptly given to OTDA and provided further that diligent efforts are undertaken to limit disclosure.

B. Confidential Information of the State

The Contractor understands that in the performance of the Services its employees, directors, officers and subcontractors may receive or have access to the State’s 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 of the State’s 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.

C. Background Investigations

Background investigations shall be conducted on Contractor staff that will have access to OTDA’s IT systems, Confidential Information, or routine access to any OTDA facility. For purposes of this policy, “routine access” is defined as access to an OTDA facility for five (5)
consecutive business days or ten (10) business days over the annual term of the engagement. Accordingly, with the signing of this Agreement, the Contractor certifies that it has conducted a background investigation, or will conduct a background investigation prior to Services being provided to OTDA, of such staff members who provide Services under this Agreement. At a minimum, background investigations shall include a review/evaluation of the following: Social Security Number search and verification of U.S. citizenship or legal immigration status (if appropriate); criminal history check/court records (Federal, State and local for the past five (5) years); work experience/history (for the past five (5) years); and pertinent education/professional credentials. OTDA has the right to review the results of the background investigation and its supporting documentation upon request. OTDA reserves the right to conduct its own background investigation of the Contractor's staff.

The Contractor must undertake a background investigation of any new/replacement staff during the term of this Agreement.

The Contractor certifies that all staff provided to perform Services possesses the necessary integrity and professional capacity to meet OTDA's reasonable expectations. Subsequent to the commencement of Services, whenever the Contractor becomes aware, or reasonably should have become aware, that any staff member(s) providing Services no longer possess the necessary integrity or professional capacity, the Contractor shall immediately discontinue the use of such staff and notify OTDA.

OTDA has final approval of any staff furnished to provide Services and may refuse to approve any staff member(s) based on its review of the staff member’s integrity to perform the required Services. OTDA reserves the right to bar anyone from access to OTDA’s premises and/or access to its information resources. The Contractor will be required to maintain records related to the background investigations performed for the term of this Agreement.

For the purposes of this Section, “staff” includes employees, owners, officers, directors, or agents of the Contractor and of any of the Contractor’s subcontractors.

D. Security

The Contractor shall be required to comply with all applicable facility and information security policies and procedures, including any required training, (both present and future) of OTDA in performing the services under this Agreement.

The Contractor shall ensure that it remains in compliance with all the provisions of the IFB, this Agreement, including compliance with the Fair Credit Reporting Act (“FCRA”) and any/all State and Federal regulations that govern how consumer reporting agencies use an individual’s information.

The Contractor may not connect any non-State computer or telecommunications equipment to OTDA network without the prior written permission of OTDA (personal and corporate laptop computers are included in this prohibition).

Where performance of Services involves use by the Contractor of State-owned or licensed, or OTDA-owned or licensed, papers, files, computer disks or other electronic storage devices, data, or records at OTDA or State facilities or offices, the Contractor shall not remove such records therefrom without the prior written approval from an authorized representative of OTDA.
ARTICLE XV
FORCE MAJEURE

Neither the Contractor, OTDA, 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 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) calendar days, either party may terminate all or any agreed upon portion of the Services 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 OTDA’s obligation to pay for Services provided by the Contractor which have been approved by OTDA.

ARTICLE XVI
INDEMNIFICATION AND LIABILITY

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

For third party claims, OTDA shall give the Contractor:

1. prompt written notice of any action, claim, suit, proceeding, or threat of such action relating to this 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.

B. For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this 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, three times the Current Contract Amount displayed on Open Book New York’s Website (http://wwe2.osc.state.ny.us/transparency/contracts/contractsearch.cfm). The Contractor shall not be responsible for loss of records or data unless the Contractor is required to back-up the records or data.

C. Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by OTDA, the Contractor, or by others.
D. OTDA may, in addition to other legal remedies available to it, retain from amounts otherwise due Contractor such monies as may be necessary to satisfy any claim for damages OTDA may have against Contractor.

ARTICLE XVII
SUBCONTRACTORS

In the event that the Contractor utilizes subcontractors to perform any of the services pursuant to this Agreement, OTDA shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractors of the Contractor prior to their performance of services under this Agreement.

The Contractor shall require all proposed subcontractors to complete such Appendices included in this Agreement as are deemed necessary by OTDA prior to any such proposed subcontractor’s performance of services under this Agreement. The Contractor acknowledges that this requirement is ongoing for the term of this Agreement, and the Contractor shall be required to disclose to OTDA its intention to enter into any subcontracts for the performance of any services under this Agreement.

Failure to disclose the identity of any and all subcontractors used by the Contractor together with a detailed description of their responsibilities may, at the sole discretion of OTDA, result in a disqualification of the subcontractor or termination of this Agreement.

