# Exhibit A – Preliminary Base Contract

**THIS AGREEMENT** by and between the New York State Department of Taxation and Finance, located at Building 9, W.A. Harriman State Office Campus, Albany, New York 12227 (hereinafter referred to as the “Department, “DTF” or “State”) and [XXXX], with its principal place of business located at [XXXX] (hereinafter referred to as the “Contractor”). The Department and the Contractor are collectively referred to as the “Parties.”

**WHEREAS,** the Department issued Invitation for Bids (IFB) 20-202 on March 19, 2021, seeking proposals for the production and delivery of TMT – 6 Highway Use Tax Stickers and TMT – 40 Automotive Fuel Carrier Stickers; and

**WHEREAS,** the Contractor submitted a timely bid proposal to provide the Services set forth in IFB 20-202and the Department has determined that the Contractor is responsible; and

**WHEREAS,** pursuant to **Section 4, Method of Award,** of said IFB, the Contractor was determined to have provided the best price proposal and has been determined capable of providing the required Services; and

**WHEREAS**, the Contractor is prepared to provide the Services according to the terms of this Agreement.

**NOW, THEREFORE,** in consideration of the mutual covenants and conditions herein set forth, the Parties hereto agree as follows:

**ARTICLE I. DEFINITIONS**

The following terms when used herein shall have the specified meanings:

**Agreement** - This Contract C400[XXX], which includes all documents identified in **Article II, Entirety of Agreement**.

**Attorney General** or **AG** - The New York State Attorney General or his/her designee.

**Base Contract** - That portion of the Agreement preceding the signatures of the Parties.

**Commissioner** - The Commissioner of the New York State Department of Taxation and Finance, or his/her designee.

**Confidential Information** - Shall have the meaning set forth in **Article VII.C, Breach of Confidentiality Provisions** herein.

**Contractor** - [*successful Bidder’s name to be inserted here*].

**Cure Period** - The period of time during which the Contractor shall have the opportunity to cure a Deficiency or a Material Breach, as set forth in a Notice of Deficiency issued by the Department.

**Defect or Deficiency** - Any failure by Contractor to meet requirements in providing the Services pursuant to this Agreement.

**Department** and/or **DTF** - The New York State Department of Taxation and Finance.

**Dispute Resolution** - The procedure set forth in Article X for resolving disputes arising under this Agreement.

**Material Breach by Contractor** - The failure to perform an obligation that Contractor is bound to perform under this Agreement which significantly impacts the State or is so fundamental to the Agreement that Contractor’s failure to perform defeats its purpose.

**Notice of Defect or Deficiency** or **NOD** - The written notification furnished by the Department to the Contractor initiating a Cure Period. Such notice shall set forth the failure(s) that have been identified which may give rise to a Material Breach of the Agreement if not corrected during the Cure Period.

**Notice of Termination** - The written notification issued to the Contractor by DTF following a Cure Period, if applicable, which sets forth the termination date of the Agreement.

**OGS-BSC** - The New York State Office of General Services, Business Services Center.

**OSC** - The New York State Office of the State Comptroller.

**Proposal** - The bid submitted by Contractor in response to IFB 20-202.

**Services** - All functions and work to be performed by the Contractor, including but not limited to routine services, required to be performed by Contractor in accordance with IFB 20-202, and this Agreement.

**Subcontractor** - Any individual or other legal entity including, but not limited to, a sole proprietorship, partnership, limited liability company, firm or corporation with whom the Contractor or another Subcontractor enters into a contract to perform all or part of the Contractor’s obligation(s) under the Agreement.

**Tax Law** - The New York State Tax Law.

**Tax Secrecy** - The sections of the Tax Law and the Internal Revenue Code enumerated in **Article VII** (Secrecy Provisions).

All other defined terms are set forth in IFB 20-202.

**ARTICLE II. ENTIRETY OF AGREEMENT**

The entire Agreement shall consist of the documents listed below. Conflicts between these documents shall be resolved in the following order of precedence:

**Appendix A** to IFB 20-202, “Standard Clauses for New York State Contracts,” dated October 2019;

**Attachment 15**, DTF-202, Tax Information Access and Non-Disclosure Agreement, dated June 2019;

Base Contract C400[XXX];

IFB 20-202 (including all attachments, exhibits and appendices to the IFB, but excluding **Appendix A** and **Attachment 15**); and

Contractor’s Proposal, including Contractor’s completed attachments.

