

**State of New York
Office of Temporary and Disability Assistance**

**Request for Qualifications
RFQ #2024-14
Statistical Consultant
Issued: March 19, 2025**

Proposals Due: April 23, 2025

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Appendices

The following Appendices are incorporated by reference in the RFQ:

Appendix A	Standard Clauses for New York State Contracts
Appendix B	OTDA Terms and Conditions
Appendix B-1	OTDA Security and Confidentiality Terms
Appendix C	Offeror's Certified Statements
Appendix E	Administrative Forms
Appendix I	New York State Insurance Requirements
Appendix P	Pricing Schedule
Appendix Q	Question Submission Form
Appendix T	Draft Contract Agreement
Appendix W	Scope of Work
Appendix Z	Minority and Women-Owned Business Enterprise (MWBE) Equal Opportunity (EEO) Participation and Workforce Utilization Requirements

I. Calendar of Events

RFQ (2024-14 – Statistical Consultant) Calendar of Events

Event	Date
Issuance of Request for Qualifications	March 19, 2025
Deadline for Submission of Written Questions	3:00 p.m. ET April 2, 2025
Responses to Written Questions Posted (on or about)	April 9, 2025
Deadline for Submission of Proposals	Proposals Due Date 3:00 p.m. ET April 23, 2025
<i>Anticipated</i> Notification of Award	TBD
<i>Anticipated</i> Approval of Contract	TBD
<i>Anticipated</i> Commencement of Work	June 4, 2025

II. General Description of Services and Definitions

Refer to Appendix B, Section 2 for definitions of terms used in this RFQ.

A. OTDA Overview

The Office of Temporary and Disability Assistance (OTDA) is responsible for supervising programs that provide assistance and support to eligible families and individuals.

OTDA's functions include but are not limited to: Providing public assistance; providing assistance in paying for food; providing heating assistance; overseeing New York State's Child Support Program; determining certain aspects of eligibility for Social Security Disability benefits; supervising homeless housing and services programs; and providing assistance to certain immigrant populations.

B. Scope of Services

Through this Request for Qualifications ("RFQ"), the Office of Temporary and Disability Assistance ("OTDA") of the State of New York ("State") is seeking competitive proposals from qualified MWBE vendors to provide the Bureau of Audit and Quality Improvement (A&QI) qualified individuals interested in providing statistical consulting services in conducting Quality Control (QC) reviews, audit work in support of its mission, and special projects throughout OTDA. OTDA seeks to obtain proposals from qualified MWBE vendors to

provide statistical consulting services as needed for projects related to OTDA programs (including Temporary Assistance for Needy Families (TANF), Maintenance of Effort (MOE), and Supplemental Nutrition Assistance Program (SNAP)).

The need for statistical work will be in Albany or via teleconference.

The Services are detailed in Appendix W (Scope of Work).

C. Minimum Mandatory Requirements

Offerors must meet the following Minimum Mandatory Requirements:

1. At a minimum, the Project Director must have a Doctorate Degree in Statistics, Statistical Analysis or Data Analytics from an accredited institution OR a Master's Degree in same and 5 years relevant statistical experience with a government agency.

Failure to meet a Minimum Mandatory Requirement and any other requirement in the RFQ deemed material by OTDA shall result in a non-responsive Proposal which will be disqualified.

D. Important Information

This RFQ outlines the terms and conditions, and all applicable information required for submission of a Proposal. Offerors should pay strict attention to the Deadline for Submission of Proposals (Section I Calendar of Events) to prevent disqualification. To ensure compliance with these requirements and to prevent possible disqualification, Offerors should follow the format and instructions contained in this RFQ.

The Offeror is required to review Appendix A, Standard Clauses for NYS Contracts. Appendix A contains important information related to the Contract to be entered into as a result of this RFQ and will be incorporated, without change or amendment, into the Contract entered into between OTDA and the successful Offeror. By submitting a response to the RFQ, the Offeror agrees to comply with all the provisions of Appendix A.

The Offeror is also required to review Appendix B, OTDA Terms and Conditions, and Appendix T, Draft Contract Agreement, as it must be willing to enter into an Agreement which includes the material terms of Appendix B and T should it be selected for Contract award.

E. Term of the Agreement

The term of the Agreement will be for a period of two (2) years beginning on or about June 3, 2025.

III. Administrative Information

NOTE: Procurement documents may, from time to time, be amended or addenda issued by OTDA. It is the Offeror's responsibility to become aware of any such

amendments and/or addenda prior to submission of a Proposal. All amendments and/or addenda to procurement documents will be posted to the OTDA website at www.OTDA.ny.gov/contracts/procurement-bid.asp. Only the OTDA website will contain all amendments and/or addenda to the procurement documents, including the Responses to Written Questions. Offerors should periodically review the OTDA website prior to submission of a Proposal to ensure that they have all information required to submit a complete and responsive Proposal.

A. Restrictions on Communication during the Procurement Process

Offerors are restricted from making oral, written or electronic contacts with OTDA employees under circumstances where a reasonable person would infer that the communication was intended to influence the procurement, e.g., an attempt to influence OTDA to award a bid to a particular Offeror (a "Contact"), ***other than to the Point of Contacts (POC) as designated below***. This prohibition on communications begins on the release date of this RFQ until the resultant Contract is approved by the Office of the New York State Comptroller's (OSC's) (the "Restricted Period").

The primary POC for this procurement is:

Ann Fisher
NYS Office of Temporary and Disability Assistance
Bureau of Contract Management
40 North Pearl Street, Suite 12 D
Albany, New York 12243
(518) 486-6352
Email Address: procurements@otda.ny.gov

Other permissible POCs for this procurement are:

Cynthia McGrath
NYS Office of Temporary and Disability Assistance
Bureau of Contract Management
40 North Pearl Street, Suite 12D
Albany, New York 12243
Phone: (518) 486-6352
Email Address: procurements@otda.ny.gov

Wallis Howe-Rosenzweig
NYS Office of Temporary and Disability Assistance
Minority and Woman Owned Business Unit
40 North Pearl Street, Suite 12D
Albany, New York 12243
Phone (518) 486-6352
Email Address: procurements@otda.ny.gov

The following communications with OTDA staff are permissible, and are therefore ***not*** deemed impermissible Contacts during the Restricted Period:

- The submission of a written Proposal in response to this RFQ

- The participation in any conference or presentation required under the RFQ
- The submission of Questions as permitted under the RFQ
- Complaints filed by an Offeror to OTDA's Counsel's Office stating that the designated POC has failed to respond in a timely manner (any such complaints should be addressed to: General Counsel, 40 North Pearl Street, 16C, Albany, New York 12243)
- Negotiations following tentative award
- Debriefings with Offerors who are not award recipients
- The filing of a bid protest or appeal

OTDA employees, other than a designated POC listed above, who are contacted by an Offeror are required to obtain and record certain information that will be referred to the POC for inclusion in the procurement record. Impermissible Contacts that are knowingly or willfully made could result in a finding of non-responsibility against the Offeror. Such a finding can result in a rejection of a Contract award and, in the event of two such findings within a four (4) year period, the Offeror would become debarred from obtaining New York State contracts. Further information about these requirements can be found at the following link: <https://ogs.ny.gov/acpl>.

The Procurement Lobbying Act also requires that every procurement over \$15,000 include a certification by the Offeror that all information provided to the agency is complete, true, and accurate with regard to prior non-responsibility determinations within the past four (4) years based on (i) impermissible Contacts or other violations of State Finance Law Section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity. See Appendix E (Administrative Forms) for Offeror Disclosure of Prior Non-Responsibility Determinations Forms, which MUST be included with Offeror's proposal.

The State reserves the right to terminate the award resulting from this procurement in the event it is found that the certification filed by the awarded Offeror in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, The State may exercise its termination right by providing written notification to the award recipient.

B. Questions

There will be an opportunity for submission of written questions and requests for clarification with regard to this RFQ. All questions and requests for clarification of this RFQ should cite the particular RFQ Section and paragraph number where applicable and must be submitted using Appendix Q – Question Submission Form via email to: procurements@otda.ny.gov, no later than the Deadline for Submission of Written Questions as specified in Section I (Calendar of Events). Questions received after the deadline may not be answered.

If an Offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFQ, then it shall notify OTDA of such error in the form of a written question, and request clarification or modification thereto.

The comprehensive list of questions and responses by OTDA will be posted to the OTDA website and notice of such posting will be distributed by email to all Offerors known to OTDA on the date specified in Section I (Calendar of Events). This listing will not include the identities of the Offerors submitting the questions; those Offerors will remain anonymous to the extent allowed by law.

C. Right to Modify RFQ

OTDA reserves the right to modify any part of this RFQ, including but not limited to, the date and time by which Proposals must be submitted and received by OTDA, at any time prior to the Deadline for Submission of Proposals listed in Section 1 (Calendar of Events). Modifications to this RFQ shall be made by issuance of amendments and/or addenda as set forth on OTDA's website at <https://otda.ny.gov/contracts/procurement-bid.asp>

Prior to the Deadline for Submission of Proposals, any such clarifications or modifications to the RFQ, as deemed necessary by OTDA, will be posted to the OTDA website and subsequent email notification will be provided to all potential Offerors known to OTDA. OTDA also reserves the right to cancel this RFQ, in whole or in part, and to reject any and all Proposals.

D. Minority & Woman-Owned Business Enterprise (MWBE) and Equal Employment Opportunity (EEO) Participation Requirements

Contractor Requirements and Procedures for Participation by New York State-Certified Minority and Women-Owned Business Enterprises and Equal Employment Opportunity for Minority Group Members and Women and Workforce Utilization Reporting

New York State Law and New York State Executive Order

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations, OTDA is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OTDA contracts. Executive Order No. 162, signed by former Governor Andrew M. Cuomo and continued by Executive Order No. 6 signed by Governor Kathy Hochul, requires OTDA to monitor and submit Workforce Utilization Reports associated with Contractors performing work in New York State.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, OTDA hereby establishes an overall 100% M/WBE participation goal, as a targeted discretionary purchase. Due to the prohibition of subcontracting the specific participation goal for either a New York State-certified Minority-owned Business Enterprises ("MBE") or New York State-certified Women-owned Business Enterprises ("WBE") will be assessed at the time of contract execution. To that end, by submitting a response to this RFQ,

the respondent agrees that OTDA may withhold payment pursuant to any Contract awarded as a result of this RFQ pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how OTDA will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60 percent of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract]

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFQ, such finding constitutes a breach of contract and OTDA may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Contract's program manager at OTDA.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OTDA for review and approval. OTDA will review the submitted MWBE Utilization Plan and advise the respondent of OTDA acceptance or issue a notice of deficiency within 30 days of receipt.
- If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by

- submitting to the OTDA a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OTDA to be inadequate, OTDA shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal. OTDA may disqualify a respondent as being non-responsive under the following circumstances:
- If a respondent fails to submit an MWBE Utilization Plan;
 - If a respondent fails to submit a written remedy to a notice of deficiency;
 - If a respondent fails to submit a request for waiver; or
 - If OTDA determines that the respondent has failed to document good faith efforts.
- The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to OTDA but must be made no later than prior to the submission of a request for final payment on the Contract.
 - The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to OTDA, by the 7th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity and Workforce Utilization Reporting Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of [Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women OR Authority equivalent to Appendix A]. The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form OTDA-4970, to OTDA with its bid or proposal.

If awarded a Contract, respondent shall submit form OTDA-4971 Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by OTDA on a QUARTERLY basis during the term of the Contract. The Workforce Utilization Report will include demographic information and the job title and aggregate salary information of employees by race and sex that perform work under each Occupation Classification in accordance with Executive Order 162 guidelines and reporting instructions.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

E. Travel

Travel time and travel expenses are NOT reimbursable under this contract.

F. Subcontracting

Subcontracting is not permitted under this contract.

G. State Ethics Law Provision

The Offeror and its Subcontractors shall not engage or employ 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 Commission on Ethics and Lobbying in Government, or its predecessors (collectively, the "Ethics Requirements") as they may be amended from time to time. The Offeror shall certify that all its employees and those of its Subcontractors who are former employees of the State, and who are assigned to perform services under this Agreement, shall be assigned in accordance with all Ethics Requirements. During the term of the Agreement, no person who is employed by the Offeror or its Subcontractors, and who is disqualified from providing services under the Agreement, resulting from this RFQ pursuant to any Ethics Requirements, may share in any net revenues of the Offeror or its Subcontractors derived from the

Agreement resulting from this Solicitation. The Offeror shall identify and provide OTDA with notice of those employees of the Offeror, and its Subcontractors, who are former employees of the State that will be assigned to perform services under the Agreement, and make sure that such employees comply with all applicable laws and prohibitions. OTDA may request that the Offeror 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 Commission on Ethic and Lobbying in Government, and, if deemed appropriate by OTDA, instruct any such person to seek the opinion of the New York State Commission on Ethics and Lobbying in Government. OTDA shall have the right to withdraw or withhold approval of any subcontract if utilizing such Subcontractor for any work performed hereunder would conflict with any of the Ethics Requirements. OTDA shall have the right to terminate the Agreement, resulting from this solicitation at any time if any work performed hereunder conflicts with any of the Ethics Requirements.

By submitting a Proposal to this RFQ, the person signing the Proposal certifies, for and on behalf of the Offeror, that:

1. He/she has read and understands the provisions applicable to post-employment restrictions affecting former State officers and employees, found at: <https://ethics.ny.gov/sites/g/files/oe1281/files/documents/2017/09/public-officers-law-73.pdf>
 - a. Public Officers Law § 73(8)(a)(i), (the two-year bar); and
 - b. Public Officers Law § 73(8)(a)(ii), (the lifetime bar);
2. Submission of this Proposal does not violate either provision;
3. He/she is familiar with the Bidder's employees, and its agents;
4. No violation shall occur by entering into a Contract or in performance of the contractual services;
5. This certification is material to the Proposal; and
6. He/she understands that OTDA intends to rely on this certification.

The Offeror shall fully disclose to OTDA, within its Proposal and on a continuing basis, any circumstances that could affect its ability to comply with the cited laws and ethics requirements. Offerors shall address any questions concerning these provisions to:

New York State
Commission on Ethics and Lobbying in Government
540 Broadway
Albany, NY 12207
Telephone #: (518) 408-3976

H. State Finance Law Consultant Disclosure Provisions

Pursuant to New York State Finance Law § 163(4)(g), State agencies must require all contractors, including Subcontractors, that provide “consulting services” for State purposes pursuant to a contract to submit an annual employment report for each such contract. Such report shall include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

The Contractor selected as a result of this procurement will be required to submit Form A, titled “New York State Consultant Services Contractor’s Planned Employment,” prior to contract approval and Form B, titled “New York State Consultant Services Contractor’s Annual Employment Report,” on an annual basis. OTDA has provided the appropriate forms in Appendix E.

I. Executive Order No. 4 signed by former Governor David A. Paterson, “Establishing a State Green Procurement and Agency Sustainability Program” printing requirements. Most recently continued by Executive Order No. 6 signed by Governor Kathy Hochul on October 8, 2021.

Contractors are encouraged to use 100% post-consumer recycled content to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging. Where paper with 100% post-consumer recycled content is not available, or does not meet required form, function, and utility, paper shall be derived from a sustainably managed renewable resource to the extent practicable, unless the cost of the product is not competitive.

All contracts for printing shall, to the maximum extent practicable, require the use of water-based or vegetable-based lithographic ink, which will reduce the amount of Volatile Organic Compounds released into the environment. In accordance with Article 2, section 7-a of the New York State Printing and Public Documents law, unless it is determined that the cost of printing with vegetable-based ink is significantly greater than the cost of printing with petroleum-based ink, all lithographic inks used in the production of New York State printing requirements shall contain the following minimum percentages of vegetable oil: news inks 40%; sheet fed inks 20%; heat set inks 10%.

IV. Proposal Content

The following sets forth the required format and information to be provided by each Offeror in its Proposal. Offerors responding to this RFQ must satisfy all material requirements stated in this RFQ. All Offerors are required to submit complete Administrative, Technical, and Financial Proposals. A Proposal that is incomplete in any material respect will be deemed non-responsive.

Offerors must submit Proposals in separate sealed and labeled Administrative, Technical, and Financial Proposal packages. No information beyond that specifically requested is required, and Offerors are requested to keep their submissions to the shortest length consistent with making a complete presentation of qualifications.

Evaluations of the Administrative, Technical, and Financial Proposals received in response to this RFQ will be conducted separately. Offerors are therefore cautioned not to include any Financial Proposal information in the Administrative or Technical Proposal documents.

OTDA will not be responsible for expenses incurred in preparing and submitting the Administrative, Technical, or Financial Proposals. Such costs must not be included in the Proposal.

A. Administrative Proposal

The Administrative Proposal should contain all requirements listed below. A Proposal that is incomplete in any material respect will be deemed non-responsive. The information requested should be provided in the prescribed format. Proposals that do not follow the prescribed format may be deemed non-responsive. OTDA reserves the right to waive any non-material requirement solely at the agency's discretion.

1. Please provide the forms in Appendix C (Offeror's Certified Statements) and Appendix E (Administrative Forms), in the same order in which they are requested as follows:
 - a. Appendix C - Offeror's Certified Statements, which includes information regarding the Offeror. Appendix C must be signed by an individual authorized to bind the Offeror contractually. Please indicate the title or position that the signer holds with the Offeror. OTDA reserves the right to reject a Proposal which fails to comply with Appendix C.
 - b. Appendix E – Administrative Forms:
 - i. Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia – EO 16 Certification
 - ii. MacBride Fair Employment Principle
 - iii. Prohibiting Contracts with Entities that Support Discrimination – EO 177 Certification
 - iv. Sexual Harassment Prevention Certification – State Finance Law §139-l
 - v. Non-Collusive Bidding
 - vi. Offeror disclosure of Non-Responsibility Determinations
 - vii. Procurement Lobbying Act Offeror's Certification of Affirmation of Understanding and Agreement pursuant to State Finance Law §§ 139-j and 139-k
 - viii. Contractor's Certification/Acknowledgement/Understanding
 - ix. Offeror Assurance of No Conflict of Interest or Detrimental Effect

- c. Appendix Z - MWBE Participation Requirements Forms. Offerors are required to comply with MWBE participation requirements as stated in Section III.D of this RFQ. As part of your proposal, submit the following documents, as appropriate. These documents can be found at:

<https://otda.ny.gov/contracts/mwbe/forms.asp>.

- i. Form OTDA-4970 (Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement) as described in Clause 12 of Appendix A – Standard Clauses for NYS Contracts
- ii. Form OTDA-4934 (Staffing Plan)
- iii. Form OTDA-4937 (MWBE Utilization Plan)
- iv. Form OTDA-4938 (MWBE Subcontractors and Suppliers Letter of Intent to Participate)
- v. Form OTDA-4976 (MWBE Goal Requirements Certification of Good Faith Efforts)

Note: Offerors may apply for a partial or total waiver of MWBE participation requirements by submitting Form OTDA-4969 (Request for Waiver Form) and including all required documentation. Waivers will be granted only when the Offeror cannot, after a good faith effort, comply with the MWBE participation requirements set forth under this procurement.

2. Vendor Responsibility Questionnaire

Offerors must complete, certify, and file a New York State Vendor Responsibility Questionnaire. OTDA recommends that Bidders file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions at [The VendRep System | Office of the New York State Comptroller](#) or go directly to the VendRep System online at <https://onlineservices.osc.state.ny.us>.

Bidders must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the OSC Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us

Bidders opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website:

www.osc.state.ny.us/vendrep

Subcontractors are required to submit a Vendor Responsibility Questionnaire for subcontracts that equal or exceed \$100,000 at the time of award or will over the life of the contract.

3. If selected for contract award, Offerors will be required to submit further information as set forth below. While the following information is not required until notification of selection of award, Offerors are encouraged to submit these forms with their Administrative Proposal.

- a. ST-220 CA, Sales and Compensating Use Tax Certification (See [Form ST-220-CA:12/11: Contractor Certification to Covered Agency, st220ca \(ny.gov\)](#))
- b. Insurance Documentation, including Workers' Compensation and Disability Benefits (See Appendix I)
- c. OTDA Consultant Disclosure Reporting – Form A (See Appendix E)

B. Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the Offeror and its staff to perform the services referenced in this RFQ. The following outlines the required information to be provided, in order, by an Offeror in its Technical Proposal. Proposals that do not follow the prescribed format may be deemed non-responsive.