The Contractor shall be fully responsible to OTDA for the acts and omissions of its subcontractors and of persons either directly or indirectly engaged by them in connection with the performance of this Agreement.

OTDA reserves the right to remove any of the subcontractor’s staff if, in OTDA’s discretion, such subcontractor’s staff is not performing in accordance with this Agreement, or for any other reasonable work-related cause. OTDA reserves the right to approve or disapprove any proposed changes in subcontractor’s key staff. OTDA in each instance will be provided with a summary of the experience of the proposed subcontractor’s key staff member(s) and an opportunity to interview the key staff member prior to giving its approval or disapproval.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of OTDA. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The Contractor may arrange for a portion/s of its responsibilities under this Agreement to be subcontracted to qualified, responsible subcontractors, subject to approval of OTDA. If the Contractor determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this Agreement must be fully explained by the Contractor to OTDA. As part of this explanation, the subcontractor must submit to OTDA a completed “Vendor Assurance of No Conflict of Interest or Detrimental Effect” form, found in Appendix E of the solicitation, as required by the Contractor prior to execution of this Agreement.

The Contractor retains ultimate responsibility for all services performed under this Agreement.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this Agreement including, but not limited to, the body of this Agreement, Appendix A (Standard Clauses for New York State Contracts) and the solicitation document unless waived in writing by OTDA, all subcontracts between the Contractor and subcontractors shall expressly name the State, through OTDA, as the sole intended third party beneficiary of such subcontract. OTDA reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make OTDA
or the State a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against OTDA.

OTDA reserves the right, at any time during the term of this Agreement, to verify that the written subcontract between the Contractor and subcontractors is in compliance with all of the provisions of this section and any subcontract provisions contained in this Agreement.

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

If at any time during performance under this Agreement total compensation to a subcontractor exceeds or is expected to meet or exceed $100,000, the subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

ARTICLE XVIII
RESPONSIBILITY TERMS

A. The Contractor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Contractor’s Vendor Responsibility Questionnaire (hereinafter “Responsibility Questionnaire”) prior to the execution of this Agreement. The Contractor further covenants and represents that as of the date of execution of this Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Responsibility Questionnaire.

B. The Contractor shall provide to OTDA updates to the Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information related to such Responsibility Questionnaire becomes available. The Contractor shall, on an annual basis from the anniversary date of execution of this Agreement, re-certify such Responsibility Questionnaire, noting any changes, whether material or non-material, or submit a certification of “no change” to OTDA.

C. Notwithstanding Subsection (B) hereinaabove, OTDA reserves the right, in its sole discretion, at any time during the term of this Agreement, (i) to require updates or clarifications to the Responsibility Questionnaire, (ii) to inquire about information included in or omitted from the Responsibility Questionnaire, and (iii) to require the Contractor to provide such information to OTDA within a reasonable timeframe to be established at OTDA’s sole discretion.

D. OTDA reserves the right to make a final determination of the Contractor’s non-responsibility (hereinafter “Determination of Non-Responsibility”) at any time during the term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (ii) the Contractor’s failure to disclose material information; or (iii) the State’s discovery of any other material information which pertains to the Contractor’s responsibility.

E. The Contractor shall at all times during the Contract term remain responsible, as defined in NYS Finance Law. The Contractor agrees, if requested by the Commissioner of OTDA 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.
F. The Commissioner of OTDA or his/her designee, in his/her sole discretion, reserves the right to suspend any or all activities under the Contract resulting from this Contract, at any time, when he/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 Commissioner of OTDA or his/her designee issues a written notice authorizing a resumption of performance under the Contract.

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

ARTICLE XIX
TERMINATION

This Agreement shall be subject to the following termination provisions:

A. All or any part of this Agreement may be terminated by mutual written agreement of the contracting parties.

B. All or any part of this Agreement may be terminated by OTDA in the event of failure of the Contractor to perform within the time requirements set forth in this Agreement.

C. All or any part of this Agreement may be terminated by OTDA for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that OTDA shall give the Contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor’s receipt therefore, such written notice to specify the Contractor’s failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to OTDA, unless the Contractor, in the opinion of OTDA, has cured said failure.

D. This Agreement may be terminated if OTDA deems that termination would be in the best interest of OTDA provided that OTDA shall give written notice to the Contractor not less than thirty (30) days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand-delivered with receipt made. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of Contractor’s receipt for notice in the case of hand delivery.

E. This Agreement may be deemed terminated immediately at the option of OTDA upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by OTDA to the Contractor.