**ARTICLE III. CONTRACTOR RESPONSIBILITIES**

The Contractor hereby agrees to provide all Services and comply with all Requirements as set forth herein and as required by IFB 20-202. In addition to the Contractor’s responsibilities set forth elsewhere in this Agreement, the Contractor shall comply with the following:

1. The Contractor hereby agrees to provide all services as set forth herein and in IFB 20-202 and the Contractor’s bid proposal in response to said IFB.
2. The Contractor will comply with the Secrecy requirements set forth in Article VII herein.
3. The Contractor must not disclose the data provided by the Department to any other individual or entity except as expressly provided by law. The data provided, while in the custody of the Contractor, must be kept confidential, and the Contractor must take all reasonable and prudent steps to ensure the data is fully protected and secured.
4. The Contractor shall pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all federal, State, and local, laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the contract.
5. The Contractor will comply with the provisions of Article XXII and Section 6.12 of IFB 20-202 entitled Insurance. The Department’s acceptance of approval of the Certificate of Insurance required thereunder shall not diminish any of the Contractor’s obligations, responsibilities or liabilities hereunder.

**ARTICLE IV. DEPARTMENT RESPONSIBILITIES**

In addition to the Department’s responsibilities set forth elsewhere in the IFB and this Agreement, the Department shall:

1. Oversee the Services provided by Contractor and make reasonable recommendations regarding the performance of such Services;
2. Make diligent efforts to provide the Contractor with direction, assistance, procedures, and contact persons necessary to perform in accordance with the requirements herein;
3. Promptly designate the appropriate contacts following the date of commencement of this Agreement;
4. Cooperate with the Contractor to utilize, where necessary, informal dispute resolution as well as the formal dispute resolution process to facilitate the timely resolution of any disputes that arise;
5. Provide access to DTF staff, as necessary, to provide the Contractor the business information needed to perform Services under this Agreement;
6. Be responsible for the performance of its employees and agents;
7. Advise the Contractor of the security rules, procedures, and regulations that DTF may from time to time establish with respect to DTF’s premises, property, records, and data;
8. Use its best efforts to ensure that any reasonable deficiencies identified by the Contractor are corrected expeditiously.

**ARTICLE V. AGREEMENT TERM**

This Agreement requires approval from the Attorney General (AG) and the Office of the State Comptroller (OSC). This Agreement is for a one- year term commencing upon approval of AG and OSC..**ARTICLE VI. FEES AND PAYMENTS**

All fees and payments shall be in accordance with **Section 5, Price** of IFB 20-202, which is incorporated in its entirety herein by reference, and Contractor’s financial proposal, **Attachment 14, Financial Response Form** of IFB 20-202. All fees and payments shall remain firm for the agreement term.

**Payment Procedures**

* 1. Electronic Payment

Payment for invoices submitted by the Contractor will only be rendered electronically and in accordance with ordinary State procedures and practices. Contractor shall comply with the State Comptroller’s procedures to authorize electronic payments and acknowledges that Contractor will not receive payment on any invoices submitted under this Agreement if it does not comply with the State Comptroller’s electronic payment procedures.  The Commissioner, in his/her sole discretion, *may* authorize payment by paper check, if specifically requested by the Contractor in advance, due to extenuating and documented circumstances necessitating payment by paper check.

**In order to receive payment, Contractor must complete and update, as appropriate, its Vendor Record through the online Vendor Self-Service Portal with the applicable Automated Clearing House (ACH) information** (e.g., bank routing number, bank account number, account type) into which the Contractor wants payment deposited. It is the Contractor’s responsibility to access the self-service portal, follow instructions provided there, and accurately supply the required information to set up electronic payments. Contractor must input the required ACH information and not permit the payment type to default to payment by paper check.  In addition to inputting the appropriate ACH information in the State Comptroller’s Vendor Record system, the Contractor must also advise DTF in writing of the ACH payment information (bank account location) into which it wants payment remitted for this Agreement. The Vendor Self-Service Portal can be found at <https://esupplier.sfs.ny.gov/psp/fscm/SUPPLIER>. Contractors requiring assistance with accessing or using the self-service portal should contact the NYS Statewide Financial System (SFS) by e-mail at helpdesk@sfs.ny.gov, or by telephone at (855) 233-8363.

* 1. Properly Submitted Invoices

Payment will be made only upon submission of proper invoices by the Contractor, and in accordance with Article 11-A of New York State Finance Law.

All submitted invoices **must** contain:

* Contractor’s name;
* Contractor's SFS Vendor Number;
* Invoice or account number;
* Name of NYS Agency to which goods or services related to the invoice were provided;
* A valid NYS Purchase Order Number and Contract number associated with the invoice;
* Line item details that match the corresponding PO line item; and
* Any other information required as communicated in the Purchase Order or Contract.