Financial information must *not* be included in the Technical Proposal. A Technical Proposal that is incomplete in any material respect may be deemed non-responsive.

1. Title Page

Submit a Title Page providing the RFQ subject and number, the Offeror's name, and the date of the Proposal.

2. Table of Contents

The Table of Contents should clearly identify all material (by section and page number) included in the Proposal.

3. Offeror Response to Technical Requirements

Offeror's proposal shall demonstrate how the Offeror intends to provide the Services included in this RFQ and Appendix W (Scope of Work) throughout the Contract Term and it shall include:

a. Requested Documentation for Statistician RFQ

Project Director:

- Cover Letter
- Curriculum Vitae (CV): The curriculum vitae, also known as a CV or vita, is a comprehensive statement of your educational background and experience.

Other Staff*:

- CV

** Other Staff** should only include those individuals who would be working directly with OTDA to assist in a statistical or analytic capacity. Do not include support staff, including secretarial or administrative only staff.

CVs should include the following items:

1. Instances where the applicant provided statistical projections, methodologies, reports and/or sampling procedures to a government agency.
2. Instances where the applicant provided a government agency with assistance regarding sample-related requirements, such as providing an audit sample generator, ensuring samples meet reporting requirements, and assisting implementing sampling changes.
3. Instances where the applicant was required to provide expert opinions in the form of affidavits, testimony and/or defense in court hearings, state hearings, federal grant appeals/ hearings, and/or legislative bodies.
4. Instances where the applicant assisted in overturning sanctions.
5. Instances of any other assistance with administrative actions or litigation.
6. Instances where the applicant provided assistance with developing quality control and/or data collection sampling, statistical projection, compliance with reporting requirement and interpretations of policies/regulations.

C. Financial Proposal

Compensation for requested work will be based on the blended hourly rate. Based on recent years' activities and spending, the expected annual utilization of consulting hours, under the contract resulting from this RFQ, will not exceed 100 hours. This is an estimated amount, and there is no minimum usage guaranteed. Any new welfare reform activities may generate additional tasks, thus exceeding this estimate.

Offerors must submit a completed and signed Appendix P – Pricing Schedule in Excel and PDF format with one blended hourly rate for all Contractor staff who will be working on the projects. Based on past experience, Offerors are to assume 60% Senior Level Staff involvement, which includes the Project Director, and 40% Other Staff involvement.

OTDA desires to select a responsible and responsive Offeror who will provide the “best value” taking into consideration services and price and who has met the requirements of this RFQ.

Failure to comply with the mandatory format and content requirements may result in disqualification.

D. Freedom of Information Law – Proprietary Information and Trade Secrets

Offerors acknowledge that all proposals submitted to OTDA become the property of OTDA and may be subject to disclosure pursuant the State’s Freedom of Information Law, as described in Section 4 of Appendix B.

V. Proposal Submission

To be considered responsive, the Offeror must submit a complete response to this RFQ in conformance with the format and content requirements set forth herein. A Proposal that does not provide all the information requested may be deemed non-responsive.

All proposals must be received by the date and time indicated for Deadline for Submission of Proposals as specified in Section I (Calendar of Events). Proposals received after the Deadline for Submission of Proposals may be deemed non-responsive.

Proposals must be submitted by e-mail to procurements@otda.ny.gov

VI. Evaluation Process/Criteria

A. General Information

OTDA will evaluate each Proposal based on the “Best Value” concept. This means that the Proposal that best “optimizes quality, cost, and efficiency among responsive and responsible offerors” shall be selected for award (State Finance Law, Article 11, §163[1][j]).

OTDA, at its sole discretion, will determine which Proposal(s) best satisfies the RFQ requirements. OTDA reserves all rights with respect to the award. All Proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost. Proposals failing to meet a mandatory or material requirement in the RFQ may be deemed non-responsive. The evaluation process will include separate Technical and Financial evaluations, and the result of each evaluation shall remain confidential until both evaluations have been completed and a selection of the winning Proposal is made.

The evaluation process will be conducted in a comprehensive and impartial manner, as set forth herein, by an Evaluation Committee. The Technical Proposal will be weighted **60%** of an Offeror’s total score and the Financial Proposal will be weighted **40%** of an Offeror’s total score.

Offerors may be requested by OTDA to clarify the contents of their proposals. No Offeror will be allowed to alter its Proposal or add information, except as provided in Appendix B, Article 18, after the Deadline for Submission of Proposals.

B. Submission Review

OTDA will examine all Proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in Section IV (Proposal Content) and Section V (Proposal Submission), and include the proper documentation, including all documentation required for the Administrative Proposal, as stated in this RFQ. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of OTDA, may be deemed non-responsive.

C. Technical Evaluation

The evaluation process will be conducted in a comprehensive and impartial manner. A Technical Evaluation Committee will review and evaluate all Proposals. Initially, each Proposal will undergo a preliminary technical evaluation to verify whether the Mandatory Requirements and “material” RFQ requirements are met. Assuming such requirements are met, Technical Evaluation Committee members will independently score each Technical Proposal. The individual Committee Member scores will be averaged to calculate the Technical Score for each responsive Proposal.

The Technical Evaluation is **60% (up to 60 points)** of the final score.

D. Financial Evaluation

The Financial Evaluation Committee will evaluate the Financial Proposal documents. Initially, Financial Proposals will be opened and reviewed for responsiveness to the RFQ and if a Financial Proposal is found to be non-responsive, that Proposal may be deemed non-responsive.

Each Financial Proposal that is deemed responsive, will be evaluated and assigned a financial score. The Financial Proposals will be scored based on a maximum score of 40 points. The maximum financial score will be allocated to the Financial Proposal with the lowest price. All other responsive Financial Proposals will receive a proportionate score using this formula:

Financial points awarded = 40 potential points x (Lowest Financial Proposal / Cost of Proposal Being Evaluated).

The Financial Proposal evaluation is **40% (up to 40 points)** of the final score.

E. Final Composite Score

A final composite score will be calculated by the OTDA by adding the Technical Proposal points and the Financial Proposal points.

F. Award Recommendation and Agreement

The Offeror with the highest composite score(s) will be notified of selection. The awarded Offeror will enter into a written Agreement as set forth in Appendix T, which includes the terms and conditions in Appendix B. The Agreement is intended to incorporate all the documents comprising the Contract between

OTDA and the Contractor. The resultant Agreement shall not be binding until fully executed and signed by all appropriate parties.

Appendix A
Standard Clauses for New York State Contracts

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE.

Standard Clauses for New York State Contracts

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Standard Clauses for NYS Contracts

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

1. Executory Clause.

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

2. Non-Assignment Clause.

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

3. Comptroller’s Approval.

In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. Workers’ Compensation Benefits.

In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of

this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. Non-Discrimination Requirements.

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

6. Wage and Hours Provisions.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. Non-Collusive Bidding Certification.

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

8. International Boycott Prohibition.

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

9. Set-Off Rights.

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

10. Records.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and

copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. Identifying Information and Privacy Notification.

- (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.
- (b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. Equal Employment Opportunities for Minorities and Women.

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

Standard Clauses for New York State Contracts

following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

- (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;
- (b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and
- (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. Conflicting Terms.

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

14. Governing Law.

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

15. Late Payment.

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

16. No Arbitration.

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. Service of Process.

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

18. Prohibition on Purchase of Tropical Hardwoods.

The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

19. Macbride Fair Employment Principles.

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

20. Omnibus Procurement Act of 1992.

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

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. Reciprocity and Sanctions Provisions.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the

goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain.

NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. Compliance With Breach Notification and Data Security Laws.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

23. Compliance With Consultant Disclosure Law.

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

24. Procurement Lobbying.

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

25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors.

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

26. Iran Divestment Act.

By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

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

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

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

27. Admissibility of Reproduction of Contract.

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

APPENDIX B
OTDA Terms and Conditions

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The Terms and Conditions set forth in this APPENDIX B are made part of the Agreement between OTDA and the Contractor.

General

1. Ethics Compliance

All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

Contractors, consultants, vendors, and subcontractors may hire former State agency, OTDA or State authority 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 years following their separation from OTDA service. In addition, former State and 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 the State or OTDA. The Offeror shall identify and provide OTDA with notice of any/all employees of the Offeror and its subcontractors who are former employees of the State, who will be assigned to perform services under an Agreement, resulting from this Solicitation, by completing the Offeror's Disclosure of Former State Employees form included in (APPENDIX E), as part of their bid proposal.

2. Definitions

Terms used in the Agreement shall have the following meanings:

- a. **Administrative Proposal** means the administrative portion of an Offeror's Proposal.
- b. **Attorney General** or **AG** means the Attorney General of the State of New York.
- c. **Bid** or **Proposal** means a response to the Solicitation submitted by a Bidder to provide Products.
- d. **Bid Specifications** means a written description drafted by OTDA setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work.
- e. **Bidder, Offeror, or Proposer** means any person or entity who submits a Bid in response to the Solicitation. At the time that a Bidder executes a Contract with OTDA, the Bidder shall become a "Contractor."
- f. **Specifications** mean the terms and conditions set forth in the negotiated Agreement and associated documents.
- g. **Business Day** means any day which is neither a Saturday, Sunday, nor an official New York

State or federal holiday.

- h. Contract or Agreement** means the writings that contain the agreement of OTDA and the Contractor setting forth the total legal obligation between the parties as determined by applicable laws and regulations.
- i. Contract Approval Date** means the date upon which OSC approves the Contract.
- j. Contract Term or Term** means the period beginning on the date OSC approves the Contract and ending on the date the Contract expires or terminates, unless otherwise specified in the Solicitation.
- k. Contractor** means the successful Bidder to whom a Contract has been awarded by OTDA.
- l. Commodities** means material goods, supplies, products, construction items or other standard articles of commerce (other than technology) that are the subject of any purchase or exchange.
- m. Documentation** means the complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, that are necessary to enable OTDA to properly test, install, operate and enjoy full use of the Product.
- n. Financial Proposal** means the financial portion of a Proposal.
- o. Invitation for Bids or IFB** means a type of Solicitation that is most typically used for procurements where requirements can be stated, and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.
- p. OSC** means the Office of the Comptroller of New York State.
- q. OTDA** means the New York State Office of Temporary and Disability Assistance.
- r. Product(s)** means items or deliverables under a Solicitation or Contract which may include commodities, services and/or technology, as applicable.
- s. Request for Proposals or RFP** means a type of Solicitation that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on “best value,” as defined by the State Finance Law, to one or more responsive and responsible Bidders, and as identified more specifically in the RFP issued herein (if any).
- t. Request for Quotation or RFQ** means a procurement method that can be used in situations such as single source, or emergency purchases.
- u. Responsible Bidder** means a Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by OTDA. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.
- v. Responsive Bidder** means a Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by OTDA.
- w. Services** means the performance of a task or tasks as described in the Agreement.

- x. **Single Source** means a procurement where two or more Bidders can supply the required Product, and OTDA may award the contract to one Bidder over the other.
- y. **Site** means the location (street address) where Product will be delivered or executed.
- z. **Sole Source** means a procurement where only one Bidder is capable of supplying the required Product.
- aa. **Solicitation** means writings by OTDA setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to APPENDIX A (Standard Clauses for NYS Contracts), APPENDIX B (General Specifications), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified in the Contract.
- bb. **State** means the State of New York.
- cc. **Subcontractor** means any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of the Contract with the Contractor.
- dd. **Submission Date** means the date on which Proposals are due to OTDA.
- ee. **Technical Proposal** means the technical portion of a Bidder's Bid Proposal.
- ff. **Technology** means a good, either new or used, or service, or a combination thereof, that results in a technical method of achieving a practical purpose or in improvements in productivity. Procurements of technology are conducted in the same manner as are procurements of services.

Bid Submission

3. Bid Submission

- a. **Bidding** All Bids, including all information and Product required by the Solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (US\$). Any Bids submitted which do not meet the above criteria may be rejected.
- b. **Bid Opening** Bids may, as applicable, be opened publicly. OTDA reserves the right at any time to postpone or cancel a scheduled Bid opening.
- c. **Late Bids** Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in OTDA's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of OTDA that the Late Bid was caused solely by factors outside the control of the Bidder. Furthermore, OTDA may choose to accept a Late Bid if OTDA determines, in its sole discretion, that doing so is in the best interests of the State. However, in no

event shall OTDA be under any obligation to accept a Late Bid.

4. Freedom of Information Law

All Proposals shall become the property of OTDA and may be disclosed or used by OTDA to the extent permitted by law. OTDA may disclose a Proposal to any person for the purpose of assisting in evaluating the Proposal or for any other lawful purpose. Information in Proposals relating to Offeror 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 Offeror. All proposals will become State agency records, which will be available to the public in accordance with the Freedom on Information Law. ***Any portion of its Proposal that an Offeror believes constitutes proprietary information entitled to confidential handling, as an exception to the Freedom of Information Law, must be clearly and specifically designated in the proposal.*** If OTDA agrees with the proprietary claim, the designated portion of the proposal will be withheld from public disclosure. Blanket assertions of proprietary material will not be accepted, and failure to specifically designate proprietary material will be deemed a waiver of any right to confidential handling of such material. OTDA's determination of whether the Offeror's claim of proprietary status of the designated information should be granted will be predicated in large measure upon the Offeror's written statement of the necessity for the exemption. Therefore, while not required, Offerors are advised to submit their written statements of the necessity for the claimed proprietary information exceptions at the time of the submission of their Proposals.

5. Prevailing Wage Rates - Public Works and Building Services Contracts

If any portion of work being solicited is subject to the prevailing wage rate provisions of the Labor Law, then this Section shall apply:

- a. **Prevailing Wage Rate Applicable to Bids** A copy of the applicable prevailing wage rate schedule is incorporated into the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (e.g., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rates for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. ***Bids that fail to comply with this requirement will be disqualified.***
- b. **Wage Rate Payments/Changes During Contract Term** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.
- c. **Article 8 Construction/Public Works Contracts** In compliance with Article 8, Section 220 of the New York State Labor Law:

- i. **Posting** The Contractor must publicly post on the work Site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.
 - ii. **Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in the State, such records must be kept at the work Site. For building services contracts, such records must be kept at the work Site while work is being performed.
 - iii. **Submission of Certified Payroll Transcripts for Public Works Contracts Only** Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to OTDA issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.
 - iv. **Day's Labor** No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than 5 calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.
- d. **Article 9 Building Services Contracts** In compliance with Article 9, Section 230 of the New York State Labor Law:
- i. **Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work Site while work is being performed.
 - ii. **Overtime** Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

6. Taxes

- a. Unless otherwise specified in the Solicitation, Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.
- b. Purchases made by the State of New York are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State sales tax exemption, either the Purchase Order issued by a State Agency, or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116(a)(1) of the Tax Law.

7. Expenses Prior to Contract Execution

OTDA is not liable for any costs incurred by a Bidder or Contractor in the preparation and production of a Bid.

8. Product References

- a. **“Or Equal”** In all Solicitations or Bid Specifications, the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. OTDA’s decision as to acceptance of the Product as equal shall be final.
- b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

9. Remanufactured, Recycled, Recyclable, or Recovered Materials

Upon the conditions specified in the Solicitation and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable, 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 Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements, or by the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, Contractor shall deliver new materials in accordance with the “Warranties” set forth below.

Items with recycled, recyclable, recovered, refurbished, or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

10. Products Manufactured in Public Institutions

Bids offering Products that are manufactured or produced in public institutions will be rejected.

11. Pricing

- a. **Unit Pricing** If required by the Solicitation, the Bidder should insert the price per unit specified, for each item unless otherwise specified in the Solicitation.
- b. **Net Pricing** Unless otherwise required by the Solicitation, prices shall be net, including transportation, travel, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination indicated in the Solicitation.
- c. **“No Charge” Bid** When Bids are requested on a number of Products as a lot, a Bidder desiring to Bid “no charge” on a Product in the lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of OTDA.
- d. **Specific price decreases:**
 - i. **GSA Changes:** Where net pricing under the Contract is based on an approved General Services Administration (GSA) schedule, price decreases shall take effect automatically

during the Contract term and apply to on or after the date the approved GSA schedule pricing decreases during the Contract term; or

- ii. **Commercial Price List Reductions:** Where net pricing under the Contract is based on a discount from Contractor's list prices, price decreases shall take effect automatically during the Contract term and apply to on or after the date Contractor lowers its pricing on its commercial price lists during the Contract term; or
- iii. **Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and
- iv. **Special Offers/Promotions to Authorized Users:** Contractor may offer other State agencies under another contracting vehicle, competitive pricing which is lower than the net pricing set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific purchase order from another State agency without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

- e. **Cost Proposal Revisions** A Contractor may be solicited prior to Contract award to propose the best possible offer for the Product being bid on, in accordance with State Finance Law Section 163(9)(c). A cost proposal revision must be a lower price than the initial price.

12. Site Inspection

Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

Bid Evaluation

13. Bid Evaluation

OTDA reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if OTDA determines the best interests of the State will be served. OTDA, in its sole discretion, may accept or reject illegible, incomplete or vague Bids. Bid evaluation criteria for a Solicitation is set forth therein.

In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing, OTDA may determine another criterion to evaluate tie bids.

14. Quantity Changes Prior to Award

OTDA reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

15. Timeframe for Offers

Bids must remain firm for 365 days, or such other period set forth in a Solicitation, from the date the Bid is due in the Solicitation.

16. Debriefings

Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OTDA that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

17. Contract Publicity

Any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by OTDA prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the State.

Terms and Conditions

18. Procurement Rights

OTDA reserves the right to:

- a. Reject any and all Proposals received in response to this Solicitation.
- b. Correct Proposers' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the Proposer.
- c. Utilize any and all ideas submitted in the proposals received.
- d. Negotiate with Proposers responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.
- e. Begin contract negotiations with another bidding Contractor(s) in order to serve the best interests of the State of New York should OTDA be unsuccessful in negotiating a contract with the selected Contractor.
- f. Waive any non-material requirement not met by all Proposers.
- g. Not make an award from this Solicitation.
- h. Make an award under this Solicitation in whole or in part.
- i. Make multiple contract awards pursuant to this Solicitation.

- j. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
- k. Seek clarifications or revisions of proposals of Bids.
- l. Disqualify any bidder whose conduct and/or Proposal fails to conform to the requirements of the Solicitation.
- m. Prior to the bid opening, amend the Solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available.

19. Contract Effective

The Contract shall be deemed effective upon its approval by the New York State Attorney General and the State Comptroller.

20. Official Use Only/No Personal Use

The Contract is only for official use. Use of the Contract for personal or private purposes is strictly prohibited.

21. Modification of Contract Terms

The Contract may only be modified or amended upon mutual written agreement of OTDA and the Contractor, and approved by OSC and the AG as necessary.

The Contractor may, however, offer OTDA more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to OTDA by the Contractor at the time of such offer.

Other than where such terms are more advantageous than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding unless authorized by OTDA or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, Purchase Orders or other documents forwarded by the Contractor for payment, notwithstanding OTDA's subsequent acceptance of Product, or that OTDA has subsequently processed such document for approval or payment.

22. Scope Changes

Prior to the Contractor implementing any change in the Services, it shall obtain the consent and approval of OTDA. The Contractor shall, prior to implementation of any such change, give written notice to OTDA of the service affected, a description of the change, why it is needed, a suggested implementation approach (and testing if necessary), the cost to OTDA if any, and any other information requested by OTDA. The approval, prior to implementation, of any requested change is in the sole discretion of OTDA.

In the event that OTDA proposes a change in technology or Services, it shall, prior to implementation of any such change, give written notice to the Contractor with a description of the change, why it is needed, a suggested implementation approach (and testing if necessary), and the Contractor shall have a reasonable time to analyze the cost, if any, to the Contractor. The final determination for implementation of any requested change pursuant to this section is in the sole discretion of OTDA.

OTDA reserves the right to direct operating changes to the Contractor based on its own observations or based on suggestions made by the Contractor.

Work performed outside the scope of the Agreement or without the approval of OTDA shall not be subject to charge by the Contractor.