F. Should OTDA determine that Federal, State and/or local funds are unavailable, OTDA may terminate this Agreement immediately upon notice to the Contractor. If the initial notice is by oral notification, OTDA shall follow up immediately with written notice. OTDA will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from OTDA.
G. If this Agreement is terminated for cause, OTDA shall have the right to award a new contract to a third party. In such event, the Contractor shall be responsible for damages, and for all additional costs incurred in reassigning the contract.

H. It is understood that OTDA reserves the right to suspend or reduce Contractor services during the term of this Agreement. Such action(s) by OTDA shall not be considered a breach of this Agreement or otherwise give rise to damages on the part of the Contractor, provided, however, that Contractor is given written notification of such action.

I. OTDA reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Procurement Lobbying Act was intentionally false or intentionally incomplete. Upon such finding, OTDA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.

J. Should OTDA determine that the Contractor/Subcontractor has become non-responsible, or, in the event it is found that the Contractor/Subcontractor Background Questionnaire as submitted was intentionally false or incomplete, OTDA shall advise Contractor or Contractor and Subcontractor of such finding and Contractor/Subcontractor shall have thirty (30) calendar days to provide evidence that the Contractor/Subcontractor is responsible or correct/resolve such issues. If, after the thirty (30) calendar-day time period, at OTDA’s sole discretion, OTDA determines that the Contractor/Subcontractor is not responsible, OTDA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement. In the event of assignment where the proposed Contractor/Subcontractor does not meet OTDA’s responsibility review, OTDA may, after meeting with the Contractor and proposed Contractor/Subcontractor as described above, exercise its termination rights as specified in this Agreement.

K. In the event of termination for any reason, under this Agreement, the Contractor shall not incur new obligations for the terminated portion of this Agreement and the Contractor shall cancel as many outstanding obligations as possible. Contractor shall take all reasonable measures to mitigate any damages for which OTDA may be liable. OTDA agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith. OTDA will not be obligated to pay the Contractor for lost and/or anticipated profits.

**ARTICLE XX**

**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 during the Term of the Contract, policies of insurance as set forth in Appendix I (New York State Insurance Requirements), written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York (“admitted” carriers) with an A.M. Best Company rating of “A-” or better or as acceptable to OTDA.

**ARTICLE XXI**

**RECORD RETENTION AND DOCUMENT DESTRUCTION**

The Contractor, during the course of this Agreement and for a period of six (6) years following its termination or final payment hereunder, whichever occurs later, agrees to maintain and make available for audit by duly authorized representatives of OTDA, the individual states, and the United States Government all records or documentation arising hereunder or relating hereto.
Additionally, all records involving matters in litigation or audit must be kept for a period of not less than six (6) years following the termination of the litigation or audit provided. Electronic copies of any documents related to this Agreement may be substituted for the originals with the prior written approval of OTDA, provided that the copy procedures are accepted by OTDA as reliable and are supported by an adequate retrieval system.

At the end of the Retention Period, the Contractor shall destroy all hardcopies of documents by shredding or burning after they have been retained until the end of the Documentation Retention Schedule. Copies of computer backups shall be destroyed by incineration or other proven method to destroy such media after they have been retained until the end of the Document Retention Schedule. The Contractor shall deliver to the OTDA Project Manager a certified statement, signed by the individual(s) responsible for performing the destruction; statement must include date/time, method of destruction and disposal site.

If at any time during the performance of the services required under this Agreement the Contractor utilizes Cloud Computing services for data storage and/or any other internet-based computing service that provides shared processing resources and data to other devices on demand, the Contractor warrants that it is International Organization for Standardization (“ISO”) 270018 compliant. (Information on ISO/IEC 27018 can be found at the following website https://www.iso.org/obp/ui/#iso:std:iso-iec:27018:ed-1:v1:en), and that any and all cloud storage data centers that the Contractor uses to store data related to this Agreement, is/are located within the Continental United States in an off-site “hardened” facility designed to withstand natural or man-made disasters or acts of terrorism.

The Contractor shall be responsible for assuring that the provisions of this Article shall apply to any subcontract related to performance under this Agreement.

ARTICLE XXII
PATENT/COPYRIGHT INDEMNIFICATION

The Contractor will indemnify, defend and hold OTDA harmless from and against any and all damages, expenses (including reasonable attorney fees), claims, judgments, liabilities and costs which may be assessed against OTDA in any action for infringement of a United States Letter Patent with respect to the products furnished, or of any copyright, trademark, trade secret or other third party proprietary right, provided that OTDA shall give the Contractor:

Prompt written notice of any action, claim or threat of infringement suit, or other suit;

The opportunity, subject to approval of the Department of Law, to take over, settle or defend such action, claim or suit at the Contractor’s sole expense; and

Assistance in the defense of any such action is at the expense of the Contractor.

