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# SECTION 1 TERMS AND CONDITIONS

The Contract is subject to and incorporates the following terms and conditions.

## 1.1 CONTRACT TERM

The term of the Contract shall be for the period as stated on the face page of the Contract subject to the termination provisions contained in the subsequent Sections 1.22 and 1.23, titled Termination and Default, respectively, and the document titled Standard Clauses for New York State Contracts (**Appendix A**). If applicable, a CPI-U adjustment, U.S. City Average, all items, index based on an agreed upon base period, may be requested by the vendor for years 2, 3,4, and 5 of this Contract. The adjustment must not exceed 3%, annually, and must be requested by the contractor.

## 1.2 MODIFICATION OF CONTRACT

The Contract may be amended only by mutual written consent of the parties, and approved by the State's Attorney General and OSC, if required.

## 1.3 EXECUTORY PROVISION/CONTRACT FORMATION

Pursuant to NYS Finance Law §112, this Contract must be approved by OSC before becoming effective.

## 1.4 ORDER OF PRECEDENCE

The Contract shall be comprised solely of the following documents. In the event of an inconsistency or conflict in terms, precedence shall be given in the order indicated:

- Appendix A
- Any Amendments to the Agreement
- The Agreement
- Appendix D
- The Request for Proposals
- All other Attachments and Appendices

## 1.5 CONTRACTOR RESPONSIBILITY AS DEFINED BY STATE FINANCE LAW

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

Contractor must present evidence of its continuing legal authority to do business in NYS, its integrity, experience, ability, prior performance, and organizational and financial capacity, upon request by the State. Contractor is responsible for ensuring that any proposed system or technology fulfills the requirements and terms established during the term of the Contract.

Contractor must formally communicate to OASAS any changes in Contractor's responsibility disclosure, and failure to accurately disclose any changes provides OASAS with the right to terminate for cause.

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

## 1.6 INDEPENDENT CONTRACTOR

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

## 1.7 CONTRACTOR PERSONNEL

All Contractor's officers, employees, subcontractors, or agents performing work under the Contract must meet or exceed the technical and training qualifications set forth in the Contract; must comply with all security and administrative requirements of OASAS; must possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the services specified are to be provided or performed; and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform services under the Contract on behalf of Contractor shall, in performing the services, comply with all applicable federal and state laws concerning employment in the United States.

OASAS, in its sole discretion, may refuse access to State systems and facilities or require removal from any State facility any employee of Contractor or its subcontractors performing work under this Contract whom OASAS determines poses a security risk, has a work performance OASAS finds inadequate or unacceptable, or otherwise fails to meet OASAS business requirements or expectations. Such action by OASAS shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

## 1.8 BACKGROUND CHECKS

Contractor employees or subcontractors who perform services under this Contract may be required to undertake and complete a full New York State Police fingerprint background investigation process, which will include a federal criminal justice site security check, as required by the New York State Office of Information Technology Services (ITS), OASAS, or NYS law, rules, regulations, and policies, prior to providing services. Any costs associated with the background checks, including related travel, will be borne by Contractor.

## 1.9 COOPERATION WITH THIRD PARTIES

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

## 1.10 COOPERATION WITH INVESTIGATIONS, AUDITS, AND LEGAL PROCEEDINGS

Upon request by the State, the Contractor shall cooperate with the State in any investigation, audit, or other inquiry related to the Procurement or the resulting Contract, or any related litigation, at no cost to the State. This provision shall survive the termination of the Contract.

## 1.11 WORK OUTSIDE THE SCOPE OF THE CONTRACT

The Contractor must not perform work outside the scope of the Contract, unless such work is authorized by a properly executed, OSC-approved written amendment to the Contract. Work not so authorized will not be compensated.

## 1.12 NOTICE OF SUBSTANTIAL CHANGE IN CONTRACTOR STATUS

In addition to notifications pursuant to the requirements of NYS Finance Law §138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the State of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries, divisions, or partners, in writing immediately upon occurrence. "Substantial change" means: 1) sales, acquisitions, mergers, or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid; 2) the entry of an order for relief under Title 11 of the United States Code; 3) the making of a general assignment for the benefit of creditors; 4) the appointment of a receiver of Contractor's business or property or that of its Affiliates, subsidiaries, divisions, or partners; or action by Contractor, its Affiliates, subsidiaries, divisions, or partners under any State insolvency or similar law for the purposes of its bankruptcy, reorganization, or liquidation; or 5) court ordered liquidation of Contractor, its Affiliates, subsidiaries, divisions, or partners.

Upon the State's receipt of such notice, the State shall have 30 business days from the date of notice to review the information. The Contractor may not transfer the Contract to or among Affiliates, subsidiaries, divisions, or partners, or to any other person or entity, without the express written consent of the State. In addition to any other remedies available at law or equity, the State shall have the right to cancel the Contract, in whole or in part, for cause, if it finds, in its sole judgment, that such substantial change adversely affects the delivery of Services or is otherwise not in the best interests of the State.

## 1.13 NOTICE OF CIRCUMSTANCES EXPECTED TO ADVERSELY AFFECT CONTRACTOR'S PERFORMANCE

The Contractor shall immediately notify OASAS upon learning of any situation that can reasonably be expected to adversely affect the delivery of Services under the Contract. If such notification is verbal, the Contractor shall follow such initial verbal notice with a written notice to OASAS, which shall include a description of the situation and a recommendation of a resolution within three calendar days of Contractor becoming aware of the situation. Contractor's failure to provide OASAS with notice that should have been provided hereunder may be deemed a material breach of the Contract and a basis for termination for cause.

## 1.14 NOTICE

All notices given pursuant to this Contract shall be in writing and shall be validly given when e-mailed, mailed by registered or certified mail, shipped by express overnight delivery service, or hand delivered. Such notices shall be addressed as set forth below, or to such different addresses as the parties may specify, from time to time, by written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

For the New York State Office of Addiction Services and Supports:

NYS Office of Addiction Services and Supports
1450 Western Avenue, 5th Floor
Albany, NY 12203
Attn: Contracts
E-mail Address: Procurements@oasas.ny.gov

For Contractor:

The Contractors primary contact person listed on the face page of this Contract.

Any such notice shall be deemed to have been given at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may specify, from time to time, a new or different address in the United States as their address for the purpose of receiving notice under this Contract by giving 15 days' written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for receiving notices under this Contract. Additional individuals may be designated in writing by the parties for the purposes of implementation and administration/billing, problem resolution, and/or for dispute resolution.