23. Estimated/Specific Quantity Contracts

Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

24. Emergency Contracts

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, OTDA reserves the right to obtain the Product from any source, including but not limited to this Contract, as OTDA, in its sole discretion, determines will meet the needs of such emergency. Contractor shall not be entitled to any claim for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

25. Product Delivery

Delivery must be made, if required, in accordance with the terms of the Contract. The decision of OTDA as to compliance with delivery terms shall be final. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify OTDA, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved by OTDA in writing.

26. Title and Risk of Loss for Products Other Than Technology Products

Notwithstanding the form of shipment, title or other property interest, risk of loss for Products other than technology Products shall not pass from the Contractor to OTDA until the Products have been received, inspected and accepted by OTDA. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Contract. Mere acknowledgment by OTDA of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by OTDA. Title, risk of loss, and acceptance for technology Products shall be governed by the Contract.

27. Product Substitution

In the event a specified Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause), a Product deemed in writing by OTDA to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to OTDA. Unless otherwise specified, any substitution of Product shall require OTDA's written approval.

28. Rejected Product

When Product is rejected, it must be removed by the Contractor from OTDA's premises within 10 calendar days of notification of rejection by OTDA. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor.

29. Installation

Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the Site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or Site. Work shall be performed to cause the least inconvenience to OTDA and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

30. Repaired or Replaced Products, Parts, or Components

Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including warranties, as set forth in the Warranties clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Before installation, all proposed substitutes for the original manufacturers' installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

31. Employees, Subcontractors and Agents

The Contractor will conduct background checks on all employees working on this Agreement, and shall retain only individuals with the moral fitness necessary to perform Services hereunder. If the Contractor is unable to determine an employee's fitness due to the results of a background check, then it shall forward a description of the results to the OTDA, for review and determination. If it is later determined that the Contractor knowingly rendered a false positive determination of an employee's fitness, failed to conduct a background check, or failed to reasonably interpret the results in confirming an employee's fitness to perform duties under the terms of this Agreement, in addition to any other remedies available to the OTDA, the OTDA may terminate this Agreement for cause. The Contractor shall provide immediate written notice to the OTDA if at any time the Contractor learns that its determination of an employee's fitness to perform duties under the terms of this Agreement was erroneous or has become erroneous because of changed circumstances. The Contractor will ensure that the provisions of this section are incorporated within all subcontracts, and acknowledges the responsibility for ensuring that these provisions are fully complied with by all Subcontractors. The Contractor will be required to maintain records related to the background investigations performed for the term of this Agreement. All employees, Subcontractors, or agents of the Contractor performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Contract, and must comply with all security and administrative requirements in the Contract. OTDA reserve the right to conduct a security background check or otherwise approve

any employee, Subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with OTDA's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract. OTDA reserves the right to reject and/or bar from any OTDA facility for cause any employee, Subcontractor, or agent of the Contractor.

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.

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.

32. Assignment

In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of OTDA; provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. OTDA may waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor's business entity or enterprise.

Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to OTDA and seek written agreement from OTDA which will be filed with the State Comptroller. OTDA shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OTDA responsibilities for the Contract.

33. Subcontractors and Suppliers

OTDA reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified

minority- and women-owned business enterprises as required in prior OTDA Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; OTDA's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services. OTDA reserves the right to approve contracts between the Contractor and Subcontractors.

34. Suspension of Work

OTDA, in its sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, due to a budget freeze or reduction in State spending, or declaration of emergency. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as OTDA issues a formal written notice authorizing a resumption of performance under the Contract.

35. Termination

- a. **Mutual Agreement** All or any part of this Agreement may be terminated by mutual written agreement of OTDA and the Contractor.
- b. **For Cause** For a material breach that remains uncured for more than 30 calendar days or other longer period as specified by written notice to the Contractor, the Contract may be terminated by OTDA for cause. Neither the State nor OTDA shall be liable for any of Contractor's costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such termination shall be upon written notice to the Contractor. In such event, OTDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

A material breach means a significant and/or repeated failure(s) to deliver a Product in accordance with the timetable, price or performance standards applicable thereto, or when a material term of the Contract is breached.

- c. **For Convenience** This Contract may be terminated at any time by OTDA for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. If the Contract is terminated pursuant to this subdivision, OTDA shall remain liable for all accrued but unpaid charges incurred through the date of the termination.
- d. **For Violation of Sections 139-j and 139-k of the State Finance Law** OTDA reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law 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.
- e. **For Violation of Section 5-a of the New York State Tax Law** OTDA reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished 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.

- f. **For Non-Responsibility** The Contractor agrees that if it is found by the State that its responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, then OTDA may terminate the Contract.

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 OTDA at the Contractor's expense where the Contractor is determined by OTDA to be non-responsible. In such event, OTDA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

- g. **Upon Conviction of Certain Crimes** OTDA reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.
- h. **Mitigation of Costs** The Contractor shall not undertake any additional or new contractual obligations on or after the receipt of notice of termination without the prior written approval of OTDA. On or after the receipt of notice of termination and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligation as economically as possible for OTDA.

36. Savings/Force Majeure

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or OTDA in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 calendar days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

- a. OTDA may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or

- b. The Contractor will provide OTDA with access to Products first in order to fulfill orders placed before the force majeure event occurred. OTDA agrees to accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor OTDA shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and OTDA to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of OTDA where the delay or failure will significantly impair the value of the Contract to the State or OTDA, OTDA may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, OTDA reserves the right, in its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss to the Contractor. In the event of a dispute between the Contractor and OTDA, such dispute shall be resolved in accordance with OTDA Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

37. Contract Invoicing

- a. **Invoicing** Contractor shall provide complete and accurate billing invoices to OTDA in order to receive payment. Billing invoices submitted to OTDA must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer.

Contractor shall provide, upon request of OTDA, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by OTDA. OTDA may direct the Contractor to provide the information to the State Comptroller.

- b. **Method of Payment** OTDA and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by OTDA, in OTDA's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at HelpDesk@sfs.ny.gov, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where OTDA has expressly authorized payment by paper check as set forth above.

38. Prompt Payments

- a. **By State Agencies** The required payment date by the State shall be 30 calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed may be made in accordance with State Finance Law Sections 179-d et seq. and the implementing regulations (2 NYCRR § 18.1 et seq.).
- b. **By Contractor** Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

39. Remedies for Breach

In the event that Contractor fails to observe or perform any material term or condition of the Contract and such failure remains uncured after 30 calendar days following written notice by OTDA, then OTDA may exercise all rights and remedies available under the Contract, and those available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 30 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 30-day period may, in the sole discretion of OTDA, be extended for a reasonable period. It is understood and agreed that the rights and remedies available to the OTDA in the event of breach shall include but not be limited to the following:

- a. **Cover/Substitute Performance** In the event of Contractor's material, uncured breach, OTDA may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if OTDA is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, acquire acceptable replacement Product of lesser or greater quality. Such purchases may be deducted from the Contract quantity without penalty or liability to the State.
- b. **Withhold Payment** In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of OTDA.
- c. **Reimbursement of Costs Incurred** Contractor agrees to reimburse OTDA promptly for any and all additional costs and expenses incurred for acquiring acceptable replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, OTDA may obtain replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

- d. **Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by OTDA from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to OTDA the amount of such claim or portion of the claim still outstanding, on demand. OTDA reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

40. Assignment of Claim

Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC Section 1, et seq. and the antitrust laws of the State of New York, General Business Law Section 340, et seq.

41. Toxic Substances

Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide OTDA with not less than two copies of a Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Safety Data Sheet must be provided to and approved by OTDA.

42. Independent Contractor

It is understood and agreed that the legal status of the Contractor, its Subcontractors, agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of OTDA, and therefore are not entitled to any of the benefits associated with such employment.

43. Security

Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of OTDA set forth in the Contract or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

44. Cooperation with Third Parties

The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of OTDA, as necessary to ensure delivery or performance of Product.

45. Warranties

- a. Product Performance** Contractor hereby warrants and represents that the Products acquired by OTDA under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.
- b. Title and Ownership** Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by OTDA under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify OTDA and hold OTDA harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein. Contractor shall provide OTDA with appropriate documentation indicating the vesting of such rights in Contractor, and/or the right to transfer such rights, as requested by OTDA.
- c. Product Warranty** Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be substantially free from defects in material and

workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one year from the date of acceptance, whichever is longer (the "Product warranty period").

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

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

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or OTDA shall in no event be liable or responsible therefor.

Where Contractor, the Third-Party Software vendor, or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with Third-Party Software vendor or other third-party manufacturers for warranty repair or replacement of Third-Party Software vendor or other third-party manufacturer's Product.

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

Unless recycled, recyclable, or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable, or Recovered Materials clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no component or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

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

- d. **Virus Warranty** Contractor represents and warrants that any Product acquired under the Contract by OTDA does not contain any known Viruses. Contractor is not responsible for Viruses introduced at OTDA's Site.

- e. **Date/Time Warranty** Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

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

- f. **Qualification Warranty** Contractor warrants that it and any subcontractors it utilizes in the performance of the services is qualified and licensed to do business in the State of New York.
- g. **Administration Warranty** Contractor warrants that it shall Maintain an adequate administrative organizational structure sufficient to discharge its contractual responsibilities. Contractor shall provide OTDA with advanced, written notification of all reductions in staff below the levels found in the Contractor's proposal.
- h. **Price Protection Warranty** Contractor warrants that the Agreement's prices and warranties are comparable to or better than the equivalent terms being offered by the Contractor to other State government customers using similar scope and volume of services under like terms and conditions. If, during the Term of this Agreement, the Contractor enters into an agreement with any other State government customer that offers better prices and warranties for similar services, OTDA may amend the Agreement to reflect such superior pricing or warranty terms.
- i. **Workmanship Warranty** Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any. OTDA must notify Contractor of any services warranty deficiencies within 90 calendar days from performance of the services that gave rise to the warranty claim.
- j. **Survival of Warranties** All warranties contained in this Contract shall survive the termination of this Contract.
- k. **Prompt Notice of Breach** OTDA shall notify the Contractor in writing of any claim of breach of any warranty provided herein.
- l. **Additional Warranties** Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to OTDA.
- m. **No Limitation of Rights** The rights and remedies of the State and OTDA provided in this clause are in addition to and do not limit any rights afforded to the State and OTDA by any other clause of the Contract.

46. Legal Compliance

Contractor represents and warrants that it shall secure all notices and comply with all applicable

laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any extensions thereof, Contractor must establish to the satisfaction of OTDA that it substantially meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by OTDA. Failure to comply or failure to provide proof may constitute grounds for OTDA to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by OTDA. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

47. Indemnification

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold OTDA harmless from suits, actions, proceedings, claims, losses, damages, and costs (including reasonable attorney fees) of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, **without limitation**; provided, however, that the Contractor shall not be obligated to indemnify OTDA for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of OTDA.

OTDA shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify OTDA, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

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

48. Indemnification Relating to Infringement

The Contractor shall defend, indemnify and hold OTDA harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret or other proprietary right provided such claim arises solely out of the Products as

supplied by the Contractor, and not out of any modification to the Products made by OTDA or by someone other than Contractor at the direction of OTDA without Contractor's approval; provided, however, that the Contractor shall not be obligated to indemnify OTDA for any claim, loss or damage arising hereunder to the extent caused by the negligent act, gross negligence or willful misconduct of OTDA.

OTDA shall give Contractor: (i) prompt written notice of any action, claim or threat of suit alleging infringement, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for OTDA the right to continue usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that OTDA is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action or proceeding at law or in equity is commenced against OTDA arising out of a claim that OTDA's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify OTDA and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of OTDA and attempt to secure a continuance to permit the State and OTDA to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and OTDA may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

49. Limitation of Liability

Except as otherwise set forth in the Contract, the limit of liability shall be as follows:

- a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in an amount equal to two (2) times the total "not to exceed" value of the Contract.
- b. OTDA may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted by OTDA unless Contractor at the time of the presentation of claim shall demonstrate to OTDA's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

- c. Notwithstanding the above, neither the Contractor nor OTDA 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.

50. Dispute Resolution Procedures

Policy - It is the policy of OTDA to provide an opportunity to resolve disputes related to contract administration. Interested parties are encouraged, but not required, to seek resolution of disputes through consultation with OTDA staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration.

Dispute Resolution Procedures

a. Informal Dispute Resolution Process

- i. In the event there is a dispute, OTDA and Contractor agree to exercise best efforts to resolve the dispute as soon as possible. The Contractor and OTDA shall, without delay, continue to perform their respective obligations under the Contract.
- ii. In the event OTDA is dissatisfied with the Contractor's Product(s) provided under the Contract, then OTDA shall notify the Contractor of such in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with OTDA, the Contractor shall notify OTDA in writing. If either party notifies the other of a dispute, then the other party shall make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt to diligently reach a satisfactory result through negotiation.
- iii. If negotiation between the Contractor and OTDA fails to resolve any such dispute to the satisfaction of the parties within 14 business days of such notice, or as otherwise agreed to by the Contractor and OTDA, the matter shall be submitted to OTDA's Director of the Bureau of Contract Management (the Director). The Director shall attempt in good faith to resolve the dispute within the next 14 business days or as otherwise agreed to by the parties. The Director shall then send a written notification to the Contractor, memorializing the good faith effort. This attempt must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

b. Formal Dispute Process

- i. Submission of Formal Disputes - A Formal Dispute must be filed by mail and email to the person specified in the Solicitation or Agreement to receive receipt of notifications. The notification must include a detailed statement of the legal and/or factual grounds for the Formal Dispute, relevant documents, a statement as to the form of relief requested, and any other pertinent information relating to the dispute.
- ii. A Formal Dispute must be filed within 20 business days after the Contractor and OTDA failed to reach resolution through the Informal Dispute Resolution Process.

c. Agency Response to Dispute

- i. The Director will consider all information relevant to the Formal Dispute and may require the Contractor to meet or participate in a conference call with OTDA to discuss the Formal

Dispute when, in the Director's sole judgment, circumstances so warrant.

- ii. The Director shall send a formal dispute determination to the Contractor.

d. Appeals

Should the Contractor be dissatisfied with the Director's Formal Dispute determination, a written appeal may be filed with the Division of Legal Affairs, by regular mail, using the following mailing information:

General Counsel
Division of Legal Affairs, Floor 16
Office of Temporary and Disability Assistance 40 North Pearl Street
Albany, NY 12243

Written notice of appeal of a determination must be received at the above address no more than 10 business days after the date the Formal Decision by the Director is received by the Contractor.

The General Counsel shall review and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within 20 business days of receipt of the appeal.

An appeal of the decision of the Director shall not include new facts and information unless requested in writing by the General Counsel. The decision of the General Counsel shall be a final and conclusive agency determination.

51. Procedure for Protests/Appeals of Bid Specifications

- a. **Formal Written Protests** Final agency decisions or recommendations for award generally may be reconsidered only in the context of a formal written protest as described below. Any Offeror or prospective Offeror who believes that there are errors or omissions in the procurement process or who otherwise has been aggrieved in the drafting or issuance of this Solicitation, may present a formal complaint to OTDA and request administrative relief concerning such action ("formal protest"). A formal protest must be submitted in writing to OTDA, by ground mail, except where alternate arrangements have been made, to the:

Director, Bureau of Contract Management
40 North Pearl Street, 12th Floor, Section D,
Albany, NY 12243.

A formal protest must include a statement of all legal and/or factual grounds for disagreement with an OTDA specification or purchasing decision including a contract award; a description of all remedies or relief requested; and copies of any and all applicable supporting documentation.

- b. **Deadline for Submission of Formal Protests for Errors or Omissions in the Procurement Process** OTDA must receive formal protests concerning errors, omissions or prejudice, including patently obvious errors in the Solicitation or Specifications, at least 10 calendar days before the Bid Submission Date.
- c. **Deadline for Submission of Formal Protests of Contract Award** OTDA must receive a formal protest concerning a contract award within 10 business days of the issuance of notice of contract award or receipt of a non-select letter by an Offeror to:

Director, Bureau of Contract Management

40 North Pearl Street, 12th Floor, Section D,
Albany, NY 12243

- d. **Review and Final Determination of Protests** Protests will be resolved through written correspondence. However, the protester may request a meeting to discuss a formal protest or OTDA may initiate a meeting on its own accord, at which time the participants may present their concerns. Either the protester or OTDA may decline such a meeting. The Director of BCM may designate an OTDA employee ("designee") to determine and undertake the initial resolution or settlement of any protest. The Director of BCM or his/her designee will conduct a review of the records involved in the protest, including, but not limited to: (a) the evaluation team's reports and recommendations; (b) the materials presented by the protesting party and/or (c), any materials required of or submitted by other Offerors. If necessary, the Director of BCM or the designee shall consult with OTDA's Counsel's Office; and prepare a protest decision. A copy of the protest decision, stating the reason(s) upon which it is based and informing the protester of the right to appeal an unfavorable decision to the OSC shall be sent to the protester or its agent within 45 calendar days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest decision will be recorded and included in the procurement record, or otherwise forwarded to the OSC upon issuance.
- e. **Appeals** Upon receipt of OTDA's protest decision, a protester has 10 business days to file an appeal of the determination with the OSC, Bureau of Contracts. The appeal must be filed with:
Director of the Bureau of Contracts at bidprotests@osc.state.ny.us or Bureau of Contracts
New York State Office of the State Comptroller 110 State Street, 11th Floor
Albany, NY 12236
- The protester's appeal must contain an affirmation in writing that a copy of the appeal has been served on OTDA, the successful bidder (except where the contracting agency upholds the protest and the successful bidder is the appealing party), and any other party that participated in the protest. In its appeal, the interested party shall set forth the basis on which it challenges OTDA's determination. The OSC Bureau of Contracts will conduct a formal review and issue its determination of the appeal in accordance with its established policy and procedures.
- f. **Reservation of Rights and Responsibilities of OTDA** OTDA reserves the right to waive or extend the time requirements for protest submissions, decisions, and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and OTDA. If OTDA determines that there are compelling circumstances, including the need to proceed immediately with the Contract award in the best interest of the State, then these protest procedures may be suspended, and such decision shall be documented in the procurement record. OTDA will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of Contract award prior to issuance of a formal protest decision.
- g. **Procurement Activity Prior to Final Protest Determination** Receipt of a formal bid protest shall not stay action on a procurement unless otherwise determined by OTDA. If a formal protest or appeal is received by OTDA on a recommended award prior to the underlying Contract being forwarded to the OSC, notice of receipt of the protest and appeal must be included in the procurement record forwarded to the OSC. If a final protest decision or final decision on appeal has been reached prior to transmittal to the OSC, a copy of the final

decision must be included in the procurement record and forwarded with the recommendation for award. If a final protest decision is made after the transmittal of a bid package to the OSC, but prior to the OSC approval under State Finance Law § 112, a copy of the final OTDA decision shall be forwarded to the OSC when issued, along with a letter either: a) confirming the original OTDA recommendation for award and supporting the request for final § 112 approval, b) modifying the proposed award recommendation in part and supporting a request for final § 112 approval as modified; or c) withdrawing the original award recommendation.

- h. **Record Retention of Bid Protests** All records related to formal Offeror protests and appeals shall be retained for at least one (1) year following resolution of the protest. All other records concerning the procurement shall be retained according to the statutory requirements for records retention.

52. No Presumption Against Drafter

Each of the parties hereto has jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement.

53. No Conflict

The Contractor warrants and affirms that the terms of the Agreement do not violate any agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under this Agreement.

54. Availability of OTDA Resources

No aspect of Contractor's performance under the Agreement will be contingent upon OTDA or State personnel or the availability of OTDA or State resources with the exception of (a) all actions required of the Contractor specifically identified in this Agreement as requiring OTDA approval, policy decisions, or policy approvals; (b) exceptions specifically stated in the Agreement; or (c) the normal cooperation which can be expected in such a contractual relationship or duties, tasks and obligations subsequently agreed to by the parties.

To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of Information Technology Products such as software, computer components, systems, or networks for the processing, distribution, or storage of data, the following clauses shall govern, as applicable.

55. Software License Grant

Where Product is acquired on a licensed basis, and unless otherwise provided or modified in the Solicitation or Contract, the following shall constitute the license grant:

- a. **License Scope.** OTDA, its agents, and subcontractors is granted a non-exclusive, perpetual license to use, copy, execute, reproduce, display, perform, and merge the Product within its business enterprise. OTDA, its agents and subcontractors shall have the right to use modifications or customizations of the Product.