If the use of any item(s) or part(s) thereof shall be enjoined for any reason or if the Contractor believes that it may be enjoined, the Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence:

1. to procure for OTDA the right to continue using such item(s) or part(s) thereof, as applicable,
2. to modify the component so that it becomes non-infringing equipment of at least equal quality and performance, or
3. to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance.
The foregoing provisions shall not apply to any infringement occasioned by modification by OTDA of any tangible or intangible product(s) without the Contractor’s approval or the use of any Equipment with any adjunct device added by OTDA without the consent of the Contractor.

In the event that an action by law or in equity is commenced against OTDA arising out of a claim that OTDA’s use of a product under this Agreement infringes any patent, copyright or proprietary right and 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 in this Agreement, the Contractor shall immediately notify OTDA and the Office of the Attorney General in writing and shall specify to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of this Agreement. The Contractor shall in such event protect the interests of OTDA and secure a continuance to permit OTDA to appear and defend its interests in cooperation with the Contractor as is appropriate, including any jurisdictional defenses OTDA may have.

ARTICLE XXIII
ANTI-KICKBACK

The Contractor understands that it must comply with federal Executive Order 11246, the Copeland “Anti-Kickback Act” (18 USC 874), Section 306 of the Federal Clean Air Act, Section 306 of the Federal Clean Water Act, and that it must certify that neither it nor its principals are debarred or suspended from Federal financial assistance programs and activities and to complete and return in pursuit of such certification any appropriate form required by OTDA (see Federal Executive Order 12549 and 7 CFR Part 3017).

ARTICLE XXIV
DRUG-FREE WORKPLACE


ARTICLE XXV
PERFORMANCE STANDARDS

A. The Contractor shall implement monitoring tools, reasonably acceptable to OTDA, to measure the Performance Standards described below (“Performance Standards”). The Contractor shall provide OTDA with information and documentation regarding such monitoring tools as reasonably necessary for OTDA to verify that the Contractor is implementing such tools in a manner that ensures the accurate measurement of the Performance Standards. The Contractor shall provide reports to OTDA on a monthly basis, or upon OTDA’s request, identifying the Performance Standards, and trend-lines indicating changes in Performance Standards over time when applicable (Performance Standards Reports). The Performance Standards Reports shall identify any actions the parties need to take to address Performance Standard issues.

B. The Contractor will ensure that a database of no fewer than 1,000 employers with employees working/living in New York State for which Employment Verification can be disclosed to OTDA is maintained as stated in Appendix W (Scope of Work).

C. The Contractor will ensure that all customer support requirements stated in Appendix W (Scope of Work) are met, including providing user access, deactivating users, assisting customers with resolving problems/questions and arranging for requested training within and average of (2) two business days.
D. The Contractor will ensure that one hundred percent (100%) of the records submitted by OTDA or the local Social Services Districts (SSDs) via any agreed upon submission methods are processed by the Contractor as stated in Appendix W (Scope of Work).

E. The Contractor will ensure that one hundred percent (100%) of responses from the Contractor verifying employment and income for all records submitted by OTDA or any local Social Services Districts (SSDs) via any agreed upon submission method accurately reflect the data received from the Contractor’s employer clients as stated in Appendix W (Scope of Work).

F. The Contractor will ensure that ninety-nine percent (99%) of the responses to records submitted by the OTDA or the SSDs are in accordance with the following timeliness standards:

   a. Single SSN Internet Inquiries and Web Services – Within a (10) ten second response time, where the response time measurement is defined as the time an HTTP / HTTPS request (GET or POST) is received at the Contractor’s internet router to the time its corresponding outgoing HTTP / HTTPS response is transmitted from the Contractor’s internet router.

   b. Batch Employment and Income Verification file searches - Income verification inquiries that require the responses to be faxed to the OTDA or the SSDs. Within twenty-four (24) hours from the time the Contractor receives the OTDA file of records for batch files containing up to three hundred thousand (300,000) records and forty-eight (48) hours for batch files in excess of three hundred thousand (300,000) records.

   c. Telephone Inquiries - One hundred percent (100%) of the responses are returned via fax within twenty-four (24) hours from the time the Contractor receives the request as stated in Appendix W (Scope of Work).

G. Timely Deliverables
   The Contractor will meet or exceed all mutually established deadline due dates for all deliverables including monthly reports and invoices as well as those resulting from contract amendments and scheduled change orders including system corrections.