## 1.15 PAYMENT

Payments for services rendered shall be as specified in the Agreement. The State's payment obligations shall be governed by the provisions of the NYS Finance Law.

## 1.16 ELECTRONIC PAYMENT REQUIREMENT

Payment for invoices shall only be rendered electronically, unless payment by paper check is expressly authorized by OASAS, in OASAS's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices as set forth in the Agreement.

## 1.17 WARRANTIES AND GUARANTEES

a. **Contract Deliverables.** Contractor warrants and represents that the services required by the Contract shall be performed or provided in accordance with all terms and conditions, covenants, statements, and representations contained in this Contract. Contractor's failure to meet predefined service levels may result in a credit or chargeback in an amount predetermined by the parties.

b. **Compliance with Laws**. Contractor warrants and represents that, throughout the term of the Contract, in the performance of its obligations under the Contract, it will: 1) comply with all applicable laws, ordinances, rules, and regulations of any governmental entity; 2) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls, and fees; and 3) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.

c. **Workmanship Warranty**. Contractor warrants and represents that all services and deliverables shall meet the completion criteria set forth in the Contract and that services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards.

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

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

## 1.18 INDEMNIFICATION, LIMITATION OF LIABILITY

### a. Indemnification

Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully defend, indemnify, and hold the State 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 the State 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 the State.

The State 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 the State; ii) the opportunity to take over, settle, or defend such action, claim, or suit at the 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 the State 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 the State and the New York State Office of the Attorney General, in writing, and shall specify to what extent it is not so obligated to defend and indemnify. Contractor shall, in such event, protect the interests of the State and attempt to secure a continuance to permit the State and OASAS to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and OASAS 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.

This section is not subject to the limitation of liability provisions of the Contract.

### b. Indemnification for Intellectual Property Infringement

Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees and legal fees), claims, judgments, liabilities, and costs that may be assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the services, products, documentation, or deliverables furnished or used by Contractor under this Contract, provided that the State shall give Contractor: 1) prompt written notice of any action, claim, or threat of infringement suit, or other suit; 2) the opportunity to take over, settle, or defend such action, claim or suit at Contractor's sole expense; and 3) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at Contractor's sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require. This paragraph shall not apply to that portion of any infringement claim that results from a material modification by the State, without Contractor's approval, of any products, documentation, or deliverables furnished or utilized by Contractor pursuant to this Contract. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest.

This section is not subject to the limitation of liability provisions of the Contract.

### c. Limitation of Liability

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation," and regardless of the basis on which the claim is made, Contractor's liability under the Contract for direct damages shall be limited to the greater of the following: 1) $500,000.00; or 2) two times the amounts paid to the Contractor under the Contract during the 12 months of the Contract term that preceded the giving of notice of the claim by the State. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to the State. Unless otherwise specifically enumerated herein, neither party shall be liable for any incidental, punitive, consequential, indirect, or special damages of any kind that may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others, however caused, and regardless of the

theory of liability, even if such party has been informed of the possibility of such damages. The limitations of liabilities, disclaimers of warranties, exclusivity of remedies, and other limitations are an essential element of the bargain between the parties (without which the transactions contemplated by this agreement would not occur) and will apply even if a remedy fails in its essential purpose.

### d. No Indemnification by the State

The State does not agree to any indemnification provisions that require the State to indemnify or save harmless Contractor or third parties.

## 1.19 FEDERAL FUNDING CLAUSES

To the extent that any of the goods or services provided under this Contract may be funded, in whole or in part, by federal funds, Contractor agrees to comply with all applicable federal laws, rules, and regulations required for the receipt and/or expenditure of such funds pertaining to the following areas, including, but not limited to:

a. Equal Employment Opportunity as set forth in federal Executive Orders 11246 and 11375, as supplemented by 41 CFR 60, and the nondiscrimination requirements of 45 CFR Parts 80, 84, and 90, and 7 CFR Parts 15, 15b, and 15d.

b. Ownership Rights in Software or Modifications Thereof – The State shall have all ownership rights in software or modifications thereof and associated documentation designed, developed, or installed with federal financial participation, and the federal government reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, such software, modifications, and documentation; provided, however, that this sentence shall not apply to 'proprietary operating/vendor software packages' within the meaning of 45 CFR 95.617(c) and 7 CFR 277.18(l)(1)(iii).

c. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Requires that every Contractor under a contract for more than $100,000, and every tier of Contractors or subcontractors thereunder, shall file certification, as required, that said Contractor will not and has not used any federal appropriated funds to pay any person or organization for influencing or attempting to influence any federal agency, member of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or award covered by such Amendment. A Contractor or subcontractor from any tier shall also disclose any lobbying with non-federal funds that takes place in conjunction with obtaining a federal award, which disclosure shall be forwarded up any applicable tiers to the recipient. (See also 45 CFR 93.)

d. Debarment and Suspension. (Federal EOs 12549 and 12689) - Certain contracts shall not be awarded to parties listed on the non-procurement portion of the U. S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs" in accordance with EOs 12549 and 12689 (see 45 CFR 76). Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals, prior to award.

## 1.20 SUSPENSION OF WORK

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

## 1.21 TERMINATION

### a. For Convenience

This Contract may be terminated by the State for convenience upon 30 days' written notice, without penalty or other early termination charges. If the Contract is terminated pursuant to this paragraph, the State shall remain liable for all accrued unpaid charges incurred through the date of the termination.

### b. For Cause

For a material breach that remains uncured for more than 15 days from the date of written notice to the Contractor, as determined solely by OASAS, the Contract may be terminated by the State, at the Contractor's expense, where Contractor becomes unable or incapable of performing or meeting any requirements or qualifications set forth in the Contract, or for nonperformance, or upon a determination that Contractor is non-responsible, or for any of the other reasons stated in this section, with the exception of termination for convenience. Such termination shall be upon written notice to the Contractor. In such event, the State may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

### c. For Suspension or Delisting of Contractor's Securities

If the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable, if the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Contract or exercise such other remedies as shall be available under the Contract, at law, and/or equity.

### d. For Vendor Responsibility Related Findings

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

### e. Mitigation of Costs

The Contractor shall not undertake any additional or new contractual obligations on or after the receipt of notice of termination, without the prior written approval of the State. On or after receipt of a notice of termination, and during the termination notice period, as applicable, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State. Upon termination of the Contract, there shall be a reconciliation based upon the services provided by the Contractor and payments made by the State. The Contractor shall refund to the State any overpayments made by the State pursuant to the Contract.