OTDA and Contractor may agree to alternative licensing rights (e.g., subscription, term, etc.) for specific Products, provided such agreement is reached prior to Contract approval.

- b. License Term** The license term shall commence upon the date as indicated in the Contract.
- c. Product Documentation** Contractor shall provide Product Documentation electronically to OTDA at no charge. If Product Documentation is made available to customers in hard copy, Contractor shall provide at no charge one hard copy.

Contractor hereby grants to OTDA a non-exclusive, fully paid-up, royalty-free perpetual license in the Product Documentation to make, reproduce, and distribute, either electronically or otherwise, copies of the Product Documentation as necessary to enjoy full use of the Product in accordance with the Contract.

- d. Product Technical Support & Maintenance** OTDA shall have the option of electing the Product technical support and maintenance (“maintenance”) set forth in the Contract (if any) by giving written notice to Contractor any time during the Contract term. Contractor shall fully disclose all terms and conditions of maintenance available to OTDA, including the extent to which updates, upgrades, revisions, and new releases are included in maintenance.

Unless otherwise provided by written agreement between the Contractor and OTDA, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, Patches, and upgrades to OTDA, and (ii) help desk assistance at no additional cost, either by toll-free telephone or on-line functionality. Contractor shall maintain the Product so as to provide OTDA with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

OTDA shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that OTDA does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges. Contractor shall submit written notification to OTDA of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

- e. Permitted License Transfers**, Licenses granted hereunder may be transferred or combined for use pursuant to governmental restructuring or reorganization (“permitted license transfers”). There shall be no additional license or other transfer fees due Contractor, provided that the consolidated enterprise is equal to the prior enterprise capacity
- f. Restricted Use By Third Parties** Third parties retained by OTDA shall have the right to use the Product to maintain OTDA’s business operations, including data processing, for the time period that they are engaged in such activities provided such third party has executed, or agrees to execute, the Product manufacturer’s standard nondisclosure or restricted use agreement, which executed agreement shall be accepted by the Contractor (“Non-Disclosure Agreement”); and such third party maintains a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for OTDA. In no event shall OTDA assume any liability for third party’s compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or OTDA.
- g. Archival Back-Up and Disaster Recovery** OTDA may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (iii)

reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. The phrase "cold site storage" means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase "disaster recovery" means the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development. Contractor shall fully disclose all archival back-up and disaster recovery options available to OTDA (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.

- h. Confidentiality Restrictions** If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to OTDA. The terms of OTDA's use and disclosure of such information shall be governed by a written agreement between the Contractor and OTDA.

56. Product Acceptance

Unless otherwise provided for in the Contract, Contractor shall issue a written Notice of Completion to OTDA when a Product meets the specifications in the Contract. Subsequently, OTDA shall issue either a Notice of Acceptance or a Notice of Deficiency which sets forth defects associated with the Product. In the event a Notice of Deficiency is issued, then Contractor shall have 15 calendar days to correct such defects, and redeliver the Product to OTDA for approval. This process shall continue until OTDA has approved the Product.

Unless otherwise provided for in the Contract, OTDA shall have the option to run testing on the Product prior to acceptance, such tests and data to be specified by OTDA. The testing may, as appropriate, take the form of a documented installation test, capable of observation by OTDA, which shall be made part of the Contractor's standard documentation and shall be covered by the Product warranty. The test data shall remain accessible to OTDA after completion of the test.

Unless otherwise provided by mutual agreement or if OTDA elects to provide a deficiency statement specifying how the Product fails to meet the specifications, Contractor shall have 30 calendar days to correct the deficiency, and OTDA shall have an additional 60 calendar days to evaluate the Product as provided herein.

If the Product does not meet the specifications at the end of the testing period, as determined by OTDA, then OTDA, upon prior written notice to Contractor, may reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by OTDA to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of OTDA's agents or employees. When Product is not accepted, it must be removed by the Contractor from the premises of OTDA within 10 calendar days of notification of non-acceptance by OTDA. Rejected items not removed by the Contractor within the 10 calendar day period shall be regarded as abandoned by the Contractor and OTDA shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse OTDA for any costs incurred in storage or effecting removal or disposition after the 10-calendar day period.

57. No Hardstop or Passive License Monitoring

Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall not

contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Any Contractor access to the Product agreed to by OTDA as provided above shall be in accordance with OTDA’s security or other requirements. Contractor agrees that in the event of a breach of this provision that OTDA shall not have an adequate remedy at law, including monetary damages, and that OTDA shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which OTDA shall be entitled.

58. Ownership/Title to Project Deliverables

This clause shall apply where Contractor is commissioned by OTDA to furnish project deliverables as detailed in the Contract.

a. Definitions

- i. For purposes of this clause, “Products” means deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on electronic media c) Third-Party Software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).
- ii. For purposes of this clause, “Existing Products” means Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular Product was in existence prior to the commencement of the project.
- iii. For purposes of this clause, “Custom Products” means Products, preliminary, final, or otherwise, that are created or developed by Contractor, its Subcontractors, partners, employees, or agents for OTDA under the Contract.

b. Title to Project Deliverables Unless otherwise specified in writing in the Contract, OTDA shall have ownership and license rights as follows:

i. Existing Products:

- 1) **Hardware** - Title and ownership of existing hardware Products shall pass to OTDA upon acceptance.
- 2) **Software** - Title and ownership to existing Software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other Third-Party Software vendor (“Existing Licensed Product”), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the Third-Party Software vendor. Effective upon acceptance, such Product shall be licensed to OTDA in accordance with the Contractor or Third-Party Software vendor’s standard license agreement; provided, however, that such standard license, must, at a minimum: (a) grant OTDA, its agents,

and contractors a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises OTDA as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to OTDA's satisfaction) and distribute Existing Licensed Product to OTDA up to the license capacity stated in the Contract with all license rights necessary to fully effect the general business purposes stated in the Solicitation; and (b) recognize OTDA as the licensee. Where these rights are not otherwise covered by the Third-Party Software vendor's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. OTDA shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

- ii. **Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to OTDA the sole and exclusive rights, title and interest in Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in the course of Contractor's business. OTDA may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of OTDA taking exclusive ownership and title to such Products. In such case, OTDA shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purposes of OTDA.
- c. **Contractor's Obligation with Regard to Third-Party Software** Where Contractor furnishes existing licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or the Third-Party Software vendor's standard license agreement, Contractor shall be responsible for obtaining from the Third-Party Software proprietary owner/developer the rights set forth herein to the benefit of OTDA at Contractor's sole cost and expense.

59. Changes to Product or Service Offerings

- a. **Product or Service Discontinuance** Where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify OTDA in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) at OTDA's option, and in order to enable OTDA to continue the use and maintain the Product, provide OTDA with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that OTDA is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

In the event that the Contractor is not the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above within 5 business days of

Contractor receiving notice from the Product manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to OTDA approval, to an alternate Subcontractor.

- b. **Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify OTDA in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) shall submit the proposed rebundling change to OTDA for approval prior to its becoming effective for the remainder of the Contract term. ***The provisions of this section do not apply if the Contractor is not the Product manufacturer.***

60. Federal Procurement Clauses

In the event the Contract is Federally funded, then the following provisions shall apply:

a. Equal Employment Opportunity

The Contractor understands and agrees to comply, when applicable, with the equal opportunity clause provided under 41 CFR 60- 1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." (2 CFR 200, Subpart F, Appendix II).

b. Clean Air and Federal Water Pollution Control Act

As applicable, Contractor understands and agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Contractor shall report violations to OTDA to then be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). (2 CFR 200, Subpart F, Appendix II).

c. Anti-Lobbying Act

As a sub-client of OTDA, the Contractor understands and agrees to comply with the Federal requirements for certification and disclosure of Section 1352, Title 31 of the U.S. Code and implemented at 2 CFR 200, Subpart F, Appendix II. By signing this Agreement, the Contractor certifies that it will not use federally appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan funds.

The Contractor understands and agrees 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-clients shall certify and disclose accordingly. The Contractor shall comply with any requirements to provide OTDA with Federal lobbying reports to comply with this Anti-Lobbying Act. The Contractor may be liable for any civil penalty imposed upon OTDA for failing to make a required report.

d. Americans with Disabilities Act

28 CFR Part 35, Title II, Subtitle A prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public and State and local governments, except public transportation services.

The Contractor shall ensure that the Services provided comply with the Americans for Disabilities Act (ADA), the Rehabilitation Act of 1973, as amended, State law, and implementing regulations.

e. Drug-Free Workplace Statement

The Contractor shall comply with 41 U.S. Code § 8103, Drug-free workplace requirements in the provision of the Services. By signing this Agreement, the Contractor certifies that it will provide drug-free workplaces for its employees.

f. Royalty Free Rights to Use Software or Documentation Developed

All documentation produced as part of the Agreement will become the exclusive property of OTDA. OTDA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use such documentation and to authorize others to do so.

Contractor shall comply with 2 CFR 200.315 regarding OTDA's rights to the intangible property acquire under this Agreement.

g. Debarment and Suspension

The Contractor certifies that the Contractor and its principals are not listed on the government wide exclusions in the System for Award Management (SAM). The Contractor by signing this Agreement further certifies that the Contractor and its principals are not suspended or debarred, as specified by the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension". The Contractor also certifies by signing this Agreement that the Contractor and its principals are not ineligible under statutory or regulatory authority other than Executive Order 12549 pursuant to 2 CFR 200, Subpart F, Appendix II and 7 CFR Part 3017. Contractor shall complete and return in pursuit of such certification any appropriate form required by OTDA (see Federal Executive Order 12549 and 7 CFR Part 3017).

h. Title VI of the Civil Rights Act of 1964

The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibit recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 USC § 2000d et seq.) as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Contract (or Agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 USC § 2000d et seq., as

implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Contract or Agreement.

The Contractor shall include the above provision in each Subcontractor agreement within thirty (30) days of execution of this Contract.

i. Other federal requirements

The Contractor agrees to comply with any federal requirements such as, among others not listed above, the Copeland "Anti-Kickback Act" (18 USC 874), and Section 306 of the Federal Clean Water Act and to provide to OTDA any requested documents supporting such compliance, including if necessary creating such supporting documentation.

The Contractor shall include in all sub-awards documents at all tiers (including Subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) the language of this Section 27 Federal Procurement Clauses and shall ensure that all sub-clients shall certify and disclose as required by any federal requirements.

Appendix B-1

OTDA Security and Confidentiality Terms

Last Updated: January 2023

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The Security and Confidentiality Terms set forth in this Appendix B-1 are made part of the Agreement between OTDA and the Contractor.

1. Definitions

For purposes of this Appendix B-1 the following terms shall have the following meanings:

“Protected Information” means data or information to which the Contractor is given access which OTDA creates, receives, or maintains, which is, pursuant to federal and/or state laws, rules, regulations, policies or agreements, deemed confidential, personal, private and/or sensitive. Such data or information may be present or stored in any form or medium and includes, but is not limited to:

- a. Data or information obtained from sources outside of OTDA;
- b. Data or information maintained in and/or obtained from OTDA-owned applications, systems, networks and/or databases;
- c. Data or information identifying an individual, particularly where such disclosure could result in an unwarranted invasion of personal privacy;
- d. Computer codes or other electronic or non-electronic data or information, the disclosure of which could jeopardize the compliance stature, security or confidentiality of OTDA’s information technology solutions,
- e. applications, systems, networks or data;
- f. Any other material designated by OTDA as being “Confidential,” “Personal,” “Private,” or otherwise “Sensitive.”

“Authorized Persons” means the Contractor’s employees, subcontractors or other agents who are authorized and have a business justification to access Protected Information to enable Contractor to perform the services pursuant to the Agreement.

“Information Security Incident” means any allegation or suspicion held by or brought to the attention of an OTDA employee or Authorized Persons involving inappropriate or unauthorized access to, or disclosure of, Protected Information.

“Information Security Breach” means the unauthorized access by a non-Authorized Person of Protected Information as defined in New York State Information and Security Breach Notification Act (General Business Law Section 899-aa and 899-bb; State Technology Law Section 208).

“OTDA Contact” means the person or persons designated in writing by OTDA to receive Information security incident or Information security breach notifications.

“Continental United States (CONUS)” – the 48 contiguous States and the District of Columbia

“Follow the Sun” – Follow-the-sun is a type of global workflow in which tasks are passed around daily between work sites that are many time zones apart. All helpdesk, online, and support services which access any Data must be performed from within CONUS. At no time will any Follow the Sun support be allowed to access Data directly, or indirectly, from outside CONUS.

2. Data to be Disclosed

While a listing of specific data elements and/or information required to effectuate the Agreement may be more specifically set out in the solicitation, the obligations set out apply not only to such data elements and/or information but to all Protected Information, as defined herein.

3. Purpose of Data

Contractor represents that it is requesting and/or providing Protected Information solely for purposes specified in this solicitation. OTDA will release Protected Information to Contractor exclusively for this purpose. Contractor shall use the Protected Information only for the authorized purposes specified in this Agreement.

4. Ownership of Data

Contractor agrees that OTDA shall be deemed the “owner” of Protected Information disclosed by OTDA to Contractor under this Agreement including for purposes of complying with the requirements of General Business Law Section 899-aa and 899-bb.

5. Data Exchange Details

Prior to OTDA’s sharing of any data pursuant to this Agreement, Contractor and OTDA shall work together to provide and establish a secure, encrypted (both in transit and at rest) method of data exchange for any transfer of such data which shall, at a minimum, comport with the standards set and required by the [New York State Chief Information Security Office](#) (NYS CISO) and, where required, any additional heightened compliance obligations applicable to and necessitated by the data involved in any such exchange. The NYS CISO’s office shall, as OTDA deems appropriate, be provided with details of such proposed method of exchange for review and approval. The Parties agree that they will work together to create and keep current a Technical Service Description, to be made part of this Agreement, which sets forth the details of the Protected Information which OTDA shall furnish to Contractor, including, at a minimum, the frequency of the disclosure, timing, technical details of the method of data exchange (including all relevant details), and the format of any response as between the Parties.

6. Data Protection

Safeguarding of Protected Information shall be an integral part of the business requirements and activities of the Contractor to ensure there is no inappropriate or unauthorized use or exposure of Protected Information at any time. Contractor shall safeguard the confidentiality, integrity, and availability of Protected Information and comply with the following conditions:

- a. Implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure, or theft of Protected Information. Such security measures shall comply with industry best practices and shall, at a minimum, comply with those requirements set forth by the [NYS CISO](#), and must comply with all applicable state and federal law, rules, regulations, and policies.

- b. All Protected Information shall be encrypted at rest and in transit, in accord with, at a minimum, the standard set forth by the NYS CISO, all applicable state and federal law, rules, regulations and policies and, as appropriate, industry best practices.
- c. At no time shall any Protected Information be copied, disclosed or retained by the Contractor for any purpose other than performing the services under this Agreement.
- d. Contractor and Authorized Persons shall not disseminate, use, or permit the dissemination or use of Protected Information in any manner not described in this Agreement without express prior written consent from OTDA.
- e. Host all Protected Information and maintain and implement procedures to logically segregate and secure Protected Information from Contractor's data and data belonging to the Contractor's other customers, including other governmental entities.
- f. All data center(s) used to perform the services under the resulting Contract must, at a minimum, meet or exceed Tier 3 standards for redundancy and resilience, which can be found at the Uptime Institute website.
- g. The contractor must carefully, thoroughly, and thoughtfully vet all software solutions and hardware used to verify that they are compliant with the requirements set forth by the [NYS CISO](#) and fulfill the compliance obligations for the protection of OTDA's Protected Information. This vetting process shall also extend to all software solutions and hardware used by Authorized Persons.

7. Data Security

Contractor shall immediately disclose its non-proprietary security processes and technical limitations to OTDA such that adequate protection for Protected Information is attained. At a minimum Contractor represents and warrants that the security requirements and processes shall comport with the security standards and protocols set by the [NYS CISO](#). In addition, the Contractor shall also comply with any state and/or federal laws, rules, regulations and/or policies that are applicable to the data being exchanged under this Agreement, including any heightened compliance obligations. The system and procedure that the Contractor will maintain for handling, storage, use, and destruction of Protected Information governed by this agreement will be sufficient to allow OTDA and/or their designee(s) to audit compliance with this Agreement.

8. Data Location

Contractor shall provide its services to OTDA and OTDA's end users solely from data centers physically located within the continental United States (CONUS), meaning the 48 contiguous States and the District of Columbia. Storage of Protected Information at rest shall be located solely in data centers in the United States. The Contractor shall not store, access, maintain, or process Protected Information on a mobile or portable device. The Contractor will store and maintain Protected Information in a place and manner that is physically secure from unauthorized access (e.g., locked cabinets or storage room) and will store and process electronic Protected Information in such a way that it will be secure from unauthorized access by any means.

9. Contract and Data Center Audit

The Contractor shall allow OTDA and any other authorized government agency to audit the Contractor's compliance with the security procedures set forth in this section. Contractor shall perform an independent audit of its data centers which contain Protected Information at least annually, and provide OTDA a copy of such audit report. Any non-critical deficiencies identified in the audit report or where the Contractor is found to be noncompliant with Agreement safeguards must be remedied, within 90 days of the issue date of the audit report with proof of remediation provided to OTDA. Critical deficiencies must be immediately remedied within a timeframe that OTDA approves. The completion of these requirements is at the Contractor's expense with no additional cost to OTDA.

The contractor will maintain a formal policy and procedures for the handling, storage, use, and destruction of Protected Information governed by this Agreement which must be sufficient to allow OTDA and/or their designee(s) to audit compliance with this Agreement.

The contractor will permit OTDA, or their agent, to enter upon Contractor's premises at reasonable times to inspect and review their safeguards and procedures for protecting the confidentiality, privacy, security, and compliance of the Protected Information. The contractor will also cooperate with OTDA, or their agent, in connection with any request for access to staff, information, or material related to an OTDA confidentiality, privacy, security, or compliance review, audit, or monitoring visit.

The contractor will provide, at Contractor's expense, an independent third-party audit of all data center(s) used to perform the services under the resulting Contract showing no deficiencies. Thereafter on an annual basis, at the contractor's expense, a full version of the audit report will be provided to the State, within 30 days of the anniversary date of the Agreement. A Service Organization Control (SOC) 2 Type 2 audit report or approved equivalent sets the minimum level of a third-party audit.

10. Access

The contractor will limit access to Protected Information to Authorized Persons who have a legitimate business justification for access to such data for the purposes described in this Agreement.

For Protected Information with heightened compliance requirements, including but not limited to Unemployment Insurance Benefit information, Federal Parent Locator Services information, Federal Tax information, and Social Security Association information, Contractor will provide a listing of such Authorized Persons to OTDA at intervals determined by OTDA. The contractor will ensure that this list is kept current with any additions, changes, or removal of Authorized Persons needing access.

Access to Protected Information by Authorized Persons shall be closely monitored by Contractor and shall be removed in the event such access is no longer justified by a legitimate business need or where the person separates from service. Such removal must be immediate but in no event later than the close of business on the date of the triggering event.

Notice of all such changes will be sent to:

OTDA General Counsel
40 North Pearl Street, 16C
Albany, New York 12243
(518) 474-9502

The contractor may not assign or subcontract the Agreement, its obligation or interest hereunder, without the express, written consent of OTDA. Any assignment or subcontract made without such consent will be null and void and will constitute grounds for immediate termination of the Agreement by OTDA.

Contractor expressly represents and agrees that it will not re-disclose Protected Information provided by OTDA under this Agreement to third parties, including contractors or subcontractors, without the prior, written approval from OTDA. Authorized Persons shall not disseminate, use, or permit the dissemination or use of Protected Information in any manner not provided for in this agreement without the express prior, written consent from OTDA.

The contractor will undertake precautions to limit access to disclosed Protected Information to Authorized Persons only. The contractor will adopt safeguards and procedures to limit dissemination only to authorized individuals with a legitimate business need/purpose related to the purpose of this project as set out in this Agreement.

11. Training

The Contractor will ensure that all Authorized Persons who have access to any Protected Information for authorized purposes set forth in this Agreement have been instructed in a manner approved by OTDA regarding the confidential nature of the Protected Information, the safeguards required to protect such data, and the sanctions in applicable state, federal, and local laws, rules, regulations and/or policies for unauthorized disclosure of Protected Information. Contractor will annually sign an acknowledgement that all Authorized Persons with access to Protected Information have been instructed in a manner approved by and as set out above. Contractor will provide this acknowledgement upon request to OTDA and prior to the disclosure of any Protected Information hereunder and annually, as required, to continue the disclosure of Protected Information hereunder.