H. Start-Up
   The Contractor will meet the anticipated start date of the system as follows:

   1. Create user accounts for initial users who previously had access to the Single SSN Internet Inquiries under the previous Contractor within five (5) business days of the Contract Start Date.
   2. Grant Web Managers, as defined in Appendix W (Scope of Work), permission to create user accounts and deactivate users within five (5) business days of the Contract Start Date.
   3. Establish an agreed upon file format and define the hit criteria as stated in Appendix W (Scope of Work) for Batch File submissions and Web Service(s) within two (2) months of the Contract Start Date.
The Contractor agrees that failure to meet the standards as stipulated herein or failure to maintain the requirements as stipulated in Appendix W (Scope of Work) may result in charge-backs to the Contractor as stipulated Article XXIX (Liquidated Damages).

ARTICLE XXVI
CONFLICT RESOLUTION

a) In the event of conflicts between the Contractor and OTDA, the Contractor shall submit to the OTDA’s Director of the Bureau of Contract Management or his/her designee, a timely written explanation of the details of the conflict, including such pertinent facts as may provide OTDA with a firm basis for understanding the nature of the conflict.

b) With respect to the conflicts detailed in Subsection (a), the OTDA Director of Bureau of Contract Management or his/her designee shall have the sole right and authority to direct the involved parties on the appropriate course of action to be taken to resolve the conflict. Both parties reserve the right to pursue all available legal and equitable remedies.

ARTICLE XXVII
MISCELLANEOUS PROVISIONS

A. PUBLIC COMMUNICATION

Neither the Contractor, nor its staff or subcontractors, shall make any statement to the press or issue through any media of communication any statement bearing on the Services performed or data collected under this Agreement, without the prior written approval of OTDA.

B. SURVIVAL

The provisions of Article XXXVIII “General Warranty,” XIV “Confidentiality, Background Investigations and Security,” XVI. “Indemnification and Liability,” XXI. “Record Retention and Documentation Destruction” and Appendix A shall survive the expiration or termination of this Agreement.

C. Ethics Compliance

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

D. Lobbying Certification

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a federal agency be subject to a requirement that any Federal Contractor or grantee (such as OTDA) must be required to certify that no Federal funds will be used to lobby or influence a Federal officer or a Member of Congress. The certification that OTDA has been required to sign for the U.S. Health and Human Services Administration for Children and Family Services provides that the language of this certification (shall) be included in the award documents.
for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of $10,000 to $100,000 for failing to make a required report. As a sub-recipient, the Contractor understands and agrees to the Federal requirements for certification and disclosure.

ARTICLE XXVIII
OTHER AGENCY USE

The Contractor must extend the terms and conditions to any state agency in New York State. It must also extend the terms and conditions to (1) County Agencies in New York State providing human services such as income maintenance, job training, employment and social services or health related services as well as (2) Local Social Services Districts ("LSSD") in New York State including New York City, which is considered a single LSSD, consisting of the Human Resources Administration, The Administration for Children’s Services, and the Department of Homeless Services. In the event services are used by an LSSD, upon acceptance by the LSSD of such services, OTDA may accept the resulting bills, consistent with the terms for those services, and process said bills for payment on behalf of the LSSD. In such event, OTDA will subsequently make the necessary arrangements with the LSSD and the appropriate Agency(s) for reimbursement.

ARTICLE XXIX
LIQUIDATED DAMAGES

This section outlines the methods and potential dollar amounts for the assessment of liquidated damages for failure to meet the requirements stated in Appendix W (Scope of Work) and performance standards in Article XXV.

In the event that the Contractor fails to perform in accordance with the Performance Standards in Article XXV, OTDA may impose and the Contractor shall be liable for the following liquidated damages. These liquidated damages are not a penalty, but shall be in lieu of certain other remedies and may be deducted from payments due or to become due to the Contractor. The Contractor acknowledges that any and all Liquidated Damages provisions in this Agreement may be invoked at OTDA’s sole discretion, subject to the applicable provisions herein. Liquidated Damages may be imposed at OTDA’s sole discretion through offset of monthly billing. Liquidated damages are not limited to the amount of the monthly billing. Charge-backs will be recovered against the current month’s billing, or subsequent billings.

1. In the event that the Contractor does not provide necessary security as stated in Appendix W (Scope of Work), OTDA may withhold/deduct up to one percent (1%) of the monthly payment for the period of time that such security is not in place.

2. In the event that the Contractor does not provide and maintain software as stated in Appendix W (Scope of Work), OTDA may withhold/deduct up to one percent (1%) of the monthly payment for the period of time that such software is not available.

3. In the event that the Contractor does not provide notifications of incidents and/or planned changes within the established deadlines to OTDA as stated in Appendix W (Scope of Work), OTDA may withhold/deduct up to one percent (1%) of the payment for the month in which such notification was not provided.
4. In the event that the Contractor does not provide monthly statistical reports to OTDA as stated in Appendix W (Scope of Work) and Article XXV (Performance Standards) by the established deliverable due date, OTDA may withhold/deduct up to three hundred seventy-five dollars ($375) per day for every day the report is more than five (5) days late.