## 1.22 DEFAULT

a. If Contractor breaches a material provision of this Contract, which breach remains uncured for a period of 15 days after written notice thereof from OASAS specifying the breach (or if such breach cannot be completely cured within the 15-day period, such longer period of time approved by OASAS, provided that the Contractor proceeds with reasonable diligence to completely cure the breach), or if Contractor shall cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or shall avail itself of or become subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, then and in any such event, OASAS may, at its option, terminate this Contract upon 10 days' written notice and exercise

such other remedies as shall be available under this Contract, at law and/or equity. The determination of whether the Contactor has cured a breach is within OASAS's sole discretion.

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

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

## 1.23 TRANSITION

OASAS may require the Contractor to provide uninterrupted Services after Contract termination/expiration ("Transition Services") as OASAS deems reasonable and necessary for OASAS to comply with all the legal requirements for establishing a new Contract and transitioning to a replacement Contractor.

### a. Transition Period

OASAS shall determine the transition period in consultation with the Contractor and shall notify the Contractor in writing. OASAS reserves the right to amend the transition period subsequently, upon 30 days' advance written notice to the Contractor.

### b. No Interruption in Service

At all times during the transition period, and unless directed otherwise in writing by OASAS, the Contractor shall continue its contractual obligations set forth in the Contract until such time as the services provided under the Contract have been transitioned to a successor Contractor, OASAS, or a third party designated by OASAS. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph, notwithstanding the issuance of a termination for cause or convenience by OASAS.

### c. Transition Plan

Within 15 days of receipt of a notice of termination, or three months prior to the end of the term of the Contract, whichever event occurs first, the Contractor shall submit to OASAS, for OASAS review and approval, a detailed written plan for transition ("Transition Plan") that outlines, at a minimum, the tasks, milestones, and deliverables associated with a smooth transition of services and corresponding timeline.

### d. Contractor Transition Services

Transition Services shall include the performance of Contractor's responsibilities, as outlined in the Contract, and the transferring of those responsibilities to a successor Contractor, OASAS, or a third party designated by OASAS in accordance with the Transition Plan agreed upon by the Parties. Contractor shall maintain the same level of service during the transition period as is set forth in the Contract until specific tasks or services are completely transitioned to or assumed by a successor Contractor, OASAS, or a third party designated by OASAS.

### e. Compensation for Transition Services

Contractor shall be reimbursed for Transition Services performed at the rates set forth in the Contract that are in effect at the beginning of the transition period or the Contractor's prevailing rates at the time transition services are requested, whichever is lower.

### f. Cooperation

Contractor shall cooperate with the State and agents working on behalf of OASAS (e.g., consultants) to facilitate a smooth and orderly transition. This shall include participation in periodic project review meetings to be held with representatives of the Contractor, a successor Contractor, OASAS, and/or a third party designated by OASAS.

## 1.24 ADDITIONAL TECHNOLOGY PROVISIONS

### a. Permitted License Transfers

Should the State's business operations be altered, expanded, or diminished, licenses or subscriptions granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies, as applicable ("permitted license transfers"). The State may make such permitted license transfers without the need to secure the approval of Contractor, but must give 30 days' prior written notice to Contractor of such transfer. No additional license, subscription, or transfer fees shall apply in the event of such transfer, so long as no additional instances, capacity, or similar functionality are required to effectuate such transfer. For on-premises software, there shall be no additional license or other transfer fees due Contractor, provided that: 1) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or 2) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to licensed capacity. In the event the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the new site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

### b. Restricted Use by Outsourcers, Service Bureaus, or Other Third Parties

Outsourcers, facilities management, or service bureaus retained by the State shall have the right to use the licensed product to maintain the State's business operations, including data processing, provided that: 1) Licensee gives notice to Contractor of such intended use and means of access; 2) if required by Contractor, such third party agrees to the Contractor's standard nondisclosure or restricted use agreement; and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that solely necessary to provide contracted services to the State. In no event shall the State assume any liability for a third party's compliance with the terms of a Nondisclosure Agreement, nor shall the Nondisclosure Agreement create or impose any liabilities on the State.

### c. No Hard Stop/Passive License Monitoring

For on-premises software, Contractor hereby warrants and represents that the licensed product and all upgrades do not and will not contain any computer code that would disable or impair, in any way, its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the licensed product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that, in the event of a breach or alleged breach of this provision, the State User shall not have an adequate remedy at law, including monetary damages, and 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 the State shall be entitled.

### d. Source Code Escrow for Licensed Product

If source code or source code escrow is offered by either Contractor or the manufacturer or developer of the licensed product to any other commercial customers, Contractor shall: 1) provide the State with the

source code for the licensed product; 2) place the source code in a third-party escrow arrangement with a designated escrow agent who shall be named and identified to the State and who shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to the State; or 3) certify to the State that the licensed product manufacturer/developer has named the State, acting by and through OASAS, as a named beneficiary of an established escrow arrangement with its designated escrow agent, who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the licensed product in the same manner as provided above, and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause or certify, immediately upon a change of the escrow agreement.

### e. Ownership of and Title to Non-Cloud Contract Deliverables

Contractor acknowledges that it is commissioned by the State to perform the services detailed in the RFP, which may include the development of intellectual property by Contractor, its subcontractors, partners, employees, or agents for the State ("Custom Products"). Unless otherwise specified in writing in the RFP, upon the creation of such Custom Products, Contractor hereby conveys, assigns, and transfers to the State the sole and exclusive rights, title, and interest in the Custom Products, whether preliminary, final, or otherwise, including all trademarks 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 performing services under the Contract in the course of the Contractor's business. The State may, by providing written notice thereof to the Contractor, elect in the alternative to take a nonexclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, the State shall be granted a nonexclusive perpetual license to use, execute, reproduce, display, perform, adapt, and distribute Custom Product as necessary to affect the general business purpose(s) as stated in the RFP and corresponding Contract fully.

### f. Ownership of and Title to Existing Software

Title and ownership to existing software delivered by Contractor under the Contract, which software is normally distributed commercially by the Contractor or a third-party proprietary owner, whether or not it is embedded in, delivered, or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or the third party. Effective upon acceptance, such existing software shall be licensed to the State and must, at a minimum, grant the State a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the State as part of Contractor's proposal that adaptation will violate existing agreements or statutes and demonstrates such to the State's satisfaction) and distribute existing software to the State up to the license capacity stated in the Contract with all license rights necessary to fully effect the general business purposes stated in the Contract. With regard to third-party software, the Contractor shall be responsible for obtaining these rights at its sole cost and expense.