12. Confidentiality Agreements

Contractor shall require Authorized Persons to sign a confidentiality and non-disclosure agreement provided by OTDA, found as Exhibit 1 below, in relation to access to Protected Information. Such signed agreements must be obtained prior to Authorized Persons commencing work. Contractor shall maintain such agreements for the duration of the audit period as set out in this Agreement and for the duration of any state, federal, and local laws, rules, regulations and policies applicable to the Protected Information being exchanged under this Agreement, whichever is longer, and shall provide them to OTDA upon request.

13. Background Investigation and Fingerprinting

Contractor shall have a written personnel security policy that ensures a background investigation is completed for any individual who will need access to perform his/her job duties to Protected Information with heightened compliance obligations. The policy will identify the process, steps, and timeframes for determining whether an employee may be granted access to such Protected

Information. The results of the background check will be reviewed by the Contractor to determine whether the applicant is suitable for access to such Protected Information. Suitability is defined as having verified citizenship or residency and no prior criminal offense or offenses where the nature of the offense creates a risk of misuse of such Protected Information as defined within this Agreement. Written background investigation policies and procedures must be provided to OTDA for review and approval. Policies and procedures, as well as a sample of completed background investigations, must be available for inspection upon request by OTDA or its agents.

14. Notification of Legal Requests

The Contractor shall immediately inform OTDA in writing upon receipt of any legal, investigatory, or other mode or method of demand (including but not limited to FOIL or FOIA requests, electronic discovery, litigation holds, and discovery searches) for access to Protected Information that is not otherwise authorized under this Agreement and shall take and vigorously pursue all necessary legal action to prevent any disclosure including, but not limited to, moving to quash subpoenas issued for such information. The Contractor will keep OTDA's General Counsel fully and timely notified of all developments related to such legal actions and their response thereto, and provide appropriate, robust legal assistance as may be required, as requested by OTDA. The notification shall be directed to:

OTDA General Counsel
40 North Pearl Street 16 C
Albany, NY 12243
(518) 474-9502
otda.GC.Notifications@otda.ny.gov

15. Report or Publication

Contractor will ensure that any study, report, publication, or other disclosure for which Protected Information shared by OTDA is the basis and which is permitted under this Agreement is limited to the reporting of aggregate, de-identified data, which means it will not contain any information that might lead to the identification of a private person or entity. OTDA shall have the right to review and approve any such study, report, publication, or other disclosure prior to disclosure or publication.

16. Return/Destruction of Protected Information

In the event of termination or expiration of the Agreement, Contractor shall immediately implement an orderly return of all Protected Information, whether in digital or any other form, in a mutually agreeable format at a time agreed to by the parties and/or at the direction of OTDA. Thereafter, the Contractor shall, unless otherwise advised in writing by OTDA, immediately destroy and/or sanitize, as appropriate to the medium, such data and any extracts, copies, or backups of same thoroughly and irretrievably. The method for the sanitization of data shall, at a minimum, comport with the standards set by the [NYS CISO](#) for the sanitization of data. Contractor shall thereafter certify in writing and provide proof that these actions have been completed within 30 days of termination or expiration of this Agreement or within seven days of the request of an agent, employee or officer of

OTDA, at the discretion of OTDA. The Contractor will not make, retain, copy, duplicate, or otherwise use any copies of Protected Information after completion of the purpose for which the data disclosed is served without prior written permission from OTDA.

17. Data Retention

Notwithstanding any other obligation under this Agreement, Contractor agrees that it will preserve the Protected Information in a manner that complies with all applicable federal, state and local laws, rules, regulations, and policies for the purposes of ensuring applicable data records retention obligations are met.

18. Compliance with Information Security Breach Notification Act and other Laws

Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Protected Information does and will comply with all applicable federal, state and local privacy, confidentiality, security, data protection and compliance laws, rules, regulations, policies, and directives. Contractor warrants that it will comply with the applicable New York State Information and Security Breach Notification Act and the SHIELD Act (General Business Law Section 899-aa and 899-bb; State Technology Law Section 208). The contractor ensures that it and all Authorized Persons will be in compliance with the aforementioned state, federal, and local laws, rules, regulations, policies, and directives.

19. Vulnerability Scanning

The contractor must perform appropriate and required environment vulnerability scanning in accordance with Industry best practices and standards. The contractor must address all high and medium vulnerabilities found during scanning in a reasonable timeframe as agreed upon with OTDA.

OTDA, through ITS, will have the option to perform application scanning and web server scanning, as needed. The contractor must address all high and medium vulnerabilities found during scanning in a reasonable timeframe as agreed upon with OTDA.

When software vulnerabilities are revealed and addressed by a vendor patch, the Contractor will obtain the patch from the applicable vendor and categorize the urgency of application as either "critical" or "non-critical" in nature. The determination of the critical versus non-critical nature of patches is solely at the reasonable discretion of OTDA in consultation with ITS and Contractor. The contractor will apply all critical security patches, hotfixes, or service packs as they are tested and determined safe for installation after consultation with OTDA and ITS.

20. Information Security Incident and Information Security Breach

If the Contractor or any Authorized Person becomes aware of or has knowledge of either any potential Information Security Incident (Security Incident) or Information Security Breach (Security Breach), then the Contractor shall within 30 minutes of becoming aware or having knowledge of any potential Security Incident or Security Breach, notify the OTDA contact listed below of the Security

Incident or Security Breach via the email address noted, and OTDA will direct what further action is necessary for response to the same. At such time, Contractor shall provide OTDA with the name and contact information for an employee of Contractor who shall serve as Contractor's primary security contact and shall be available to assist OTDA 24 hours a day, seven days per week, in keeping OTDA fully and timely notified of all developments relating to any such potential or actual Security Incident or Security Breach utilizing the following contact information:

OTDA General Counsel
40 North Pearl Street 16 C
Albany, NY 12243
(518) 474-9502
otda.GC.Notifications@otda.ny.gov

Should an Information Security Incident or Security Breach occur, immediately following the requisite notification to OTDA, Contractor shall 1) promptly investigate and utilize best efforts and IT industry best practices to determine the cause(s) of same and devise a proposed resolution and report the cause(s) and suggested remedies to OTDA; (2) promptly implement necessary remedial measures as OTDA deems necessary; (3) document responsive actions taken, including any post-incident review of events and actions taken to make changes in business practices to prevent similar instances in the future; 4) provide reports within the timeframes as requested by OTDA; 5) promptly notify OTDA of the steps taken to prevent similar instances in the future ; and 6) take any other action as may be directed by OTDA.

Notification and Assistance to Affected Persons.

Contractor shall be responsible for:

- a. Promptly notifying individuals whose Protected Information was compromised by an Information Security Breach ("Affected Persons") or, as OTDA deems appropriate, an Information Security Incident. The contractor is to first seek consultation and receive authorization from OTDA prior to issuing such notifications. OTDA shall approve the content of and the method by which such notifications must be provided (e.g., regular mail, e-mail, and/or website posting);
- b. If requested by OTDA and/or required by law, provide credit monitoring services, identity theft consultation and restoration, identity theft insurance, public records monitoring, toll free number and call center, payday loan monitoring, and any other services deemed reasonably necessary by OTDA to Affected Persons for a minimum of one year or longer, as determined by OTDA, (together referred to as "Affected Persons Assistance");
- c. Costs. The Contractor shall bear all costs associated with providing Affected Persons Assistance. OTDA may reduce any Contractor invoice by an amount attributable to the Contractor's failure to satisfactorily provide Affected Persons Assistance.

21. Business Continuity and Disaster Recovery

The Disaster Recovery system shall be accessible by all users 24 hours a day, seven days a week, 365 days a year and available 99.982% of the time (uptime) per month and must not be rendered inoperable for any longer period for the purposes of maintenance, upgrades or hardware additions.

OTDA will work with the Contractor to provide a listing of all essential functions related to the Agreement that must be sustained and maintained for the duration of the agreement. The Contractor shall have no less than one redundant data centers separated by at least 100 miles and on separate network fiber and separate power grids.

Contractor shall failover application to alternate hardware to perform planned maintenance, patches, code revisions, etc. to one instance, thoroughly test, then switch back to the upgraded instance before repeating the planned maintenance, patch, code revision, etc. on the second instance.

The contractor will provide OTDA with a business continuity and disaster recovery plan. This plan will include detailed precautions to minimize the effects of any disaster or interruption of service so that OTDA can rapidly continue to operate and resume mission-critical functions. OTDA will work with the Contractor to provide an analysis of business processes and continuity needs. The contractor will provide technical support staff with the skills required to interface with OTDA's application, network, hardware, and software during planning and preparation for disaster recovery and business continuity testing and/or during any declaration of an actual disaster. Minimum recovery time objective (RTO) and recovery point objective (RPO) will be determined by OTDA.

22. Suspension/Termination

OTDA agrees to provide Protected Information pursuant to this Agreement subject to the representations and agreements by the Contractor contained in this document. OTDA will suspend the Agreement and the further disclosure of any Protected Information hereunder if: (i) Contractor fails to comply with any provision of this Agreement or (ii) OTDA General Counsel believes in good faith that the Contractor has violated its obligations to maintain the confidentiality, privacy, security and/or compliance status of such data or limit properly limit dissemination of such data. Such suspension will continue until corrective action, approved by OTDA, has been taken. In the absence of prompt and satisfactory corrective action, OTDA may, at its sole discretion, terminate the Agreement. Upon termination, the Contractor must immediately return all Protected Information obtained by the Contractor or Authorized Persons under the Agreement pursuant to the terms and conditions of the Return/Destruction of Protected Information section within this Agreement.

23. General Terms

In addition to suspension or termination of the Agreement as provided herein, OTDA reserves the right to undertake, without limitation, any other action under the Agreement, or state or federal law, rule, or regulation, to enforce the Agreement and secure satisfactory corrective action and/or return and/or destruction of the Protected Information furnished hereunder, including seeking damages, penalties, and restitution from Contractor or its affiliates as permitted under law.

The Contractor's and Authorized Person's confidentiality and related assurances and obligations hereunder shall survive the termination or expiration of the Agreement.

24. Assignment or Subcontracting

The Contractor may not assign or subcontract the obligations or interests outlined in this Section of this Agreement, without the express, prior written consent of OTDA. Any assignment or subcontract made without such consent will be null and void and shall constitute grounds for immediate termination of the Agreement by OTDA.

25. Cloud computing provisions

All privacy, confidentiality, security and compliance requirements set out in this Agreement shall apply to any cloud computing solution proposed for use by the Contractor to accomplish any obligation under this Agreement.

Exhibit 1

Confidentiality/Non-Disclosure Agreement

With regard to my work with _____(Requestor)

I, _____ (individual), am:

- a volunteer with Requestor
- a contractor of Requestor
- an employee of a contractor of Requestor
- a volunteer with a contractor of Requestor
- a subcontractor to a contractor of Requestor
- an employee of a subcontractor to Requestor
- a volunteer with a subcontractor to Requestor

and;

A. Access or Exposure Protected Information In General

I understand that as part of performing my duties as an employee, volunteer, contractor or subcontractor I may have access to, see or hear "Protected Information," which, for purposes of this agreement, shall include, but not be limited to:

1. Data or information obtained from sources outside of OTDA, such as Federal Tax Information (FTI); Federal Parent Locator Services (FPLS) information; Unemployment Insurance Benefit (UIB) information; Social Security Administration (SSA) information; and, Medicaid (MA) information.
2. Data or information maintained in and/or obtained from OTDA-owned applications, systems, networks and/or databases, including but not limited to: Welfare Management System (WMS); Child Support Management System (CSMS); Automated State Support Enforcement and Tracking System (ASSETS); Benefits Issuance Control System (BICS); Cognos; Computer Output to Laser Disk (COLD) report system; and/or the Commissioner's Dashboard.
3. Data or information identifying an individual, particularly where such disclosure could result in an unwarranted invasion of personal privacy. Such data or information may include, but is not limited to: home addresses; telephone numbers; Social Security numbers; client identification numbers; payroll information; financial information; health information; and/or, eligibility and benefit information;
4. Computer codes or other electronic or non-electronic data or information, the disclosure of which could jeopardize the compliance stature, security or confidentiality of OTDA's information technology solutions, applications, systems, networks or data;
5. Non-final OTDA policy or deliberative data or information related to the official business of OTDA;

6. Data or information which is not otherwise required to be disclosed under the NYS Freedom of Information Law;
7. Any other material designated by OTDA as being "Confidential," "Personal," "Private" or otherwise "Sensitive."

I acknowledge and agree that all Protected Information (oral, visual or written, including both paper and electronic) which I see or to which I have access shall be treated as strictly confidential and shall not be released, copied or otherwise re-disclosed, in whole or in part, unless expressly authorized by the New York State Office of Temporary and Disability Assistance (OTDA).

I understand and agree that access to and the use of Protected Information obtained in the performance of my duties shall be limited to purposes directly connected with such duties, unless otherwise provided in writing by OTDA. When access to such information or data also results in access to Protected Information or data beyond that which is necessary for the purpose for which access was granted, I agree to access only that Protected Information needed for the purpose for which access was given.

When I no longer require the use of or access to such Protected Information, whether because of termination of employment, reassignment of job duties or otherwise, I agree that I will not access or attempt to access any Protected Information, including, but not limited to any Protected Information in State systems or other sources, to which I have been given access. I will return any and all reports, notes, memoranda, notebooks, drawings, data and other Protected Information developed, received, compiled by or delivered to me in order to carry out my functions or which may be in my possession, regardless of the source of the Protected Information. Any Protected Information not returned will be catalogued, and thereafter securely scrubbed, shredded, or otherwise disposed of in accordance with New York State EISO policies [<http://www.its.ny.gov/tables/technologypolicyindex>].

I understand that federal and State law and regulation prohibit the release or disclosure of such Protected Information, in whole or part. I acknowledge and hereby agree that I will not copy, re-disclose or otherwise share Protected Information in whole or in part in any form to anyone unless I am expressly directed to do so by my supervisor and such disclosure complies with applicable federal and State law and regulation. I further understand that if I am unsure as to what information is confidential, I will immediately, and prior to any such access, use, or re-disclosure, consult with OTDA or my supervisor.

I will safeguard, and will not disclose to unauthorized parties, any user name and/or password that may be issued to me in furtherance of my access to the Protected Information unless authorized. I understand that my access to Protected Information may be revoked at any time if my responsibilities change, or for any other reason at the discretion and direction of OTDA, or my supervisor. Further, I will not facilitate access or disclosure of Protected Information to any unauthorized person or entity, whether by knowingly providing my user name and/or password or otherwise.

I will comply with all applicable Federal and State confidentiality, record security, compliance and retention laws, regulations, policies and procedures including, but not limited to, those set out in Attachment A.

I will immediately report to my supervisor any activities by any individual or entity that I have reason to believe may compromise the availability, integrity, security or privacy of the Protected Information. I

will immediately notify OTDA and my supervisor of any request for Protected Information that does not come from an individual directly involved in the project.

I agree not to attach or load any hardware or software to or into any State or Requestor equipment unless properly authorized, in writing, to do so by OTDA. I will use only my access rights to, and will access only those systems, directories, and Protected Information authorized for my use by OTDA.

I will not use OTDA telecommunications, Internet, E-mail or other services or equipment for any illegal, disruptive, unethical or unprofessional activities, for personal gain, or for any purpose that could jeopardize the legitimate interests of the State or expose some or all Protected Information.

I agree not to knowingly take any actions that may intrude upon, disrupt or deny OTDA or Requestor services or the flow of any Protected Information.

I agree to store any Protected Information received in secure, locked containers or, where stored on a computer or other electronic media, in accordance with state and federal law and regulation, as well as OTDA's and New York State Office of Information Technology Services' (ITS) security policies that protects Protected Information from unauthorized disclosure.

I agree that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding this Agreement or any Protected Information shall be disseminated in any way to the public, nor shall any presentation be given regarding this Agreement without the prior written approval of OTDA.

B. Access or Exposure to Information With Heightened Obligations:

I. Child Support Information

1. I acknowledge that, through attendance at a training program provided or approved by OTDA, I have been advised of the laws, regulations, policies, and rules governing use and disclosure of child support information, including federal information (as defined below) and agree to follow the same.
2. I will not access child support information on any system maintained by New York State for any purpose other than those permitted by law, including:
 - Actions necessary to establish paternity, establish, modify or enforce orders of child support or combined orders of child and spousal support.
 - The administration of the child support program, including data and systems management.
 - Verifying child support or combined child and spousal support payments to persons in Medicaid (MA), Temporary Aid to Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP) households as part of an eligibility determination or recertification;
 - Obtaining information about child support orders and combined orders of child and spousal support for the purpose of administering the MA, TANF or SNAP program.
 - Investigation of fraud in the MA, TANF, or SNAP program.
3. I will not access any cases, accounts, files or screens except those necessary to perform my duties.

4. I understand that all child support information I have access to, whether in paper, electronic, or other format is confidential and may not be used or disclosed for any other purpose, or be released to any party, without prior written consent of the OTDA Division of Child Support Enforcement or (if employed by a social services district) the Coordinator of the child support unit of the social services district where I am employed, or the designee of either.
5. I understand that any access, use, or disclosure for any unauthorized purpose without prior written consent as set forth in paragraph 4 shall constitute a breach of confidentiality and may result in disciplinary proceeding, criminal charges, and/or civil liability.

NOTICE: Pursuant to Social Services Law 111-v, any person who willfully discloses or permits disclosure or release of Confidential Information obtained hereunder shall be guilty of a class A misdemeanor and shall be liable to any person who incurs damages due to said disclosure in a civil action.

II. Federal Information

1. For the purposes of this Agreement, "federal information" shall mean all information obtained through the Federal Parent Locator System (FPLS), including National Directory of New Hires (NDNH), and the Federal Case Registry (FCR). The FPLS is an automated national information system which locates employment, income, asset and home address information on parents in child support cases. The NDNH contains new hire (W-4), quarterly wage (QW) and unemployment insurance (UI) information on employees in both the public and private sector. The FCR collects and maintains records provided by state child support agency registries, which include abstracts of support orders and information from child support cases. This information must be safeguarded as required by state and federal rules whether in transmission or at rest, and in both electronic and paper form. Federal information must be protected from improper disclosure in accordance with state and federal rules regardless of where it is stored or displayed, including the Automated State Support Enforcement and Tracking System (ASSETS), the Child Support Management System (CSMS), and Computer Output to Laser Disk (COLD), or a local system. Federal information that has been independently verified is no longer federal information, but remains child support information subject to Section I, above.
2. I will not access federal information for any purpose other than those permitted by law, including:
 - Actions necessary to establish paternity, establish, modify or enforce order of child support or combined orders of child and spousal support.
 - The administration of the child support program.
 - Information obtained from the NDNH or FCR may be disclosed to agencies administering plans or programs under titles IV-A, IV-B, IV-D and IV-E of the federal Social Security Act for the purpose of assisting that program to carry out its responsibilities of administering title IV-A, IV-B, IV-D and IV-E programs.
 - Certain location and employment information from the FPLS may be disclosed to locate an individual for the purposes of establishing parentage or relative foster care under titles IV-B or IV-E of the federal social security act.
3. I acknowledge that paragraphs three through five in Section B, I above, apply to use, disclosure and safeguarding of federal information.