5. In the event that the Contractor does not make services available during the hours and on the days of the week as stated in Appendix W (Scope of Work), OTDA may withhold/deduct up to one percent (1%) of the monthly payment for the period of time that services were not available.

6. In the event that the Contractor does not meet all customer support requirements stated in Appendix W (Scope of Work) and Article XXV (Performance Standards), including providing user access, deactivating users, assisting customers with resolving problems/questions and scheduling training within the established deadlines, OTDA may withhold/deduct up to one percent (1%) of the monthly payment for the month in which customer support requirements are not met.

7. In the event that the Contractor does not maintain sufficient capacity to accept requests from individual internet user accounts as stated in Appendix W (Scope of Work), OTDA may withhold/deduct up to one percent (1%) of the monthly payment for the period of time that such capacity is not available.

8. In the event that the Contractor does not maintain at least 1,000 employers with employees working/living in New York State for which Employment Verification can be disclosed to OTDA as stated in Appendix W (Scope of Work), OTDA may withhold/deduct up to one percent (1%) of the monthly payment for the period of time that such databases are below the minimum requirement.

9. In the event that the Contractor does not process one hundred percent (100%) of the records submitted by OTDA or the local Social Services Districts (SSDs), OTDA may withhold/deduct up to one percent (1%) of the monthly payment per each one percent (1%) that the Contractor does not meet the standard.

10. In the event that less than one hundred percent (100%) of responses from the Contractor verifying employment and income for records submitted by OTDA or any SSD accurately reflect the data received from the Contractor's employer clients, OTDA may withhold/deduct up to one percent (1%) of the monthly payment per each one percent (1%) that the Contractor does not meet the standard.

11. In the event that less than ninety-nine percent (99%) of the responses to records submitted by OTDA or the SSDs are in accordance with the following timeliness standards, OTDA may withhold/deduct up to the amounts listed below that the Contractor does not meet the standard:

1. Single SSN Internet and Web Service(s) Inquiries:

<table>
<thead>
<tr>
<th>Number of Minutes</th>
<th>Liquidated Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>$150</td>
</tr>
<tr>
<td>7</td>
<td>$300</td>
</tr>
<tr>
<td>8</td>
<td>$450</td>
</tr>
<tr>
<td>9</td>
<td>$600</td>
</tr>
<tr>
<td>10</td>
<td>$3,000</td>
</tr>
</tbody>
</table>

2. Batch and Fax Request Inquiries:
<table>
<thead>
<tr>
<th>Number of Days</th>
<th>Liquidated Damages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$ 150</td>
</tr>
<tr>
<td>2</td>
<td>$ 300</td>
</tr>
<tr>
<td>3</td>
<td>$ 450</td>
</tr>
<tr>
<td>4</td>
<td>$ 600</td>
</tr>
<tr>
<td>5</td>
<td>$ 3,000</td>
</tr>
</tbody>
</table>

A. Start-Up

If the Contractor is unable to meet the anticipated start date of the system, liquidated damages shall be assessed in the amount of **five thousand dollars ($5,000)** per day, or part thereof. OTDA may, in its sole discretion and in the best interest of the State, waive such liquidated damages, provided the Contractor makes a good faith effort to meet the above deadline.

**ARTICLE XXX**

**STAFF**

For the purposes of this section Contractor’s “Staff” includes employees, owners, directors, subsidiaries, affiliates, partners, agents, and subcontractors of the Contractor.

The Contractor specifically represents and agrees that its Staff has and shall possess the experience, knowledge and character necessary to qualify its Staff for the particular duties to be performed pursuant to this Agreement, including having the necessary integrity and professional capacity to meet OTDA’s reasonable expectations. Subsequent to the commencement of Services, whenever the Contractor becomes aware, or reasonably should have become aware, that the Staff providing Services to OTDA no longer possesses the necessary integrity or professional capacity, the Contractor shall immediately discontinue the use of such Staff and notify OTDA.

OTDA reserves the right to remove any of the Contractor’s Staff if, in OTDA’s discretion, such Staff is not performing in accordance with this Agreement, or for any other reasonable work-related cause. OTDA may refuse to approve any Staff based on its review of the Staff’s responsibility to perform the required Services. OTDA reserves the right to bar anyone from access to OTDA’s premises and/or access to OTDA’s information resources.

The Contractor shall be fully responsible for performance of work by its Staff.