### g. Data Ownership

All State data is owned by the State exclusively and will remain the property of the State. Contractor is permitted to use data solely for the purposes set forth in the Contract, and for no other purpose. At no time shall the Contractor access, use, or disclose any confidential information (including personal, financial, health, or criminal history record information or other sensitive criminal justice information) for any other purpose. The Contractor is strictly prohibited from releasing or using data or information for any purposes other than those specifically authorized by the State. Contractor agrees that State data shall not be distributed, used, repurposed, transmitted, exchanged, or shared across other applications, environments, or business units of the Contractor, or otherwise passed to other contractors, agents, subcontractors, or any other interested parties, except as expressly and specifically agreed to in writing by the State.

### h. Data Protection and Transmission

Contractor shall use appropriate means to preserve and protect State data. This includes, but is not limited to, use of stable storage media, regular data backups and archiving, password protection of volumes, and data encryption. Contractor must, in accordance with applicable law, regulations, or established requirements and the instructions of the State, maintain such data for the time period required by applicable law, exercise due care for the protection of data, and maintain appropriate and necessary data integrity safeguards against the deletion or alteration of such data. In the event that any data is lost or destroyed because of any act or omission of the Contractor, or any non-compliance with the obligations of this Contract, then Contractor shall, at its own expense, use its best efforts in accordance with industry standards to reconstruct such data as soon as feasible. In such event, Contractor shall reimburse the State for any costs incurred by the State in correcting, recreating, restoring, or reprocessing such data or in providing assistance therewith.

Contractor agrees that any and all State data will be stored, processed, and maintained solely on designated target devices and that no State data will, at any time, be processed on or transferred to any portable computing device or any portable storage medium, unless that device or storage medium is a necessary and approved component of the authorized business processes covered in the contract/agreement and/or any addendum thereof, or the Contractor's designated backup and recovery processes, and is encrypted in accordance with all current state and federal statutes, regulations, and requirements, including requirements for data defined as confidential, financial information, personal private and sensitive information (PPSI), personally identifying information (PII) or protected health information (PHI) by statute or regulations. The Contractor shall encrypt data at rest, on file storage, database storage, or on backup media, and in transit in accordance with state and federal law, rules, regulations, and requirements. The solution shall provide the ability to encrypt data in motion and at rest in compliance with state or federal law. Contractor shall use secure means (HTTPS) for all electronic transmission or exchange of system, user, and application data with the State.

Contractor must support Federal Information Processing Standards (FIPS) 140-2 cryptographic modules. Contractor cannot have management of or hold the encryption keys.

### i. Data Return and/or Destruction

At the expiration or termination of the Contract, at the State's option, the Contractor must provide ITS/OASAS with a copy of all State data, including metadata and attachments, in a mutually agreed upon, commercially standard format and give the State continued access to State data for no less than 90 days beyond the expiration or termination of the Contract.

Thereafter, except for data required to be maintained by law or this Contract, Contractor shall destroy State data from its systems and wipe all its data storage devices to eliminate any and all State data from Contractor's systems. The sanitization process must be in compliance with NYS Security Policy NYS-S13-003, https://www.its.ny.gov/document/sanitizationsecure-disposal-standard and, where required, CJIS sanitization and disposal standards. If immediate purging of all data storage components is not possible, the Contractor will certify that any data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. Contractor must then certify to ITS/OASAS, in writing, that it has complied with the provisions of this paragraph. The State may withhold payment to Contractor if State data is not released to ITS/OASAS in accordance with the preceding sections.

### j. Access to Data

The Contractor shall not copy or transfer data unless authorized by an Authorized User. In such an event, the data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any data for any purpose other than fulfilling the service. Contractor is prohibited from data mining, cross tabulating, monitoring Authorized Users' data usage and/or access, or performing any other data analytics, other than those required within the Authorized User Agreement. At no time shall any data or processes (workflow, applications, etc.) owned or used by Authorized Users be copied, disclosed, or retained by the Contractor or any party related to the Contractor. Contractors are permitted to perform industry standard backups of data. Documentation of backup must be provided to the Authorized User

upon request. Contractor must comply with all security requirements within the Authorized User Agreement.

### k. Data Location and Related Restrictions

All data shall remain in the Continental United States. Any data stored or acted upon must be located solely in Data Centers in the Continental United States. Services that access data, directly or indirectly, may only be performed from locations within the Continental United States. All data at rest or in process must be protected in accordance with FIPS-140-2 cryptographic modules (level 1 or higher). Data in transit must employ cryptographic protocol TLS2 (or successor).

### l. Support Services

All help desk, online, and support services that access any data must be performed from within the Continental United States. At no time will any Follow the Sun support be allowed to access data directly, or indirectly, from outside the Continental United States.

### m. Infrastructure Support Services

Infrastructure support services that do not access data, directly or indirectly, may be provided in a Follow the Sun format, if expressly outlined within the Authorized User Agreement. The data, and/or the storage medium containing the data, shall be destroyed in accordance with applicable ITS destruction policies (ITS Policy S13-003 Sanitization/Secure Disposal and S14-003 Information Security Controls or successor) when the Contractor is no longer contractually required to store the data.

## 1.25 FORCE MAJEURE

In the event that either Party is unable to perform any of its obligations under the Contract because of natural disaster, any act of God, war, civil disturbance, court order, labor dispute, or any other acts beyond the reasonable control of either Party (hereinafter referred to as a "Force Majeure Event"), the Party that has been so affected shall immediately give notice to the other Party and shall exercise every commercially reasonable effort to resume performance, and an extension of the time for performance shall be granted for a period to be agreed to in writing by the Parties. Any delay in performance by either Party resulting from a Force Majeure Event shall not be considered a breach or default under the Contract.

## 1.26 DISPUTE RESOLUTION

The Parties agree to resolve any disputes regarding the performance of services or otherwise arising under the Contract expeditiously, through an escalation process to be agreed upon by the Parties. Senior management representatives of the Parties shall meet within three (3) business days in the event a dispute threatens the performance of a material portion of the Services according to the Contract until such dispute is resolved.

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

## 1.27 GENERAL PROVISION AS TO REMEDIES

a. The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy, or constitute a waiver of or acquiescence to, an event otherwise constituting a breach or default under the Contract.

b. In addition to any other remedies available to the State under the Contract and state and federal law for Contractor's default, the State may choose to exercise some or all of the following:

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

## 1.28 INSURANCE

Contractor must comply with the Insurance provisions set forth in Appendix D-1, which is attached hereto and incorporated into this Contract.