III. Federal Tax Return Information

I have read the quoted provisions of Section 6103, 7213, 7213A and 7431 of the Internal Revenue Code contained in Attachment B of this Agreement and I understand that Section 6103 of the Internal Revenue Code imposes strict confidentiality requirements on child support enforcement personnel who have or have had access to federal tax returns or return information and that Sections 7213, 7213A and 7431 of the Internal Revenue Code impose criminal and civil penalties for unauthorized inspection or disclosure of any tax return or return information. I further understand that:

1. All tax returns and return information which the Internal Revenue Service discloses to state and local child support enforcement agencies are confidential under the terms of Section 6103(a) of the Internal Revenue Code, and may not be disclosed by any officer or employee of any state or local child support enforcement agency or other person except as authorized by Internal Revenue Code;
2. All tax returns or return information which the Internal Revenue Service discloses to state and local child support enforcement agencies may be used only for purposes of and to the extent necessary in establishing and collecting child support obligations from, and locating, individuals owing such obligations;
3. Willful unauthorized inspection or disclosure of a tax return or return information by an officer or employee of a state or local child support enforcement agency or other employees is unlawful under the terms of Section 7213 and 7213A of the Internal Revenue Code and punishable as a felony by a fine in any amount not exceeding \$5,000 or imprisonment of not more than five (5) years, or both, together with the costs of prosecution. Willful unauthorized inspection of a tax return or return information is punishable by a fine of up to \$1,000 and/or imprisonment of up to one year, together with the costs of prosecution;
4. Under the terms of Section 7431 of the Internal Revenue Code, a taxpayer may bring a civil lawsuit to recover actual and punitive damages from an officer or employee of a state or local child support enforcement agency or other person who has disclosed, whether knowingly or by reason of negligence, such taxpayer's tax return or return information in violation of the provisions of Section 6103 of the Internal Revenue Code; and
5. The civil and criminal penalties apply even if the unauthorized disclosures were made after employment has ceased with the child support agency, agents or contractors.

I understand and agree that the terms of this Agreement shall continue even when I am no longer an OTDA or Requestor employee, contractor, subcontractor, or volunteer and that I will abide by the terms of this Agreement in perpetuity.

I understand that failure to comply with these requirements may result in disciplinary action, termination, civil action and/or criminal prosecution, as well as any other penalties provided by law.

This Agreement shall be governed by the laws of the State of New York, unless otherwise required by Federal law.

Individual's Signature: _____

Individual's Printed Name: _____

Entity of which Individual is an employee, subcontractor, or volunteer:

Date: _____

Attachment A

Legal and Regulatory References

The Federal and State statutory, regulatory and policy requirements related to information security, confidentiality, privacy, and compliance include the following, as amended:

Child Support

- General rules: 42 U.S.C. § 654(26); 45 C.F.R. § 303.21; SSL § 111-v; 18 NYCRR 346.1(e), 347.19
- Child Support Systems data: 42 U.S.C. § 654a, (d); 45 C.F.R. § 307.13; SSL § 111-v
- Domestic Violence Indicators: 42 U.S.C. § 653(b)(2); 42 U.S.C. § 654(26)(e); SSL § 111-v
- Federal and State Case Registry: 42 U.S.C. §§ 653(h), (m); 42 U.S.C. § 654a(e)
- Federal Parent Locator Service/State Parent Locator Service: 42 U.S.C. §§ 653(b), (l), (m); 42 U.S.C. § 654(8); 42 U.S.C. § 663; SSL § 111-b(4)
- Financial Institution records: 42 U.S.C. § 666(a)(17); 42 U.S.C. § 669a(b); SSL § 111-o
- Government Agency and Private records: 42 U.S.C. § 666(c)(1)(D); SSL § 111-s
- IRS and State Tax Information: 26 U.S.C. § 6103(p)(4)(C); 26 U.S.C. §§ 6103(l)(6), (8); 26 U.S.C. § 6103(l)(10)(B); NY Tax Law §§ 697(e)(3), 1825; SSL § 111-b(13)(b); See also [IRS Publication 1075: Tax Information Security Guidelines for Federal, State, and Local Agencies](#)
- The most current Corrective Action Plan, and any updates, prepared in response to the most recent IRS Security Review Report, and any future IRS Security Review Reports
- The most current Security Agreement, Security Addendum and attached Plan of Actions and Milestones, and any amendments, executed by OTDA and ITS
- New Hires Data: 42 U.S.C. § 653(i); 42 U.S.C. § 653a(h); SSL § 111-m

Public Assistance

- Public Assistance Application Information and Public Welfare Records: SSL § 136
- Fair Hearing Records: 45 C.F.R. § 205.10(a)(19); 18 NYCRR 358-3.7; 18 NYCRR 358-4.3; 18 NYCRR 358-5.11(b); 18 NYCRR 387.2(j)
- General rules: 42 USC § 602(a)(1)(A)(iv); 45 C.F.R. 205.50, SSL §§ 20(3)(h) and (i) and 136; 18 NYCRR Part 357 & § 358–5.11; [2021 - 2023 TANF State Plan](#)
- IRS and State Tax Information: 26 U.S.C. § 6103; SSL § 23; 136-a(2); NY Tax Law § 697(e)(3); See also [IRS Publication 1075: Tax Information Security Guidelines for Federal, State, and Local Agencies](#)
- Welfare Management System (WMS) data: SSL §§ 21(2)-(5)
- Income and Eligibility Verification System (IEVS): 42 USC §§ 1320 b-7 (a)(4) & (5), (c)
- Substance Abuse Confidentiality: 42 U.S.C. § 290 dd-2
- Mental Health Confidentiality: Mental Hygiene Law § 33.13

- Unemployment Insurance Benefits (UIB): 42 U.S.C. § 1320-b7; 20 CFR § 603; NYS Labor Law § 537
- Domestic Violence Residential and Non-Residential Programs: 18 NYCRR §§ 452.10 and 462.9

Home Energy Assistance Program (HEAP)

- General Rules: [2021-2022 HEAP State Plan](#), § 17.6
- General Rules: [2021-2023 LIHWAP State Plan](#), § 12.6

Division of Disability Determinations

- Confidentiality: 20 C.F.R. § 404.1631, 20 C.F.R. §416.1031 and 20 C.F.R. Chapter 3, Part 401, Subpart C

Supplemental Security Income (SSI) Additional State Payments

- Confidentiality: 18 NYCRR §§ 398-13.1 through 13.4
- File Retention: 18 NYCRR § 398-14.1

Medical Assistance

- General rules: 42 U.S.C. § 1396a (a)(7), amended by Pub. L. No. 113-67, 127 Stat. 1165 (2013); 42 C.F.R. § 431.300 et seq.; SSL §§ 136, 367-b(4), 369(4); 18 NYCRR 357.1 – 357.6; 18 NYCRR 360-8; Public Health Law § 2782 (AIDS information)
- HIPAA regulations: 45 C.F.R. pt. 160; 45 C.F.R. pt. 164

Supplemental Nutrition Assistance Program (SNAP)

- General Rules: 7 U.S.C. § 2020(e)(8); 7 C.F.R. § 272.1(c); 7 C.F.R. § 278.1(q); 18 NYCRR 387.2(j)

Shelters for Adults

- Personal, social, financial, and medical records: 18 NYCRR § 491.7(d)
- Resident right to have private written and verbal communications with legal representatives, legal counsel, medical providers, social workers, and any other service providers or persons authorized by the social services district: 18 NYCRR § 491.12(c)(5)
- Records and reports: 18 NYCRR § 491.19
- Confidentiality of HIV and AIDS related information: 18 NYCRR § 491.20

Shelters for Families with Children

- Personal, social, financial and medical records: 18 NYCRR § 900.7(d)
- Resident right to have private written and verbal communications with legal representatives, legal counsel, medical providers, social workers, and any other service providers or persons authorized by the social services district. 18 NYCRR § 900.12(c)(5)
- Records and reports: 18 NYCRR § 900.19

- Confidentiality of HIV and AIDS related information: 18 NYCRR § 900.20
- Confidential Nature of Records: 18 NYCRR § 357

Refugee Programs

- Safeguarding and sharing of information: 45 C.F.R. § 400.27

Emergency Rental Assistance Program

- Reporting and Privacy: § 501(g) of the Consolidated Appropriations Act, 2021
- Confidentiality of records: § 6 of Subpart A of Part BB of Chapter 56 of the Laws of 2021 as amended by Chapter 417 of the Laws of 2021

Landlord Rental Assistance Program

- Confidentiality of records. § 6 of Subpart A of Part BB of Chapter 56 of the Laws of 2021 as amended by Chapter 417 of the Laws of 2021

General Information Security, Confidentiality, Privacy and Compliance

- Security and Privacy Controls for Federal Information Systems and Organizations: NIST Special Publication 800-53 Revision 4 and Revision 5, available at [NIST Special Publications](#)
- Digital Identity Guidelines: NIST Special Publication 800-63 Revision 3; NIST Special Publication 800-63A, available at [NIST Special Publications](#)
- Contingency Planning Standard: NIST Special Publication 800-34 Revision 1, available at [NIST Special Publications](#)
- Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations: NIST Special Publication 800-171 Revision 2, available at [NIST Special Publications](#)
- Safeguarding SSA Provided Electronic Information: The most current Social Security Administration Technical System Security Requirements (TSSR) (synonymous with the Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic Information with The Social Security Administration)

Other Statutes and Policies

- Criminal Offenses involving Computers (including governmental and personal records): NY Penal Law art. 156
- Freedom of Information Law: NYS Public Officers Law, Article 6, §§ 84 – 90
- Information Security Breach and Notification Act and the SHIELD Act: State Technology Law §§ 201-208; NYS General Business Law §§ 899-aa and 899-bb
- Personal Privacy Protection Law: NYS Public Officers Law, Article 6-A, §§ 91 – 99
- State Archives and Records Administration: Arts and Cultural Affairs Law §§ 57.05 and 57.25
- [New York State Information Technology Policies, Standards, and Guidelines](#)

Attachment B

Internal Revenue Code (IRC) Section 6103(l)(6) provides:

The Secretary of Health and Human Services shall disclose return information to State and local child support enforcement agencies only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations.

IRC Section 6103 imposes strict confidentiality requirements on child support enforcement personnel who have access to federal tax returns or return information. IRC Section 6103(a) provides: Returns and return information shall be confidential, and except as authorized by this title:

- (1) no officer or employee of the United States,
- (2) no officer or employee of any State or of any local child support enforcement agency who has or had access to returns or return information under this section, and
- (3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), subsection (k)(10), paragraph (6), (10), (12), (16), (19), (20), or (21) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term “officer or employee” includes a former officer or employee.

IRC Sections 7213, 7213A and 7431 impose criminal and civil penalties for unauthorized disclosure or inspection of any tax return or return information:

Criminal Penalty - Section 7213(a)(2), provides that an unauthorized disclosure of return or return information shall be a felony punishable by up to 5 years imprisonment and \$5,000 fine:

- (2) State and other employees - It shall be unlawful for any officer, employee, or agent, or former officer, employee, or agent, of any State (as defined in Section 6103(b) (5)), or any local child support enforcement agency willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in Section 6103(b)) acquired by him or another person under subsection (1) (6) or (1) (10) of Section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

Criminal Penalty - Section 7213A(a)(2), provides that it shall be unlawful for any person willfully to inspect, except as authorized by this title, any return information acquired by such person or another person under a provision of Section 6103 referred to in Section 7213(a)(2). Section 7213A(b) further provides that any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding \$1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

Civil Penalty - Section 7431, provides that a taxpayer may bring a civil action to recover actual and punitive damages from a person who discloses the taxpayer's tax return or return information in violation of the provisions of Section 6103:

- a) In General – (2) . . . If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such a person in a district court of the United States.
- c) Damages – In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of –
 - (1) the greater of –
 - (A) \$1,000 for each act of unauthorized disclosure of a return or return information with respect to which such defendant is found liable, or
 - (B) the sum of –
 - (i) the actual damages sustained by the plaintiff as a result of such unauthorized disclosure, plus
 - (ii) in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages, plus
 - (2) the costs of the action.

Appendix C

Offeror's Certified Statements

RFQ 2024-14 – Statistical Consultant

(Mandatory Submission: to be completed and included in the Proposal documents)

1. Information with regard to the Offeror

- A. Provide the Offeror's name, address, telephone number, and fax number.

Name: _____

Address: _____

City, State, ZIP Code: _____

Telephone Number (including area code): _____

Fax Number (including area code): _____

- B. Provide the name, address, telephone number, and email address of the Offeror's Primary Contact with OTDA with regard to this proposal.

Name: _____

Address: _____

City, State, ZIP Code: _____

Telephone Number (including area code): _____

Email Address: _____

- C. Provide the name, address, telephone number, and email address of the person authorized to bind the Offeror contractually, if different from (B).

Name: _____

Address: _____

City, State, ZIP Code: _____

Telephone Number (including area code): _____

Email Address: _____

- D. Provide the name, address, telephone number, email address, place of principal employment and occupation of any person authorized to represent the Offeror. This requirement applies not only to the Offeror's employees involved in the submission of the proposal, but also to every individual or organization employed or designated by the Offeror to attempt to influence the procurement process. If there is no one, state that. This information must be updated if, after the Deadline for Submission of Proposals, the Offeror retains an individual or organization to attempt to influence the procurement process. Indicate also whether the individual or organization has a financial interest in the procurement.

Name: _____

Address: _____

City, State, ZIP Code: _____

Telephone Number (including area code): _____

Email Address: _____

Place of Principal Employment: _____

Occupation: _____

This individual/organization has a financial interest in the procurement:

Yes No

No such individual/organization is authorized to represent the Offeror:

Yes No

2. Mandatory Requirements to Propose (Section IV.):

Requirement	Response
A. The Offeror has maintained an organization capable of performing the Services indicated in the RFQ for at least five (5) years and has sufficient financial resources to deliver the goods or services described in the RFQ.	<input type="checkbox"/> Yes <input type="checkbox"/> No*

3. Offeror's Acknowledgement of Proposal Requirements

Please note: any alteration of any language contained in this section may render your proposal non-responsive.

Requirement	Response
A. The proposal, including the Technical, Administrative, and Cost Proposals, constitutes a firm and irrevocable offer for a period of 365 days from the date of submission to OTDA.	<input type="checkbox"/> Yes <input type="checkbox"/> No*
B. By submission of a proposal, the Offeror agrees not to make any claims for or have any right to any damages because of any misrepresentations or misunderstanding of the specifications or because of lack of information.	<input type="checkbox"/> Yes <input type="checkbox"/> No*
C. The Offeror attests that its performance of services outlined in this solicitation does not and will not create a conflict of interest with, nor position the Offeror to breach any other Agreement currently in force with the State of New York.	<input type="checkbox"/> Yes <input type="checkbox"/> No*
D. The Offeror certifies that all information disclosed to the OTDA is complete, true, and accurate with regard to Conflicts of Interest.	<input type="checkbox"/> Yes <input type="checkbox"/> No*

Requirement	Response
E. The Offeror certifies that all information disclosed to the OTDA is complete, true, and accurate with regard to investigations or disciplinary actions by the NYS Commission of Public Integrity or its predecessor(s) (collectively, "Commission").	__ Yes __ No*
F. The Offeror certifies that all information disclosed to OTDA is complete, true, and accurate with regard to employment of Former State Employees.	__ Yes __ No*
G. The Offeror certifies that it can and will provide and make available, at a minimum, all services as described in the RFQ if selected for award.	__ Yes __ No*
H. The Offeror certifies that 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 successful Offeror becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OTDA no longer possesses the necessary integrity or professional capacity, the Offeror agrees to immediately discontinue the use of such staff and notify OTDA.	__ Yes __ No*
I. The successful Offeror agrees to undertake a background investigation of any new/replacement staff during the term of the Agreement resulting from this RFQ.	__ Yes __ No*
J. The Offeror certifies that it will maintain records related to the background investigations performed for the term of the Agreement resulting from this RFQ.	__ Yes __ No*
K. The Offeror certifies that all information provided in connection with its proposal is true and accurate.	__ Yes __ No*
L. The Offeror has read, understands, and accepts all provisions of Appendix A – Standard Clauses for NYS Contracts. Appendix A contains important information related to the contract to be entered into as a result of this RFQ and will be incorporated, without change or amendment, into the contract entered into between OTDA and the selected Offeror. By submitting a response to the RFQ, the Offeror agrees to comply with all the provisions of Appendix A.	__ Yes __ No*

Requirement	Response
M. The Offeror’s Legal representation has reviewed and understands Appendix T (Draft Agreement), and the Offeror is willing to enter into an Agreement substantially in accord with the terms of Appendix T (Draft Agreement), should the Offeror be selected for contract award.	__ Yes __ No*
N. The Offeror agrees that OTDA shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractor(s) of the Offeror prior to their performance of services under the Agreement.	__ Yes __ No*
O. The Offeror agrees that it shall be fully responsible for performance of work by its staff and by the subcontractor’s staff. OTDA reserves the right to request removal of any Offeror staff or subcontractor’s staff if, in OTDA’s discretion, such staff is not performing in accordance with the Agreement.	__ Yes __ No*

* A “No” response in Sections 2 or 3 of this Appendix will result in disqualification.

4. Information Required:

A. The Offeror is (check as applicable):

- A New York State Certified Minority-Owned Business Enterprise
- A New York State Certified Woman-Owned Business Enterprise
- A New York State Certified Minority- and Woman-Owned Business Enterprise (Dual Certified)
- A New York State Certified Service-Disabled Veteran-Owned Business Enterprise
- None of the above

B. Provide the name, title, address, telephone number, and email address of the person authorized to receive Notices with regard to the Contract entered into as a result of this procurement. See Article 6 of the Draft Agreement (Appendix T), Notices.

Name: _____

Title: _____

Address: _____

City, State, ZIP Code: _____

Telephone Number (including area code): _____

Email Address: _____

C. Offeror's Taxpayer Identification Number: _____

D. Offeror's NYS Vendor Identification Number: _____

By my signature on this Appendix C, I certify that I am authorized to bind the Offeror contractually.

Typed or Printed Name of Authorized Representative of the Offeror

Title/Position of Authorized Representative of the Offeror

Signature of Authorized Representative of the Offeror

Date

Appendix E

Administrative Forms

Administrative Forms Checklist

To Be Provided with Offeror's Proposal

Vendor Standard Response Forms:

- Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia – EO 16 Certification
- MacBride Fair Employment Principle
- Prohibiting Contracts with Entities that Support Discrimination – EO 177 Certification
- Sexual Harassment Prevention Certification – State Finance Law §139-I
- Vendor Responsibility Questionnaire, certified within six (6) months of the Proposal due date (filed and certified online)
 - If Vendor Responsibility Questionnaire was not completed and certified online, check here and attach a paper copy.
- Non-Collusive Bidding
- Offeror Disclosure of Non-Responsibility Determinations
- Procurement Lobbying Act Offeror's Certification of Affirmation of Understanding and Agreement pursuant to SFL § 139-j and k
- Contractor's Certification/Acknowledgement/Understanding
- Offeror Assurance of No Conflict of Interest or Detrimental Effect (Offeror, Subcontractors, Consultants)

M/WBE Participation Requirements:

- Form OTDA-4934 – Staffing Plan
- Form OTDA-4937 – M/WBE Utilization Plan
- Form OTDA-4976 – M/WBE Goal Requirements Certification of Good Faith Efforts
- Form OTDA-4969 – Request for Waiver Form (if applicable)
- Form OTDA-4970 – Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement

The Following Will Be Required from the Selected Offeror Within 48 Hours of Notification

Sales and Compensating Use Tax Certification¹

- ST-220 CA, Sales and Compensating Use Tax Certification

Workers' Compensation Documentation – Appendix I

- Form C-105.2 – Certificate of Workers' Compensation Insurance issued by private insurance carrier (or Form U-26.3 issued by the State Insurance Fund); or
- Form SI-12 – Certificate of Workers' Compensation Self-Insurance (or Form GSI-105.2 Certificate in Workers' Compensation Group Self-Insurance); or
- Form CE-200 – Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

Disability Documentation – Appendix I

- Form DB-120.1 – Certificate of Disability Benefits Insurance; or
- Form DB-155 – Certificate of Disability Benefits Self-Insurance; or
- Form CE-200 – Certification of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

Other Insurances – Appendix I

- Commercial General Liability Insurance
- Commercial Automobile Liability Insurance
- Professional Liability Insurance
- Crime Insurance
- Umbrella and Excess Liability Insurance

Additional Forms

- Consultant Disclosure Reporting – Form A (if applicable)

The Following M/WBE Quarterly and SDVOB Monthly Reports Will Be Required from the Selected Offeror

- Form OTDA-4968 – MWBE Quarterly Compliance Report (if goals apply)
- Form OTDA-4971 – Workforce Utilization Report
- Form SDVOB-101 – Contractor's Monthly SDVOB Compliance Report (if goals apply)

¹ The selected Offeror must file a properly completed Form ST-220-CA (with OTDA as the Contracting Agency within 48 hours of notification of selection of award) and Form ST-220-TD (with the DTF).

Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found [here](#).

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.

- 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)

- 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)

3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name: _____
(legal entity)

By: _____
(signature)

Name: _____

Title: _____

Date: _____

Nondiscrimination in Employment in Northern Ireland: MacBride Fair Employment Principles

In accordance with Section 165 of the State Finance Law, the Bidder, by submission of this bid certifies that it, or any individual or legal entity in which the Bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the Bidder, either: (answer yes or no to one or both of the following, as applicable),

1. Has business operations in Northern Ireland:

Yes ___ or No ___

If yes:

2. Shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland and shall permit independent monitoring of their compliance with such Principles.

Yes ___ or No ___

Signature: _____

Prohibiting Contracts with Entities That Support Discrimination

EO 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status, or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion, or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296 (11) of the New York State Human Rights Law.

Contractor: _____

By: _____

Name: _____

Title: _____

Date: _____

Sexual Harassment Prevention Certification

State Finance Law §139-I requires bidders on state procurements to certify that they have a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment training (that meets the Department of Labor’s model policy and training standards) to all its employees.

“By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.”

Contractor: _____

Printed Name: _____

Title: _____

Signature: _____

Date: _____

Bids that do not contain the certification will not be considered for award; provided however, that if the bidder cannot make the certification, the bidder may provide a signed statement with their bid detailing the reasons why the certification cannot be made.

New York State Vendor Responsibility Non-Construction For-Profit Questionnaire

The Office of Temporary and Disability Assistance recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System; however, vendors may choose to complete and submit a paper questionnaire.

To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at http://www.osc.ny.gov/vendrep/vendor_index.htm or go directly to the VendRep System Online at <https://onlineservices.osc.state.ny.us>.

Please check one of the following:

- A Vendor Responsibility Questionnaire has been filed online and has been certified/updated within the last six months.
- A Vendor Responsibility Questionnaire is attached to this Bid/Proposal.

Non-Collusive Bidding Certification Required by Section 139-D of State Finance Law

Section 139-D. Statement of Non-Collusion in Bids to the State:

By submission of this bid, Bidder and each person signing on behalf of Bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor.
3. No attempt has been made or will be made by the Bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

A bid shall not be considered for award nor shall any award be made where 1, 2, and 3 above have not been complied with; provided however, that if in any case the Bidder(s) cannot make the foregoing certification, the Bidder shall so state and shall furnish below a signed statement which sets forth in detail the reasons therefore:

[Affix addendum to this page if space is required for statement.]

Subscribed to under penalty of perjury under the laws of the State of New York, this

____ day of _____, 20____ as the act and deed of said corporation or partnership.

Exhibit 1: Non-Collusive Bidding Certification-3

Identifying Data

Potential Contractor: _____

Street Address: _____

City, State, Zip: _____

Telephone: _____

Title: _____

If applicable, Responsible Corporate Officer:

Name: _____

Title: _____

Signature: _____

Joint or combined bids by companies or firms must be certified on behalf of each participant.

Legal Name (Person/Firm/Corporation)

By:

Name

Title

Street Address

City

State

Legal Name (Person/Firm/Corporation)

Name

Title

Street Address

City

State

Offeror Disclosure of Prior Non-Responsibility Determinations (Procurement Lobbying Act)

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

No

Yes

If yes, please answer the next questions.

2. Was the basis for the finding of non-responsibility due to violation of State Finance Law §139-j?

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?

No

Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the provision of false or incomplete information?

No

Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

Offeror certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true, and accurate.

Signature: _____

Date: _____

Name: _____

Title: _____

**Procurement Lobbying Act
Offeror's Certification and Affirmation of Understanding of
and Agreement pursuant to State Finance Law §139-j and k**

Offeror affirms that it understands and agrees to comply with the New York State procedures relative to permissible contacts as required by State Finance Law §139-j. (<https://www.nysenate.gov/legislation/laws/STF/139-J>)

By: _____

Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

Offeror Certification:

I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true, and accurate.

(<https://www.nysenate.gov/legislation/laws/STF/139-K>)

Authorized Signature: _____

Contractor's Certification/Acknowledgements/Understanding

Contractor's Acknowledgement of Understanding of Post-Employment Provisions

The Authorized Signatory of the Contractor acknowledges that he/she has the authority to sign on behalf of the Contractor, has read and understands the provisions applicable to post-employment restrictions affecting former State officers and employees, and agrees to abide by the Provisions of the Public Officer's Law during the term of the Agreement.

Contractor's Disclosure of Any Existing and/or Contemplated Conflict of Interest

Have you any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, of affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Contractor or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this Agreement?

Yes ___ No ___

If your answer to the above is "Yes", please attach a written explanation, include a statement with your Agreement documents describing how your Staffing Firm would eliminate or prevent the Conflict of Interest. Indicate what procedures will be followed to detect, notify OTDA of, and resolve any such conflicts.

By my signature on this form, I certify that all information disclosed to the State is complete, true, and accurate with regard to Conflicts of Interest.

Contractor's Disclosure of Former State Employees

Do you employ and/or use any subcontractors who are former employees of OTDA that will be assigned to perform services under this Agreement?

Yes ___ No ___

If your answer to the above is "Yes", please attach a written statement identifying any/all employees and/or subcontractors who are former employees of OTDA that will be assigned to perform services under this Agreement, include a description of their work duties, and the dates of their employment.

By my signature on this form, I certify that all information disclosed to the State is complete, true, and accurate with regard to Former State Employees.

Contractor’s Disclosure of Any Investigation or Disciplinary Action by the New York State Commission on Public Integrity or its Predecessor State Entities (Collectively, “Commission”)

Have you or any of your members, shareholders of 5% or more, parents, affiliates, or subsidiaries, been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, “Commission”)?

Yes ____ No ____

If your answer to the above is “Yes”, please attach a written explanation; include a statement with your Proposal providing a brief description indicating how any matter before the Commission was resolved, or whether it remains unresolved.

By my signature on this form, I certify that all information disclosed to the State is complete, true, and accurate with regard to investigations or disciplinary actions by the Commission.

Contractor’s Agreement to Notify OTDA of Potential Future Conflicts

By signature below, the Authorized Signatory of the Contractor, certifies that he/she will notify OTDA of any/all new potential conflicts of interest and any/all new contractor staff that are prior OTDA employees during the term of the contract, prior to hiring of said individual, and will complete and submit an updated version of this form to OTDA at the time of becoming aware of any such new potential conflicts of interest, and of any/all new contractor or subcontractor staff that are prior OTDA employees.

The Signature Below Indicates Certification/Acknowledgement/Understanding of Each of the Above

Authorized Signatory: _____

Date: _____

Printed Name: _____

Title:

Contract Number: _____

Offeror Assurance of No Conflict of Interest or Detrimental Effect

The Offeror proposing to provide services pursuant to this solicitation, as Contractor, Joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this solicitation does not and will not create a conflict of interest with nor, position the Offeror to breach any other Agreement currently in force with the State of New York.

Furthermore, the attests that it will not act in any manner that is detrimental to any State project on which the Offeror is rendering services. Specifically, the Offeror attests that:

1. The fulfillment of obligations by the Offeror, as proposed in the response, does not Violate any existing Contracts or Agreements between the Offeror and the State.
2. The fulfillment of obligations by the Offeror, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Offeror has with regard to any existing Contracts or Agreements between the Offeror and the State.
3. The fulfillment of obligations by the Offeror, as proposed in the response, does not and will not compromise the Offeror's ability to carry out its obligations under any existing Agreements between the Offeror and the State.
4. The fulfillment of any other contractual obligations that the Offeror has with the State will not affect or influence its ability to perform under any Agreement with OTDA resulting from this RFP.
5. During the negotiation and execution of any Agreement resulting from this RFP, the Offeror will not knowingly take any action or make any decision which creates a Potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another.
6. In fulfilling obligations under each of its State contracts, including any Agreement which results from this RFP, the Offeror will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another.
7. No former officer or employee of the State who is now employed by the Offeror, nor any former officer or employee of the Offeror who is now employed by the State, has played a role with regard to the administration of this procurement in a manner that may violate section 73(8)(a) of the State Ethics Law.
8. The Offeror has not and shall not offer to any employee, member, or director of OTDA any gift, whether in the form of money, service, loan, travel, entertainment,

hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member, or director, or could reasonably be expected to influence said employee, member, or director in the performance of the official duty of said employee, member, or director or was intended as a reward for any official action on the part of said employee member, or director.

Offerors responding to this RFP should note that OTDA recognizes that conflicts may occur in the future because an Offeror may have existing or new relationships. OTDA will review the nature of any such new relationship and reserves the right to terminate the Agreement for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Signature: _____

Date: _____

Name: _____

Title: _____

Note: This form must be signed by an authorized executive or legal representative (person that is authorized to bind the Offeror contractually).



Your MWBE Utilization and Reporting Responsibilities Under Article 15-A

The New York State Contract System (“NYSCS”) is your one stop tool compliance with New York State’s MWBE Program. It is also the platform New York State uses to monitor state contracts and MWBE participation.


GETTING STARTED

To access the system, you will need to login or create a user name and password at <https://ny.newnycontracts.com>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to your contract’s project manager. For verification, in the email, include your business name and contact information.

VENDOR RESPONSIBILITIES

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MWBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support >>** link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on

all features of the NYSCS. You may also click on the  icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the “Knowledge Base” through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com>).

For more information, contact your project manager.

OTDA Consultant Disclosure Reporting Requirements

Contractor Instructions

Background

Pursuant to New York State Finance Law Section 163(4)(g), state agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract, such report to include for each employment category within the contract: (i) the number of employees employed to provide services under the contract, (ii) the number of hours they work, and (iii) their total compensation under the contract. Consulting services are defined as analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Contractors selected for award on the basis of a procurement issued by OTDA (Request for Proposals, Request for Quotations, Mini-Bid, or Invitation for Bids) must complete [Form A](#) (State Consultant Services – Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term) upon notification of award. The completed Form A must include information for all employees that will be providing services under the contract, whether by the contractor or by a subcontractor.

Contractors selected for award are also required to complete [Form B](#) (State Consultant Services – Contractor’s Annual Employment Report) annually for each year of the contract term, on a State fiscal year basis. The first report is due May 15 for the period April 1 through March 31 of the most recently concluded State fiscal year or portion thereof.

Form A must be submitted to OTDA as the contracting agency, and Form B must be submitted to OTDA (as the contracting agency), the Department of Civil Service, and the Consultant Reporting Section of the Bureau of Contracts at OSC, at the addresses provided in the instructions.

Instructions

Form A

Upon notification of contract award, use [Form A](#) (State Consultant Services – Contractor’s Planned Employment from Contract Start Date through the End of the Contract Term) to report the necessary planned employment information prospectively from the start date through the end of the contract term. This is a one-time reporting requirement.

Complete [Form A](#) for contracts for consulting services in accordance with the following:

- **Employment category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees anticipated to be providing services under the contract. (Note: Access the O*NET database, which is available through the US Department of Labor’s Employment and Training Administration website at <https://www.onetonline.org/>.)

- **Number of employees:** the total number of employees in the employment category employed anticipated to provide services under the contract, including part-time employees and employees of subcontractors.
- **Number of hours to be worked:** the total number of hours anticipated be worked by the employees in the employment category.
- **Amount payable under the contract:** the total amount payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services to be provided during the Report Period.

Submit completed Form A within 48 hours of notification of selection for award to OTDA (as the contracting agency) at the address listed below.

Form B

Use [Form B](#) (State Consultant Services – Contractor’s Annual Employment Report) to report the annual employment information required by the statute. This form will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31). Submit [Form B](#) to OTDA (as the contracting Agency), the Department of Civil Service (DCS), and to the Consultant Reporting Section of the Bureau of Contracts at OSC at the addresses listed below.

Complete [Form B](#) for contracts for consulting services in accordance with the following:

- **Scope of Contract:** a general classification of the single category that best fits the predominate nature of the services provided under the contract.
- **Employment Category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. (Note: Access the O*NET database, which is available through the US Department of Labor’s Employment and Training Administration website at <https://www.onetonline.org/>.)
- **Number of Employees:** the total number of employees in the employment category employed that provided services under the contract during the Report Period, including part-time employees and employees of subcontractors.
- **Number of hours worked:** the total number of hours **worked** during the Report Period by the employees in the employment category.
- **Amount Payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

Submit the completed Form B by May 15 for the period April 1 through March 31, and annually by May 15th thereafter for each State fiscal year (or portion thereof) the contract is in effect, as follows:

To OTDA (as the contracting Agency):

By mail: Office of Temporary and Disability Assistance
Contract Management
40 North Pearl Street, Floor 12D
Albany NY 12243-0001

By email: procurements@otda.ny.gov

To the Consultant Reporting Section of the Bureau of Contracts at OSC:

By mail: NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

By fax: (518) 474-8030 or (518) 473-8808

To DCS:

By mail: NYS Department of Civil Service
ESP, Agency Building 1
20th Floor
Albany, NY 12239

Appendix I New York State Insurance Requirements

Prior to the commencement 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, and any renewal or extensions thereof, policies of insurance as set forth in this Appendix I. All insurance required by the Appendix I shall be 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-" Class "VII" or better or as acceptable to the Office of Temporary and Disability Assistance (OTDA).

The OTDA 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; or other documents demonstrating the company's strong financial rating. If during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the Insurance must be replaced, on or before the renewal date of the policy with Insurance that meets the requirements above.

The Contractor shall deliver to the OTDA evidence of the insurance required by this Appendix I in a form acceptable to the OTDA. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by the OTDA does not, and shall not be construed to, relieve the Contractor of any obligations, responsibilities, or liabilities under the Contract.

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

General Conditions

A. Conditions Applicable to Insurance.

All policies of insurance required by this Contract must comply with the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified below in paragraph B. *Specific Coverages and Limits.*
- 2. Policy Forms.** Except as otherwise specifically provided herein or agreed to in writing by OTDA, all policies of insurance required by this section shall be written on an occurrence basis. Under certain circumstances, the OTDA 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, Tail 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 OTDA prior to the policy's expiration or cancellation.

3. Certificates of Insurance/Notices. The Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OTDA, (i.e., an ACORD Certificate), before commencing any work under this Contract and thereafter, pursuant to the timelines set forth in Section A.13 below. Certificates shall reference the Contract number and shall name the OTDA as the Certificate holder. Certificates shall be mailed to the: **Office of Temporary and Disability Assistance, Bureau of Contract Management, 40 North Pearl Street, 12D, Albany, NY 12243** as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to the OTDA and in accordance with the New York State Insurance Law (i.e.: an ACORD Certificate);
- Disclose any Deductible, Self-Insured Retention, Aggregate Limit or any exclusion to the policy that materially changes the coverage required by the Contract;
- Specify the Additional Insureds and Named Insureds as required herein;.
- Refer to this Contract by number and any other attachments on the face of the certificate;
- Be signed by an authorized representative of the insurance carriers; and
- Contain the following language in the Description of Operations/Locations/Vehicles section: Additional Insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the Additional Insureds.

ONLY original documents (Certificate(s) of Insurance, any Endorsements and other attachments) or electronic versions of the same that can be directly traced back to the Insurer, Agent or Broker via e-mail distribution or similar means will be accepted.

4. Primary Coverage. All liability insurance policies (with the exception of Professional Liability) shall provide that the required coverage shall be primary and non-contributory coverage to other insurance available to OTDA. Any other insurance maintained by OTDA shall be excess of and shall not contribute with the Contractor's insurance.

5. Breach for Lack of Proof of Coverage. The term of the Contract shall not commence if the coverage provisions and limits of the policies provided by the Contractor do not meet the provisions and requirements of this section or proof of compliance is not provided to the OTDA. In addition, the failure to comply with the requirements of this section at any time during the term of the contract, and any extension or holdover thereof, shall be considered a breach of the terms of the Contract and shall allow the OTDA to avail itself of all remedies available under the contract, at law or in equity.

6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable Deductibles or Self-Insured Retentions for each listed policy. Deductibles or Self-Insured Retentions above \$100,000.00 are subject to approval from the

OTDA. Such approval shall not be unreasonably withheld, conditioned, or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments within the Deductible or Self-Insured Retentions. If the Contractor is providing the required Insurance through Self-Insurance, evidence of the financial capacity to support the Self-Insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

7. Waiver of Subrogation. The Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the Contractor's right of Subrogation against The People of the State of New York, the New York State Office of Temporary and Disability Assistance and their officers, agents, and employees, or, if such waiver is unobtainable provide one of the following to the OTDA prior to the commencement of the Contract: (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York and the New York State Office of Temporary and Disability Assistance and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York and the New York State Office of Temporary and Disability Assistance and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

8. Additional Insured. The Contractor shall cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of the CG 20 10 12 19 and CG 20 37 12 19) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage), naming as Additional Insureds: The People of the State of New York, the New York State Office of Temporary and Disability Assistance and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the OTDA prior to the commencement of the Contract and pursuant to the timelines set forth in Section A.13. below. A blanket Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage is also acceptable. For Contractors that are Self-Insured, the Contractor shall be obligated to defend and Indemnify the above-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this section had the Contractor obtained such Insurance policies.

9. Excess/Umbrella Liability Policies. Required Insurance coverage limits may be provided through a combination of primary and Excess Liability and Umbrella Liability policies. If coverage limits are provided through Excess Liability and Umbrella Liability policies, then a Schedule of Underlying Insurance listing policy information for all underlying Insurance policies (Insurer, policy number, policy term, coverage and limits of Insurance), including proof that the Excess Liability and Umbrella Liability Insurance follows form, must be provided upon request.

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

11. Policy Renewal/Expiration. Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this solicitation and any Contract resulting from this solicitation shall be delivered to the OTDA. If, at any time during the term of this contract, and any extension or holdover thereof, 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 OTDA, OTDA shall have the right to avail itself of all remedies available under the contract, at law or in equity, including requiring the Contractor immediately cease work under the contract. In such case, the Contractor shall not resume work under the Contract until authorized to do so by the OTDA. 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 OTDA, shall not give rise to a delay claim or any other claim against the OTDA.

12. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain Insurance documents must be provided to the OTDA after renewal or upon request. This requirement means that the Contractor shall provide the applicable Insurance document to the OTDA as soon as possible but in no event later than the following time periods:

- For Certificates of Insurance: five (5) business days from request or renewal, whichever is later;
- For information on Self-Insurance or Self-Insured Retention programs: fifteen (15) calendar days from request or renewal, whichever is later;
- For other requested documentation evidencing coverage: fifteen (15) calendar days from request or renewal, whichever is later;
- For Additional Insured and waiver of Subrogation endorsements: thirty (30) calendar days from request or renewal, whichever is later; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: five (5) business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the Insurance documents from its Broker or Insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its Insurer and submit them to the OTDA, the OTDA shall extend the time periods set forth above for a reasonable period, that shall in no event exceed thirty (30) calendar days from request or renewal, whichever is later.

B. Specific Coverages and Limits

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

1. 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:

- a. **Form C-105.2** – Certificate of Workers' Compensation Insurance issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund; or
- b. **Form SI-12** – Certificate of Workers' Compensation Self-Insurance; or **Form GSI-105.2** Certificate of Participation in Workers' Compensation Group Self-insurance; or
- c. **CE-200** – Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.

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

2. 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:

- a. **Form DB-120.1** - Certificate of Disability Benefits Insurance; or
- b. **Form DB-120.2** – Certificate of Participation in Disability Benefits Group Self Insurance; or
- c. **Form DB-155** - Certificate of Disability Benefits Self-Insurance; or
- d. **CE-200** – Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Coverage.

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

3. 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.

4. Professional Liability

The Contractor 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) each claim 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.

5. Umbrella and Excess Liability

When the limits of the CGL policy procured is 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.

Appendix T
Draft Agreement

**State of New York
Office of Temporary and Disability Assistance
Contract Number CXXXXXX**

Statistical Consultant

THIS AGREEMENT (hereinafter "Agreement" or "Contract") is made by and between the New York State Office of Temporary and Disability Assistance (hereinafter "OTDA") whose main office and principal place of business is 40 North Pearl Street, Albany, New York, 12243, and **Enter Contractor Name here** the Contractor (hereinafter "Contractor" or "Vendor") whose office is located at **Enter contractor's address here** is effective as of the date of approval by the New York State Office of the State Comptroller after execution by all parties.