The Federal Immigration Reform and Control Act, as amended (8 USC § 1324a et al.), obligates employers, such as the Contractor and its subcontractors, to verify that its employees are legally entitled to work in the United States. In order to confirm that the employees are legally entitled to work in the United States, OTDA reserves the right to request documentation attesting to the legal entitlement to work in the United States of any Contractor or subcontractor employee assigned work under this Agreement. OTDA does not provide sponsorship. The Contractor warrants to OTDA that the Staff assigned to OTDA are eligible for employment in the United States. The Contractor is responsible for ensuring that the Staff retain the authorization to legally work in the United States throughout the term of the Agreement. OTDA does not discriminate against individuals on the basis of national origin or citizenship.

**ARTICLE XXXI**

**EXECUTORY PROVISION**

**APPENDIX A**, (Standard Clauses for NYS Contracts) is hereby fully incorporated, without change or amendment into this Agreement.
Should any provision of this Agreement be declared or found to be illegal, unenforceable, ineffective, or void, then each party shall be relieved of any obligation arising from such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.

No term or provision of the Agreement shall be deemed waived and no breach consented to, unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under this Agreement shall not constitute or consent to, a waiver of, or excuse for any other, different or subsequent breach.

It shall be understood that the Contractor is an independent contractor; the Contractor, its agents, officers and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of OTDA.

**ARTICLE XXXII**
**ASSURANCES**

The Contractor warrants that it has carefully reviewed the needs of OTDA, as described in the IFB and its attachments and otherwise communicated in writing by OTDA to the Contractor, that it has familiarized itself with OTDA’s specifications, and warrants that it can provide such services as represented in its Proposal and the other documents incorporated into this Agreement.

The Contractor agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.

The Contractor warrants and affirms that the terms of this Agreement 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 this Agreement.

**ARTICLE XXXIII**
**NON-ASSIGNABILITY**

Full responsibility for the delivery of services must be provided by the Contractor under this Agreement. Should the Contractor seek external financing, OTDA reserves the right to approve the assignment of the Agreement for financing purposes.

Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation or other entity, other than the parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of this Agreement.

**ARTICLE XXXIV**
**RECYCLED OR RECOVERED MATERIALS**

In accordance with the laws of the State of New York, contractors are encouraged to use recycled or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications.

**ARTICLE XXXV**
**ACCESS TO AND AUDIT OF AGREEMENT RECORDS**

The Contractor agrees to preserve all Agreement-related records in accordance with the provisions of Paragraph 10 of Appendix A (Standard Clauses for New York State Contracts) of this Agreement for the Term of this Agreement. All records and information obtained by OTDA pursuant
to the provisions of this Agreement, whether by audit or otherwise, shall be usable by OTDA in any manner, in its sole discretion, as it deems appropriate and the Contractor shall have no right of confidentiality or proprietary interest in such records or information.

Notwithstanding the preceding sentence and in addition to the provisions set forth in Appendix A herein, OTDA agrees, in those instances in which it has discretion, not to disclose outside those government agencies involved in the performance of this Agreement and then only to the personnel who are involved in the performance of the particular data contained within this Agreement.

The Contractor hereby agrees that all documents furnished by the Contractor shall be subject to public disclosure by OTDA in the normal course of business in accordance with the requirements of the Public Officers Law, Article 6, except for proprietary information the disclosure of which would cause substantial injury to the competitive position of Contractor enterprise. Information relating to Contractor price submissions, including commercial, book or list pricing, applicable discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary to the Contractor. Contractor may otherwise preserve proprietary rights as to confidential or business process information in accordance with procedures established under applicable State laws, provided that (i) Contractor informed OTDA prior to or with submission of its bid, in writing, that such records are being furnished, are proprietary and are not to be disclosed; and (ii) said records shall be sufficiently identified; and (iii) Contractor stated the reasons with specificity why the information should be exempted from disclosure; and (iv) designation of said records as exempt from disclosure is reasonable and accepted by OTDA.

The Contractor shall promptly notify OTDA of any request for access to any records maintained pursuant to this Agreement. Access by Federal or State bank regulatory agents, or the Contractor’s regular outside auditors to the Contractor’s financial records, pursuant to regularly scheduled or routine audits or inspection of the Contractor, shall not require notification to OTDA provided that rights of confidentiality or proprietary interests are preserved.

ARTICLE XXXVI
LIMITATION OF LIABILITIES

The Contractor shall be liable for breach of any express warranties, obligations and indemnifications set forth herein and, except where expressly provided otherwise, such liability by Contractor for direct damages under this Agreement shall not exceed, in aggregate, the greater of the dollar amount of this Agreement, as indicated by the State Comptroller’s Open Book New York http://wwe2.osc.state.ny.us/transparency/contracts/contractsearch.cfm or two (2) times the amount paid to the Contractor. The Contractor shall not be responsible for loss of records or data unless the Contractor is required to back-up the records or data.

Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special damages of any kind that may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by OTDA, the Contractor, or by others.

The warranties set forth herein are in lieu of all other warranties expressed or implied including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

Where express loss liabilities set forth herein provide for a higher loss limitation liability than as set forth in this paragraph, or where such express provisions impose the Contractor liability “without limitation,” such express warranties, obligations and indemnifications shall supersede the loss limitation cap contained in this Article. For any suit, action, claim, damages or costs arising under or connected to the title, patent and copyright actions by third parties, the Contractor shall be fully liable for damages without limitation should the same arise in performance of this contract. Notwithstanding the foregoing, Contractor remains liable, without monetary limitation, for direct
damages for personal injury, death or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of Contractor, its officers, employees or agents.

ARTICLE XXXVII
GENERAL WARRANTY

The Contractor hereby warrants that the Services provided to OTDA under this Agreement will be performed in a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, “highest applicable industry standards” shall be defined as the degree of care, skill, efficiency and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances. Contractor shall re-perform, at its own expense, any work not in compliance with this warranty brought to its attention within ninety (90) days of the initial performance of such work.

ARTICLE XXXVIII
NYS INFORMATION SECURITY BREACH AND NOTIFICATION ACT

Contractor shall comply with the provisions of the New York State Information Breach and Notification Act. Contractor shall be liable for the costs associated with such breach if caused by the Contractor’s negligence or willful acts or omissions, or the negligence or willful acts or omissions of the Contractor’s agents, officers, employees and/or subcontractors. The Contractor must comply with the “Information and Security Breach and Notification Act” (also known as Chapter 4212 of the Laws of 2005 - the “Internet Security Privacy Act” – Article 2 of the New York State Technology Law). In the event the Contractor has reason to believe that there has been unauthorized access to and/or use of OTDA’s data or data system, the Contractor must provide immediate written notification to OTDA. The Contractor must cooperate with activities necessary for OTDA to determine the need for notification and/or to provide the notification(s) required. Within twenty-four (24) hours of the notification by Contractor, the Contractor must report to OTDA the steps taken or proposed to be taken in response to the instance of unauthorized access. The Contractor must also notify OTDA of the steps taken to prevent similar instances in the future as soon as is practicable after the unauthorized access is discovered.

ARTICLE XXXIX
REQUIRED APPROVALS

This Agreement and any amendment hereof shall not be deemed executed, valid, or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by the Office of the State Comptroller pursuant to Section 112 of the State Finance Law, and filed in the Office of the State Comptroller.

ARTICLE XXXX
ENTIRE AGREEMENT

All provisions stated in Appendix C (Offeror’s Certified Statements), Attachment B (Amendments to the Income Verification IFB, to include Questions and Answers), and Attachment C (The Income Verification IFB) are incorporated into this Agreement and are part of the contractual obligations under this Agreement, unless explicitly stated herein that such provision(s) is deemed excluded from this Agreement.

The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed Agreement by the Comptroller of the State of New York. Additionally, no cost will be incurred by OTDA for the Contractor’s participation in any pre-
contract award activity.

This Agreement, the Appendices, and Attachments hereto constitute the entire Agreement between the parties and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties, as set forth above.

INTENTIONALLY LEFT BLANK
Agency Code: 3410000  
Contract Number: C021937

Agency Certification

In addition to acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Agency Signature
______________
Dated

Contractor Signature
______________
Dated

Contractor Signatory Name (Printed):

Contractor Signatory Title:

Corporate, Partnership or Individual Acknowledgement

STATE OF NEW YORK)
 [Check One]
) SS.:
COUNTY OF
(□ If an individual): On this __________ day of __________________, 20__, before me personally came __________________________, to me known and known to me to be the person described in and who executed the foregoing instrument and (s)he acknowledged to me that (s)he executed the same.
(□ If a corporation): On this __________ day of __________________, 20__, before me personally came __________________________, to me known who being duly sworn, did depose and say that (s)he resides in __________________________; that (s)he is the __________________ of the __________________ corporation described in and which executed the foregoing instrument; that (s)he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that (s)he signed her/his name thereto by like order.
(□ If a partnership): On this ___________ day of __________________, 20__, before me personally came __________________________, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for herself/himself depose and say that (s)he is a member of the firm of __________________________, and that (s)he executed the foregoing instrument in the firm name of __________________________, and that (s)he had authority to sign same, and (s)he did duly acknowledge to me that (s)he executed the same as the act and deed of said firm of __________________________, for the uses and purposes mentioned therein.

Notary Public

Approved as to Form:  
Eric T. Schneiderman  
Attorney General

Approved:  
Thomas P. DiNapoil  
State Comptroller

By: __________________________  
Date: __________________________

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