## 1.29 TAXES

a. OASAS represents that purchases on behalf of the State of New York are not subject to any State or local sales or use taxes, or to Federal excise taxes.

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

c. Section 5-a of the New York Tax Law requires that any contract valued at more than $100,000 entered into by a State Agency shall not be valid, effective, or binding against the Agency unless the Contractor certifies to the Department of Taxation and Finance that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in of excess of $300,000, measured over a specified period. In addition, the Contractor must certify to the Department of Taxation and Finance that each affiliate and subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, "affiliate" means a person or organization which—through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization—is controlled by another person or organization or is, along with another person or organization, under the control of a common parent. The Contractor also must certify to the procuring State entity that it filed the certification with the Department of Taxation and Finance and that the certification is correct and complete. Accordingly, in the event that the value of this Contract exceeds $100,000, and Contractor's sales delivered by any means to locations within New York State of tangible personal property or taxable services have a cumulative value in excess of $300,000, measured over a specific period, the Contractor must file a properly completed Form ST-220-CA (**Attachment VII**) with OASAS and a properly completed Form ST-220-TD with the Department of Taxation and Finance before the Contract may take effect. In addition, after the Contract has taken effect, the Contractor must file a properly completed Form ST-220-CA with OASAS if the Contract's term is renewed. Further, a new Form ST-220-TD must be filed with the Department of Taxation and Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete. Further information about this requirement is available at http://www.tax.ny.gov. Contractor agrees to cooperate fully with the State in administering these requirements.

## 1.30 OUTSTANDING TAX LIABILITIES

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

## 1.31 SECURITY, NON-DISCLOSURE/CONFIDENTIALITY, PRESS RELEASES

The State may terminate the Contract for cause for a material breach of this section by Contractor.

### a. Security Procedures

Contractor shall comply fully with all security procedures and policies of the State, including but not limited to any required fingerprinting and background check procedures that are communicated to the Contractor by the State during the performance of the Contract. Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any, of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, if any, while providing Services under the Contract.

### b. Nondisclosure and Confidentiality

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors, if any, have access. This requirement shall survive termination of the Contract. For purposes of the Contract, all State information of which Contractor, its officers, agents, employees, and subcontractors, if any, become aware of during the performance of services for the State, shall be deemed to be confidential information (oral, visual, or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

- Information that is previously rightfully known to the receiving party without restriction on disclosure.
- Information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain.
- Information that is developed independently by Contractor without use of Confidential Information of the State.

Contractor shall indemnify and hold the State harmless from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such confidential information.

Contractor employees and subcontractors shall be required to sign Confidentiality and Nondisclosure Agreements, either before or upon arrival at the work site, or prior to providing services under the Contract.

### c. Press Releases

Contractor agrees that no brochure, news/media/press release, public announcement, memorandum, or other information of any kind regarding the Contract shall be disseminated in any way to the public, nor shall any presentation be given regarding the Contract without the prior written approval of OASAS, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Contract and answer any questions relating thereto to any state or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

### d. Federal or State Requirements

Contractor will comply with Federal and State laws and regulations regarding personal, private, and sensitive data, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) (see Section 1.48, below), 45 CFR Part 160 and Subparts A and E of Part 164, 42 CFR Part 2,10 NYCRR Part 63, Mental Hygiene Law §§33.13 and 33.16.

In the event it becomes necessary for Contractor to receive Confidential Information that Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees to return or destroy all such Confidential Information that has been received from the State when the purpose that necessitated its receipt by Contractor has been completed. In addition, Contractor agrees not to retain after termination of

the Contract any Confidential Information that Federal or State statute or regulation prohibits from disclosure.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of the Contract for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contactor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify the State accordingly. Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information that Federal or State statute or regulation prohibits from disclosure.

Contractor agrees that it shall immediately report to the State the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information of any New York State Agency information directly to that New York State Agency. The State may terminate the Contract if it determines that Contractor has violated a material term of this section. The terms of this section shall apply equally to Contractor, its agents, and subcontractors, if any. Contractor agrees that all subcontractors, if any, and agents shall be made aware of and shall agree to the terms of this section.

If requested by OASAS, the Contractor shall enter into a written agreement with OASAS (**Attachment V**) ensuring the confidentiality of patient records and information in accordance with 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records.

### e. Offshore Restrictions

Confidential Information accessed by or provided to the Contractor during the course of performing services for the State must not be stored or accessed outside of the continental United States.

### f. Criminal Justice Information Services (CJIS)

If Contractor, its employees, agents, or subcontractors shall have access to criminal justice/forensic information (including criminal history record information or other sensitive criminal justice information), as defined by the Federal Bureau of Investigation Criminal Justice Information Services (CJIS) Security Policy (accessed through the link below), on NYS systems or media, Contractor, its employees, agents, or subcontractors must comply with the requirements of the CJIS Security Policy available at:

https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center

## 1.32 PUBLIC INFORMATION AND FREEDOM OF INFORMATION LAW (FOIL)

Disclosure of information related to this procurement and the resulting Contract shall be permitted, consistent with the laws of the State of New York, and specifically FOIL. OASAS shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this procurement that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Contractor upon submission in accordance with the Contract provisions. If the Contractor intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall, at the time of submission, request the exemption, in writing, and provide an explanation of: 1) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor; or 2) why the information constitutes critical infrastructure information that should be exempted from disclosure pursuant to §87(2) of FOIL. Acceptance of the identified information by OASAS does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by OASAS.

## 1.33 LEGAL REQUESTS AND RELEASE OF STATE DATA TO THIRD PARTIES PROHIBITED

Except as otherwise required by law, Contractor shall not disclose State data to a third party. Except where expressly prohibited by law, Contractor shall notify the State promptly of any subpoena, warrant, judicial,

administrative, or arbitral order of an executive or administrative agency or other governmental authority of competent jurisdiction (a "Demand") that it receives and which relates to or requires production of the information or data Contractor is processing or storing on your behalf. If Contractor is required to produce information or data in response to a Demand, Contractor will provide the State with the information or data in its possession that it plans to produce in response to the Demand prior to production of such information or data. Except as otherwise required by law, Contractor shall provide the State reasonable time to assert its rights with respect to the withholding of such information or data from production. If the State is required to produce information or data in response to a Demand, Contractor will, at the State's request and unless expressly prohibited by law, produce to the State any information or data in its possession that may be responsive to the Demand and shall provide assistance as is reasonably required for the State to respond to the Demand in a timely manner. The State acknowledges that Contractor has no responsibility to interact directly with the entity making the Demand. The parties agree that the State's execution of this agreement does not constitute consent to the release or production of State data or information.