WITNESSETH

WHEREAS, OTDA requires Statistical Consultant Services; and

WHEREAS, to meet this requirement OTDA, issued a Request for Qualifications (RFQ), for the purposes of entering into an Agreement for the Statistical Consultant; and

WHEREAS, the Contractor reviewed and analyzed the OTDA's needs as contained in said Statistical Consultant RFQ 2024-14, and submitted a Proposal; and

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; and

WHEREAS, based upon the evaluation of various proposals submitted in response to the Statistical Consultant RFQ 2024-14, it has been determined that the Contractor's proposal offered the best value solution and it would be in the best interest of OTDA to retain the Contractor to perform the Services in accordance with the terms and conditions of this Agreement.

WHEREAS, the OTDA, in reliance upon the expertise of the Contractor, selected the Contractor as the successful respondent to the required Services, and desires to engage the Contractor to fulfill the 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:

CXXXXXX

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Article 1: Agreement Duration and Amendment

THIS AGREEMENT shall commence upon **Enter Date Here**, and shall continue for a two-year term, subject to the termination provisions of **Appendix B, Section 35**.

OTDA shall have the right to re-negotiate the terms and conditions of the Agreement in the event applicable New York State or Federal statutes, policy, rules, regulations and/or guidelines are altered from those existing at the time of the execution 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-negotiation, the terms and conditions required to continue the Agreement in compliance with revised State or Federal statutes, policy, rules, regulations and/or guidelines shall be decided by the Commissioner of OTDA or his/her duly authorized representative(s) or designee(s).

Unless otherwise provided, this Agreement is subject to amendment only upon mutual consent of the parties, reduced to writing and approved by OSC.

Article 2: Merger of Documents/Conflicts of Clauses

This Agreement shall be deemed inclusive of the following documents. Only documents expressly mentioned below shall be deemed part of this Agreement.

Conflicts between these documents shall be resolved in the following order of precedence:

- A. Appendix A – Standard Clauses for New York State Contracts
- B. Amendments to this Contract (if any)
- C. AGREEMENT – (This Document)
- D. Appendix B-1 OTDA Security and Confidentiality Terms
- E. Appendix B – OTDA Terms and Conditions
- F. Appendix C – Offeror’s Certified Statements, as completed by the Contractor
- G. Appendix P as completed by the Contractor and approved by OTDA
- H. The RFQ, including all RFQ amendments, the Questions and Answers, all Appendices, Attachments and Exhibits
- I. Contractor’s Proposal, including all Appendices, Attachments and Exhibits as completed by the Contractor

The document most recent in time in each category above shall take precedence over any conflicting document included in such category.

Article 3: Compensation

OTDA shall compensate the Contractor pursuant to this Agreement in accordance with the Financial Proposal as set forth in the Contractor’s Proposal, **(Appendix P)**.

The prices set forth in this Agreement shall remain the same for the duration of the Agreement.

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Article 4: Payment and Invoices

The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained and the contract is fully executed.

Vendor Maintenance and the Statewide Financial System:

The contractor must maintain up to date vendor files as required by the New York State Office of the Comptroller (OSC), including the requirement to file a Substitute Form W-9. Vendors that are not currently registered with a New York Statewide Financial System (SFS) Vendor File will need to complete an [AC3237-S New York State Substitute Form W-9](#) and return it to OTDA's Bureau of Contract Management to initiate the creation of a New York State Vendor File.

The SFS Self-Service Portal online application is the preferred method to perform updates to a vendor's New York State vendor account information on the Vendor File. If you have not already signed up for this convenient and helpful tool, information on doing so is also available on the State Comptroller's website at:

www.osc.state.ny.us/vendor_management. Any changes to your business name, structure, taxpayer ID or any other change that may require a new vendor file should be reported to OTDA promptly. Technical questions regarding your SFS Vendor Profile can be directed to: HelpDesk@sfs.ny.gov.

Invoicing:

The Contractor shall submit only ONE complete and accurate monthly invoice (with ONE unique invoice number) for all services/cumulative periods of services rendered during that month; along with a completed Claim for Payment Form ([AC 3253-S](#)). Invoices must be sent to OTDA's designated payment office, the New York State Business Services Center (BSC) in order to receive payment. Payments to the Contractor shall be based on the prices and/or rates set forth in APPENDIX P attached hereto and should be invoiced at the proper rate.

Invoices/Claims for Payment not received by OTDA within 183 days of the good or service being provided may not be paid. Any dispute or unresolved payment issue must be brought to the attention of OTDA in writing within one calendar year of the date of service to receive consideration by OTDA.

If travel expenses are an approved expenditure under the Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out- of-state travel costs shall be permitted unless specifically detailed and pre-approved by OTDA. Monthly invoicing shall be submitted in arrears by the Contractor.

Invoices must contain:

- The Contractor's legal business name,

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- remit-to address,
- NYS Vendor ID#,
- Invoice Date (the date the invoice was created),
- A Unique Invoice Number,
- Contractor Contact Information,
- The Agency you are Billing (OTDA)
- Unit ID# TDA01,
- The NYS Contract ID Number for this Agreement (#####),
- The period of service for which the claim is made or reference to deliverable completed,
- A description of each invoiced item or service,
 - The date(s) of service,
 - the rate(s) charged as per Appendix P,
 - the unit of measure, and
 - the quantity of the item or service
- The cumulative invoice total being requested

If prompt payment 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 may be rejected and returned to the vendor for corrections.

The contractor shall send the Invoice and Claim for Payment Form to the BSC using the following guidelines:

- Send only one invoice per email to AccountsPayable@ogs.ny.gov. The subject field should include: agency name and invoice number.
- Invoices must be in a non-editable format (preferably a PDF).
- Excel and Word files should be converted to PDF to ensure data presentation/integrity.
- Do not send zip files, encrypted, or password protected emails.
- Invoices should not include confidential information, such as social security numbers, patient names, and medical diagnosis.
- Preferably emails are under 20 mb and less than 100 pages.
- Invoices should not include gif files or pictures.

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- DO **NOT** send Backup documentation to the BSC.

The contractor shall also concurrently supply the OTDA with a copy of the complete Invoice package, which was sent to the BSC, and all contractually required supporting documentation to the contact listed below:

- A. Preferred Method: Email to OTDA at XXX@otda.ny.gov with a subject field as follows for invoices:

Subject: Unit ID: TDA01 Contract #CXXXXXX

- B. Alternate Method: Mail to OTDA at the following U.S. postal address:

NYS Office of Temporary and Disability Assistance

Attn: Program Contact

Office of Temporary and Disability Assistance

Program Area

40 North Pearl Street

Albany, New York 12243

The Contractor shall submit backup documentation to support its claims for payment pursuant to this Contract. All supporting documentation must be complete and provided in a manner satisfactory and acceptable to OTDA. Additional supporting documentation may be requested by OTDA to support the invoice, as deemed necessary.

Additionally, the OTDA may at its discretion, withhold any payment due under this Agreement until such time as the Contractor has submitted to OTDA all Deliverables, including reports, which are due prior to invoice including those in accordance with the requirements of Appendix Z. These include when applicable, but are not limited to:

- Receipts
- timecards
- Reports
- Consultant Disclosure Form B
- MWBE Contractors Compliance Reports

Any outstanding MWBE and SDVOB Contractor's Compliance Reports, if applicable, will be due when submitting the invoice for the final month of services rendered under the contract.

Form B must be received by the OTDA by the defined due date of April 30th. For contracts that end prior to March 31 of any calendar year, the Form B will be due when submitting the invoice for the final month of services rendered under the contract.

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, unemployment insurances taxes and other Federal, State, and local taxes to which the Contractor is subject.

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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.

The State may, in its discretion, automatically generate a voucher in accordance with the contract. The State reserves the right to require the Contractor to submit billing invoices electronically.

Electronic Payments:

Payment for invoices submitted by the Contractor shall be rendered electronically in accordance with OSC's procedures and practices governing electronic payment unless payment by paper check is expressly authorized by the head of the State Agency, in his or her sole discretion after the Contractor establishes extenuating circumstances requiring payment by paper check. OSC's ePayments enrollment can be initiated and/or updated in the contractor's SFS Vendor Self-Service Portal.

Non-Compliance:

In the event that the Contractor submits an inaccurate or incomplete invoice, OTDA may refuse to pay the invoice and may return it to the Contractor with a written explanation for the decision to refuse payment. The Contractor must submit a corrected invoice within 30 days. OTDA reserves the right to deem the Contractor non-compliant and to terminate the contract if, after having been giving notice and an opportunity to cure, the Contractor fails to submit accurate and complete invoices on more than 3 occasions during the term of the contract.

Timeliness of Payments:

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

Lack of submission of any contractually required supporting documentation or inaccurate or incomplete invoices, may "stop the clock" on the invoice until proper documentation is submitted or issues are resolved.

Contractor Inquiry on Paid Invoices through SFS:

The Contractor may view payments and view other pertinent information in the SFS Vendor Portal. Advantages of using the SFS website include but are not limited to:

- 24/7 online access,
- Ability to create detailed reports in a few easy steps,
- Track and receive payments,
- Check Status of Purchase Orders,
- Maintain vendor information,
- See when your invoice will be paid,

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- Review details about a payment you received

The contractor's designated user can access the SFS Vendor Portal at:

<https://esupplier.sfs.ny.gov>. Technical assistance can be obtained by contacting: HelpDesk@sfs.ny.gov.

For additional payment questions on previously submitted invoices or past due invoices, you may also contact the BSC at APinquiries@ogs.ny.gov.

Article 5: Minority- and Woman-Owned Business Enterprise (MWBE) 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 (MWBEs) 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/MWBE requirements.
- B. To streamline MWBE 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 MWBE Utilization Plan nor the MWBE participation goals as specified in the RFP or Contract, unless otherwise authorized by OTDA. The electronic monitoring and reporting system can be viewed at <https://ny.newnyContracts.com>. The Vendor

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Guide and Vendor Training Manual are available on the OTDA's internet site at <http://otda.ny.gov/Contracts/mwbe/forms.asp>.

- C. Please refer to Appendix Z for the specific EEO/MWBE 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 RFP 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>.

For purposes of this Contract, OTDA hereby establishes an overall goal of **30%** for MWBE participation, **15%** for New York State certified Minority Business Enterprise ("MBE") participation and **15%** 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 MWBEs as Subcontractors or suppliers in the performance of the Contract and the Contractor agrees that OTDA may withhold payment pending receipt of the required M/WBE documentation. The New York State MWBE Directory can be viewed at: <https://ny.newnyContracts.com>. For guidance on how OTDA will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

Article 5a: Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. OTDA recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OTDA.

- A. Contractor agrees, to the maximum extent practical and consistent with legal requirements of the State Finance Law, the Veterans' Services 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.
- B. Contractor acknowledges being subject to the provisions of Article 3 of the Veterans' Services Law and the applicable regulations (9 NYCRR Part 252), and that the directory of NYS certified SDVOBs is located at: <https://online.ogs.ny.gov/SDVOB/search>.

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- C. Contractor acknowledges that the SDVOB utilization goal for this Agreement is 6%.
- D. 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 (M/WBEs), consistent with current State law (Executive Law, Article 15-A).
- E. 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 set by OTDA in Appendix Y of this contract.
- F. 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: <https://ogs.ny.gov/veterans>, which provides certification information and guidance for State agencies in making determinations and administering set asides for procurements from SDVOBs.

Article 6: Notices

Any notice or other communication given pursuant to this Agreement shall be in writing and shall be effective either when delivered personally to the party for whom intended, or five days following the deposit of same into the United States Postal Service mail (certified mail, return receipt requested, or first class postage prepaid), upon read receipt if sent via email, or upon actual receipt by the intended party if the same is sent by overnight mail service, addressed to such party at the address set forth in this Agreement. Either party may designate a different address by notice to the other given in accordance herewith.

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

OTDA:

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NYS Office of Temporary and Disability Assistance
Attn: **Program Area Staff Name**
Program Area Address
Albany, New York 12234
Telephone Number: (518) **Program Area Phone**
E-Mail Address: [Program Area Email](#)

Should either party change their contact information, they must send notification of such change to the other party within 15 business days of such change.

Unless otherwise noted, all communications with the Contractor shall be to the person designated in the RFP document section NOTICE TO BIDDER, Bidder Information.

Article 7: Services

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

Nothing contained herein shall prohibit OTDA from Contracting at any time with third parties 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.

The Contractor shall provide to OTDA, upon request, Services and commodities at the rates contained in Appendix P, or less.

The Contractor accepts sole and complete responsibility for the timely accomplishment of all activities required under this Agreement and to provide the Services and commodities as specified in accordance with the Appendices W and P.

The OTDA Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the Contractor's facilities.

The Contractor agrees to strict adherence to the requirements outlined in Appendix W (Scope of Work).

Upon expiration of this Agreement, the Contractor agrees to cooperate in assisting OTDA with transition of the Services provided through this Agreement to any new Contractor selected for subsequent Contract periods.

Article 8: Conflicts of Interest

- A. The Contractor has provided a form ("**Offeror 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

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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 "Offeror 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, "Offeror 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 9: Responsibility Terms

- A. The Contractor represents that it has, to the best of its knowledge, truthfully and thoroughly completed the Contractor's Vendor Responsibility Questionnaire ("Responsibility Questionnaire") provided to the Contractor by OTDA prior to execution of this Agreement. The Contractor further 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

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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) hereinabove, 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 (“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) OTDA’s discovery of any other material information which pertains to the Contractor’s responsibility.

Article 10: Transition

The transition represents a period when all goods and/or services must be turned over to the State, a third party designated by the State, or the successor contractor, during or at the end of the Contract. This includes, but is not limited to, a complete transfer of all data, files, reports, and records generated during the term of the Contract. The Contractor shall maintain the appropriate number of staff to adhere to the contractual obligations and provide the same level of service during the transition period as is set forth in the Contract. The Contractor shall be reimbursed for transition services at the rates set forth in the Contract. The Contractor shall fully cooperate to facilitate a smooth and orderly transition, so that the services required are uninterrupted and are not adversely impacted by the change in Contractor.

Article 11: Record Retention and Destruction

The Contractor, during the course of this Agreement and for a period of six 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. Retention and access to records must be in full compliance with all applicable federal laws, rules and regulations, and policies as arising hereunder or relating hereto.

Additionally, all records involving matters in litigation or audit must be kept for a period of not less than three years following the termination of the litigation or audit. 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.

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 12: Lobbying Certification

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated by 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. The Contractor understands and agrees to the Federal requirements for certification and disclosure.

Article 13: Other Agency Use

Upon request by any other New York State Agency, the Contractor shall enter into an Agreement with such agency for the purchase of the goods and services that are the subject of this Agreement. Such new Agreement shall provide that the cost of such goods and services to the agency entering into such Agreement shall be the same as charged to OTDA under this Agreement except that the Contractor shall be permitted to negotiate an increase in price to the extent it can show an increase in the cost of providing goods and services which can be attributed to the fact that the agency requires the Contractor to be obligated to standard Contractual provisions that are more onerous than those contained in Appendix A. In the event that a volume discount is applicable to the increase in services due to other agency use, both OTDA and the other agency shall share in the cost savings.

Upon request by a local social services district, New York City Human Resources Administration (NYC HRA) or its designated purchasing agent, the Contractor shall enter into an Agreement with such district or agent for the purchase of the goods and services that are the subject of this Agreement. Such new Agreement shall provide that the cost of such goods and services to the district/agent entering into such Agreement shall be the same as charged to OTDA under this Agreement except that the Contractor shall be permitted to negotiate an increase in price to the extent it can show an increase in the cost of providing goods and services which can be attributed to the fact that the municipality constituting the local social services district requires the Contractor to be obligated to standard Contractual provisions are more onerous than those contained in Standard New York State Appendix A. In the event that a volume discount is applicable to the increase in services due to other agency use, both OTDA and the other agency shall share in the cost savings.

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Article 14: Miscellaneous Provisions

A. The New York State Printing and Public Documents Law

The New York State Printing and Public Documents Law at Section 7, requires that all lithographic inks used in the production of New York State printing must contain the following minimum percentages of vegetable oil: News Inks – 40%; Sheet Fed Inks – 20%; Forms Inks – 20%; and Heat Set Inks – 10%.

B. Severability

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

C. Survival

The provisions of Appendix A, Appendix B, and Appendix B-1 shall survive the expiration or termination of this Agreement.

Article 15: Entire Agreement and Approvals

All provisions stated in the Statistical Consultant RFQ 2024-14 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.

This Agreement, attachments and the appendices attached hereto constitute the entire Agreement between the parties with respect to the subject matter; all other prior agreements, representations, statements, negotiations and undertakings are superseded hereby. Any provision of this Agreement that imposes or contemplates continuing obligations on a party will survive the expiration or termination of this Agreement. It is understood that unless the context clearly indicates otherwise, all references herein to this Agreement shall be deemed to include the Attachments and Appendices attached hereto, subject to Article 2 (Merger of Documents/ Conflicts of Clauses) of this Agreement.

Contract Signature Page

Agency Code: 3410000

Contract Number: _____

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.

Dated

Dated

Agency Signature

Contractor Signature

Agency Signatory Name (Printed)

Contractor Signatory Name (Printed)

Agency Signatory Title

Contract Signatory Title

Corporate, Partnership Or Individual Acknowledgement

STATE OF NEW YORK)
) SS.:
COUNTY OF _____)

[Check One]

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 _____, 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

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Appendix W – Statement of Work

The Project Director must have a Doctorate Degree in Statistics, Statistical Analysis or Data Analytics from an accredited institution OR a Master's Degree in same and 5 years relevant statistical experience with a government agency.

The need for statistical work will be in Albany or via teleconference. OTDA will send Contractor de-identified data. Transport of data will be via secure managed file transfer agreed upon by both parties.

1. Provide statistical projection, methodologies, audit activities/reports and/or sampling procedures for projects under any of our State and Federal programs including, but not limited to:
 - United States Department of Agriculture (USDA) Food and Nutrition Services (FNS)
 - Administration for Children and Families (ACF) Health and Human Services (HHS)
 - NY State Tax Credits through the Department of Taxation & Finance (DTF)
 - Social Security Administration (SSA)
 - Other bureaus within OTDA
2. Provide guidance on and assistance with an array of sample-related requirements:
 - Provide an audit sample generator.
 - Ensure samples meet federal data reporting requirements.
 - Assist with implementing future sampling changes.
3. Provide expert opinions in the form of affidavits, testimony and/or defense in:
 - State and Federal courts, state hearings, federal grant appeals hearings, and legislative bodies
 - Overturning governmental sanctions
 - Other administrative action or litigation
4. Provide guidance on and assistance with developing Quality Control (QC) and Data Collection procedures to comply with State and Federal guidelines. Procedures include:
 - Sampling
 - Statistical Projections
 - Compliance with State/Federal reporting requirements
 - Interpretation of policies/regulations

Appendix Z

Minority and Women-Owned Business Enterprise (MWBE) participation requirements for all NYS Office of Temporary and Disability Assistance Contracts

I. General Provisions

- A. The OTDA is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OTDA, to fully comply and cooperate with OTDA in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to OTDA pursuant to the Contract and applicable law.

II. Contract Goals

- A. For purposes of this Contract, OTDA hereby establishes an overall goal of ___% for MWBE participation, ___% for New York State-certified minority-owned business enterprise (“MBE”) participation and 1___% for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>. Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract]
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
 2. Any responses by MWBEs to the Contractor’s outreach;
 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by OTDA with MWBEs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (“EEO”)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to OTDA within seventy-two (72) hours after the date of the notice by OTDA to award the Contract to the Contractor.
 3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, OTDA may require the Contractor or subcontractor to adopt a model statement (see Form OTDA-4970 Minority and Women-owned Business Enterprise – Equal Employment Opportunity Policy Statement).
 4. The Contractor’s EEO policy statement shall include the following language:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form OTDA-4934 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by OTDA.

D. Form OTDA-4971 - Workforce Utilization Report

To ensure compliance with this Section, the Contractor shall do the following:

1. Complete a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by OTDA on a QUARTERLY basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.
3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by OTDA, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to OTDA, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OTDA shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by OTDA. Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, OTDA shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If OTDA, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, OTDA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to OTDA by the 7th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where OTDA determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to OTDA liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by OTDA, the Contractor shall pay such liquidated damages to OTDA within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.