## 1.34 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE) AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN; AND PAY EQUITY BY STATE CONTRACTORS (ATTACHMENT III):

By signing the Contract, the Contractor agrees to comply with all requirements of Minority and Women Business Enterprise Laws, Regulations and Rules (M/WBE). Annexed hereto is Attachment III, which is made part of the Contract.

## 1.35 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES (SDVOB)

By signing the Contract, the Contractor agrees to comply with all requirements of Service-Disabled Veteran-Owned Business Laws, Regulations and Rules (SDVOB). Annexed hereto as Attachment VIII, which is made part of the Contract.

## 1.36 ETHICS COMPLIANCE

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

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

The Contractor and its subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics or its predecessors (collectively, the "Ethics Requirements"). The Contractor certifies that all of its employees, and those of its subcontractors, who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the term, no person who is employed by the Contractor or its subcontractors and who is disqualified from

providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its subcontractors who are former employees of the State who will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any subcontractor, if using such subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract, at any time, if any work performed hereunder is in conflict with any of the Ethics Requirements.

## 1.37 MOST FAVORABLE TERMS AND BEST PRICING

Contractor agrees that all fees, pricing, terms, and warranties provided by the Contractor under the Contract are substantially similar to the best equivalent terms being offered by the Contractor to any entity similarly situated to the State for substantially similar services or products. If during the term of the Contract, the Contractor enters into an arrangement with any similarly situated entity for substantially similar services or products with better pricing or terms that are more favorable, Contractor hereby agrees to amend the Contract to provide the same to the State.

## 1.38 TRANSFER OF CONTRACT

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

## 1.39 SUBCONTRACTORS

Contractor may not subcontract the services procured under this Contract without OASAS's prior written approval. OASAS reserves the right to reject any proposed subcontractor or supplier if it determines that the company is not qualified or responsible. All such subcontracting relationships between the Contractor and its subcontractors to perform Services must be memorialized by written agreement.

Contractor shall include in all agreements with its subcontractors, in such a manner that will be binding upon each subcontractor with respect to work performed in connection with the Contract, provisions specifying that:

- The work performed by the subcontractor must be in accordance with the terms and conditions of this Contract.
- Nothing contained in the subcontract shall impair the rights of OASAS or the State.
- Nothing contained in the subcontract shall create any contractual relationship between the subcontractor and OASAS or the State.
- The State and OASAS shall have the same authority to audit the records of all subcontractors as it does those of the Contractor.
- Subcontractor shall cooperate with any investigation, audit, litigation, or other inquiry related to the Procurement or the resulting Contract.

OASAS reserves the right, at any time during the term of the Contract, to verify that the written subcontract(s) between Contractor and subcontractor(s) complies with all of the provisions of this Section and any subcontract provisions contained in this Contract.

See the Agreement for additional requirements.

## 1.40 WAIVER

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

## 1.41 ACCESSIBILITY

Any web-based information and applications development, or programming delivered pursuant to the Contract, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications, as such policy may be amended, modified, or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by Contractor, and the results of such testing must be satisfactory to OASAS before web-based information and applications will be considered a qualified deliverable under the Contract or Procurement.

## 1.42 COMPLIANCE WITH NYS INFORMATION SECURITY POLICIES AND STANDARDS

Contractor shall comply fully with the requirements of the Information Security Breach and Notification Act, and all security procedures and policies of the State, including but not limited to:

- Acceptable Use of Information Technology Resources Policy
- Information Security Policy
- Security Logging Standard
- Information Security Risk Management Standard
- Information Security Controls Standard
- Sanitization/Secure Disposal Standard
- Mobile Device Security Standard
- Remote Access Standard
- Secure System Development Life Cycle Standard
- Secure Configuration Standard
- Secure Coding Standard

ITS Security Policies and Standards may be found at:

http://www.its.ny.gov/tables/technologypolicyindex.htm/security

## 1.43 RIGHT TO INSPECT

The State, or contracted entities working on behalf of the state, has the right to review Contractor's procedures, practices, and controls related to the security of State data and information assets. Upon request, Contractor will, immediately or no later than five business days after the request, make available for review policies, procedures, practices, and documentation related to the protection of State data and information assets, including but not limited to that related to information security governance, network security, risk and compliance management policies and procedures, personnel security background screening/checks and vetting procedures, secure systems/software development protocols, change/release management, testing, quality assurance, vulnerability management, secure disposal/sanitization and documentation. Contractor may be asked to provide a recent independent audit report on security controls prior to execution of the Contract, or at any time during the Contract term. The State shall have the right to send its officers, employees, or contracted vendors working on behalf of OASAS

to inspect Contractor's facilities and operations used to provide Contract services. Based on such inspection, the State may require Contractor to implement corrective measures where the Contractor is found to be noncompliant with Contract provisions.

## 1.44 SEVERABILITY

In the event one or more of the provisions of the Contract shall, for any reason, be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.

## 1.45 PIGGYBACKING

Contractor acknowledges and agrees that, pursuant to State Finance Law §163(10)(e), the New York State Office of General Services may authorize and approve purchases from Contracts let by Contractor to other New York State agencies, the United States Government, or any other state, with the concurrence of OSC and under appropriate circumstances.

## 1.46 EMPLOYEE INFORMATION REQUIRED TO BE REPORTED FOR CERTAIN CONSULTANT CONTRACTORS AND SERVICE CONTRACTORS (ATTACHMENT VI)

State Finance Law § 163(4)(g) imposes reporting requirements about certain information concerning Contract Employees working under State Agency service and consulting Contracts. State Agency consultant Contracts are defined as "Contracts entered into by a state Agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*" ("covered consultant Contract" or "covered consultant services"). The amendments also require that certain Contract Employee information be provided to the state Agency awarding such Contracts, OSC, the New York State Division of the Budget (DOB), and the New York State Department of Civil Service (CS). The effective date of these amendments is June 19, 2006. The requirements will apply to covered Contracts awarded on and after such date.

To meet these requirements, the Contractor agrees to complete:

**Form A** - Contractor's Planned Employment Form, if required. Note: State Agencies are required to furnish this information but may require a Contractor to submit the information as part of its bid response.

**Form B** - Contractor's Annual Employment Report. Throughout the term of the Contract, by May 15 of each year, the Contractor agrees to report the following information to the State Agency awarding the Contract, or if the Contractor has provided Contract Employees pursuant to an OGS centralized Contract, such report must be made to the State Agency purchasing from such Contract. For each covered consultant Contract in effect at any time between the preceding April 1 through March 31 fiscal year or for the period of time such Contract was in effect during such prior State fiscal year, Contractor reports the:

1. Total number of employees employed to provide the consultant services, by employment category
2. Total number of hours worked by such employees
3. Total compensation paid to all employees who performed consultant services under such Contract.*

***NOTE**: The information to be reported is applicable to only those Employees who are providing services directly or performing covered consultant services directly. However, such information shall also be provided relative to employees of subcontractors who perform any part of the service Contract or any part of the covered consultant Contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an Employee in a clerical, support, organizational, or other administrative capacity.

Contractor agrees to report such information to CS, OSC, and OASAS as designated below:

**Department of Civil Service**
Alfred E. Smith State Office Building
Albany, NY 12239

**OASAS**
1450 Western Avenue, 5th Floor
Albany, NY 12203
Attn: Contracts & Procurement Team

**Office of the New York State Comptroller** – Bureau of Contracts
110 State St., 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event that individual employee names or social security numbers are set forth on a document, the State Agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

Further information is available in the Office of the New York State Comptroller's Guide to Financial Operations, Chapter XI Procurement and Contract Management, Section 18. Miscellaneous Legislative Requirements, Subsection C.

Consultant Disclosure Legislation found at http://www.osc.state.ny.us/agencies/guide/MyWebHelp/

## 1.47 COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA), 42 CFR PART 2 AND THE (HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT OF 2009 (HI-TECH)

To the extent Contractor or its subcontractor(s) create, receive, maintain, or transmit protected health information on behalf of the State pursuant to their responsibilities under this Contract, Contractor and such subcontractors must comply with HIPAA, 42 CFR Part 2 and HI-TECH and execute the HIPAA, 42 CFR Part 2 and HI-TECH Compliance Certification Form provided by OASAS. If requested by OASAS, the selected Bidder must agree to and sign OASAS Qualified Service Organization Business Associate Agreement (**Attachment V**). The successful Bidder must notify OASAS and ITS within two hours of any suspected breach of security involving an individual's personal or health information.

## 1.48 DELIVERABLE ACCEPTANCE

Completed work products and services ("Deliverables") will be delivered to the designated State approver who has been authorized to accept deliverables. Deliverables must meet Contract requirements. The New York State approver will accept or reject the work product or service within 15 business days of the receipt of the Contractor's notification of completion. If the New York State approver rejects a work product or service, the cause for rejection and all defects to be addressed will be documented by New York State and provided to the Contractor, and the Contractor will correct all identified deficiencies and resubmit the Deliverable for acceptance within five business days. When resubmitted after rejection, the New York State approver will accept or reject the work product or service within seven business days. The number of resubmissions shall be limited to two, after which the issue shall be subject to Dispute Resolution Section 1.26 for further determination.

## 1.49 CHANGE REQUEST

At any time during the term of this Contract, the State may make changes, subtractions, or additions in any of the Equipment, Software, Documentation, Services, and/or other Deliverables within the general scope of work set forth in the Contract, consistent with pricing established under the terms of this agreement. All such changes shall be executed by both Parties, and shall otherwise be in accordance with the terms and conditions of this Contract. If any such change causes an increase or decrease in pricing, or the time required for the performance of the Contract, an equitable adjustment of the Contract amount and/or time

of performance will be made by mutual agreement of the Parties, subject to the approval of OSC and any applicable control agency, if required.

## 1.50 ADDITIONAL PROCUREMENT PROVISIONS

### *1.50.1 BIDDERS, SUB CONTRACTORS, AND CONTRACTOR OBLIGATIONS*

The Contractor shall provide a written copy of all subcontracts and third-party contracts to the State upon request and include a certification that it has fully disclosed all terms and conditions of such contracts and will disclose any amendments that occur subsequent to the original submission. Failure to provide such information shall constitute a breach of contract. Any waiver of breach as a result of Contractor's failure to furnish information required in this paragraph shall not be deemed a waiver of any subsequent breach. The Contractor may request the State's approval to submit redacted copies of such subcontracts and third-party contracts from which trade secrets or proprietary information has been removed pursuant to the Trade Secret Materials paragraph of this Contract.

## 1.51 VULNERABILITIES, DOWNTIME, AND INCIDENT RESOLUTION; PENALTIES

### *1.51.1 Vulnerability Assessment*

The Contractor will be ready to demonstrate that there are no environmental, network or application vulnerabilities and must comply with NYS Security Policies (https://its.ny.gov/tables/technologypolicyindex), which includes NYS-S15-002 – Vulnerability Scanning.

The Contractor will demonstrate through documentation that the solution is secure and meets the aforementioned standards

Further, OASAS reserves the right to hire an industry-recognized vendor to perform a network vulnerability assessment on the implemented system. The Contractor will be expected to support the vendor during the assessment. The Contractor will be expected to develop an implementation plan within 10 days of receiving the assessment results to address any findings. The Contractor is expected to resolve minor findings as soon as possible. If deemed appropriate by OASAS, the change request process as described in this Contract may be used to address any major findings requiring redesign or significant changes to the system. OASAS reserves the right to implement penalties on the Contractor for any findings not addressed satisfactorily within 30 days.

### *1.51.2 Penalties for Vulnerabilities*

If a vulnerability is detected within the system, the Contractor, within 10 days, will provide a plan to address and remediate the vulnerability. Upon identification of any vulnerability, the Contractor must supply to OASAS for approval a plan of corrective action that outlines how the vulnerability will be addressed and the timeframes for taking corrective actions.

Failure to provide a corrective action plan within 10 days, or failure to implement the approved plan of corrective action, will result in a daily fine of $250.00, to be deducted from the payments due to the Contractor.

### *1.51.3 Penalties for System Downtime and Incident Resolution*

For those incidents described herein that are within the Contractor's control (subject to OASAS's reasonable agreement as to whether an incident is within the Contractor's control) OASAS reserves the right to levy the following penalties upon the Contractor on a monthly basis:

System downtime exceeding four hours will result in a $250.00 fine for each additional four hours the system is down.

Failure to provide Problem Resolution for any incident within 30 days shall result in a $250.00 fine for each additional day the incident is unresolved to OASAS's satisfaction.

Fines will be collected as a reduction to the payments due to the Contractor.

Penalties for downtime apply when uptime (24 x 7 x 365 for service other than downtime for scheduled maintenance) is:

>= 99.7% = no penalty

>= 98% and < 99.7% = 5% penalty

>= 97% and < 98% = 10% penalty

>= 95% and < 97% = 15% penalty

< 95 % = 25% penalty

## 1.52 CONFLICTS OF INTEREST

The Contractor shall provide certain conflict of interest disclosures (See Attachment 3), to include but not be limited to the following:

a. The Contractor shall affirm that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with, the State of New York, and that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

b. The Contractor shall affirm 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 Contract. The Contractor shall have a duty to notify OASAS immediately of any actual or potential conflicts of interest.

In conjunction with any subcontract under this Contract, the Contractor shall obtain and deliver to OASAS, prior to entering into a subcontract, a conflict of interest disclosure, as detailed in Attachment 3, signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to OASAS a signed conflict of interest disclosure as detailed in Attachment 3 for each of its subcontractors prior to entering into a subcontract.

OASAS and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. OASAS will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of OASAS, a real or potential conflict of interest cannot be cured.

# APPENDIX D-1
## Contractor's Insurance Requirements

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

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

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

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

1. ***Coverage Types and Policy Limits.*** The types of coverage and policy limits required from the Contractor are specified in Section B-*Insurance Requirements.*
2. ***Policy Forms.*** Except as otherwise specifically provided herein, or agreed to in the contract, all policies of insurance required by this section shall be written on an occurrence basis.
3. ***Certificate of Insurance/Notices.*** The Contractor shall provide OASAS with a Certificate or Certificates of Insurance, in a form satisfactory to OASAS (e.g., an ACORD certificate), after renewal or upon request. Certificates shall reference the Contract number and shall name the New York State Office of Addiction Services and Supports, 1450 Western Avenue, Albany New York, 12203 as the certificate holder.

   Certificates of Insurance shall:

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

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

Except for: 1) Data Breach and Privacy/Cyber Liability coverage; 2) Technology Errors and Omissions; and 3) Crime insurance coverages, OASAS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OASAS reserves the right to request other proof of insurance. Contractors are requested to refrain from submitting entire insurance policies, unless specifically requested by OASAS. If an entire insurance policy is submitted but not requested, OASAS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by the OASAS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. ***Forms and Endorsements.*** For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Contractor shall provide the OASAS, after renewal or upon request, a Schedule of Forms and Endorsements and, upon request, all Forms and Endorsements, unless otherwise agreed to in the Contract. The Forms and Endorsements shall provide evidence of compliance with the requirements of this Contract. Only original documents or electronic versions of the same that can be traced directly back to the insurer, agent, or broker via email distribution or similar means will be accepted.

5. ***Primary Coverage.*** All insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the State of New York, OASAS, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees. Any other insurance maintained by the State of New York, OASAS, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

6. ***Breach for Lack of Proof of Coverage.*** The failure to comply with the requirements of this section at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the State of New York, OASAS, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

7. ***Self-Insured Retention/Deductibles.*** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above $100,000.00 are subject to approval by OASAS. Such approval shall not be unreasonably withheld, conditioned, or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program, along with a description of that program, including but not limited to information regarding the use of a third-party administrator, shall be provided upon request.

8. ***Subcontractors.*** Prior to the commencement of any work by a subcontractor, the Contractor shall require such subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that subcontractor.

9. ***Waiver of Subrogation.*** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the State of New York, OASAS, any entity authorized by law or regulation to use the Contract, and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to OASAS upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

10. ***Additional Insured.*** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insureds: The State of New York, OASAS, any entity authorized by law or regulation to use the Contract, and their officers,

agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OASAS after renewal and/or upon request. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Contractor would have been required to pursuant to this section had Contractor obtained such insurance policies.

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

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

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

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

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

Notwithstanding the foregoing, if the Contractor shall have requested the insurance documents promptly 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 OASAS, OASAS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

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

1. **Commercial General Liability Insurance:** Commercial General Liability Insurance with a limit of not less than $2,000,000 each occurrence. Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage, and shall cover liability arising from bodily injury, premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

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

Aggregate limits shall apply on a per-location basis, or as otherwise agreed to in the Contract. This aggregate limit applies separately to each location at which the insured works.

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

- Premises liability
- Independent contractors
- Blanket contractual liability, including tort liability of another assumed in any Contract resulting from this Solicitation
- Defense and/or indemnification obligations, including obligations assumed under this Contract
- Cross-liability for additional insureds
- Explosion, collapse, and underground hazards

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

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

   In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or use non-owned automobiles in connection with performance under the Contract, the Contractor must: 1) obtain Comprehensive Business Automobile Liability Insurance as required by this Contract, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and 2) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by OASAS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OASAS in accordance with the insurance requirements of the Contract.

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

| Data Breach and Privacy/Cyber Liability | | |
|---|---|---|
| Software | | $1,000,000 |
| Hardware | | $1,000,000 |
| Cloud * | Low Risk | $2,000,000 |
| | Moderate Risk | $5,000,000 |
| | High Risk | $10,000,000 |
| Implementation | | $1,000,000 |

* See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories.

Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.

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

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

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

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

| Technology Errors and Omissions | | |
|---|---|---|
| Software | | $1,000,000 |
| Hardware | | $1,000,000 |
| Cloud * | Low Risk | $2,000,000 |
| | Moderate Risk | $5,000,000 |
| | High Risk | $10,000,000 |
| Implementation | | $1,000,000 |

*See NYS-S14-002 Information Classification Standard or successor available at http://www.its.ny.gov/tables/technologypolicyindex.htm for additional information relating to risk categories.

Contractor must maintain minimum insurance coverage for the level of risk for which Contractor provides Products and submit documentation in accordance with the terms of this Contract.

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

- Consulting
- Data processing
- Programming
- System integration
- Hardware or software development
- Installation
- Distribution or maintenance
- Systems analysis or design
- Training
- Staffing or other support services
- Manufactured, distributed, licensed, marketed, or sold cloud-computing services

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

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

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

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

Contractor must provide and maintain Crime Insurance coverage, on a "loss sustained form" or "loss discovered form," providing coverage for Third-Party Fidelity.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one year with respect to events that occurred but were not reported during the term of the policy.
- Any warranties required by the Vendor's and Contractor's insurer as a result of this Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents, and employees) of the Vendor and Contractor as a result of this Contract.
- The policy shall include coverage for third-party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the State of New York, OASAS, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees as "Loss Payees" for all third-party coverage secured. An Endorsement naming as Loss Payees "The State of New York, OASAS, any entity authorized by law or regulation to use this Contract, and their officers, agents, and employees" shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

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

Proof of Compliance with the Workers' Compensation Coverage Requirements:

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

Proof of Compliance with the Disability Benefits Coverage Requirements:

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

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