The State may, in accordance with **Article IX (Contractor Compliance with IFB Requirements)** hereof, retain from any invoice such monies due Contractor, as may be necessary to remedy any deficiency or error, including, but not limited to, any penalties or Reimbursements that may be assessed against the Contractor under the terms of this Agreement.

All invoices will be subject to the State’s acceptance of the Services for which billing is being made.

Submission:

Preferred Method:

Email invoices to the OGS-BSC at: accountspayable@ogs.ny.gov including the invoice number and the name of the agency being billed in the subject field. (Note: Do not send a paper copy in addition to the electronic invoice.)

Alternate Method:

Mail invoices to OGS-BSC at the following U.S. postal address:

New York State Department of Taxation and Finance

c/o NYS OGS Business Services Center

1220 Washington Avenue

Building 5, 5th Floor

Albany, NY 12226-1900

* 1. Payment in the Event of Termination or Suspension

In the event of termination, the Contractor shall be entitled to compensation for Services not in dispute performed through the date of termination, in the State’s sole discretion.

In the event of suspension, the Contractor shall be entitled to compensation for non-suspended Services which are acceptable to the State, in its sole discretion.

* 1. Payment Records

The Contractor must maintain adequate records as prescribed by the State to substantiate all claims for payment and must make those records available in New York State for examination and copying.

**ARTICLE VII. SECRECY PROVISIONS**

1. **New York State Tax Law and Internal Revenue Code Tax Secrecy Provisions**

The various secrecy provisions of the Tax Law (e.g., Tax Law § 697 (e) and 1825) prohibit independent Contractors from disclosing tax information in any manner and provide for misdemeanor prosecution for violations.  The secrecy provisions of the Internal Revenue Code (26 USC § 6103) provide for felony prosecution for unauthorized disclosure of Federal Tax Information in the possession of the Department.

All other information about the Department's operations not covered by the preceding provisions of law must be kept confidential as if it were so covered.   Contractor representatives must comply with the administrative procedures enforcing these rules.

The awarded Contractor, all staff members and subcontractors shall agree to view, access and use only that confidential information relevant and necessary to provide services to the State under the Agreement; and to subscribe to the provisions of § 73 and 74 the Public Officers Law.

1. **Tax Secrecy - Required Forms**

The Contractor acknowledges and agrees that it has read, will comply and will require each employee and/or Subcontractor performing services under this Agreement to execute the Tax Information Access and Non-Disclosure Agreement form (DTF-202 as set forth as Attachment 15 of this IFB) in their individual capacity and provide completed originals to the Department.

The Contractor, any Subcontractor, and employees of both who, in the course of providing Services to DTF in connection with this Agreement, may view or access tax secret Confidential Information shall complete the Department’s Annual Access and Disclosure Training on DTF’s website at <https://www.tax.ny.gov/about/procure>.

The Contractor acknowledges and agrees that it has read and will comply with all requirements in **Attachment 16, Acknowledgment of Confidentiality of IRS Tax Return Information and Internal Revenue Code Selected Confidentiality Provisions Pertaining to Contractors**. In addition, Contractor will require all its employees performing services under this Agreement to execute the Acknowledgement of Confidentiality of IRS Tax return Information and Internal Revenue Code Selected Confidentiality Provisions Pertaining to Contractors.

1. **Breach of Confidentiality Provisions**

The Contractor, through its employees and agents, may have access to tax secret and other confidential and/or proprietary information and materials of the State and tax secret and other confidential and/or proprietary information and materials of third parties rightfully in the State’s possession (“confidential information”). Contractor shall maintain all such information in confidence for the sole and exclusive benefit of the State, and shall not use same for any purpose whatsoever other than rendering Services to the State. Contractor shall execute, and shall cause its employees and agents having access to such confidential information of the State to execute, confidentiality agreements in such form as the State may reasonably request.

Contractor acknowledges that any unauthorized use or disclosure of Confidential Information may cause irreparable damage to the State. If an unauthorized use or disclosure occurs, the Contractor shall, at its expense, take such commercially reasonable steps that are necessary to recover Confidential Information and to prevent its subsequent unauthorized use or dissemination, including availing itself of actions for seizure and injunctive relief. If the Contractor fails to take these steps in a timely and adequate manner, the State may take them at the expense of the Contractor.

The Contractor shall be fully liable for breach of the confidentiality provisions of this Agreement in an amount not to exceed the amount allowed by applicable Federal or New York State law (including any damages construed as incidental, consequential or indirect damages). Liability limitations set forth in this Agreement shall not apply to breaches involving the Contractor’s confidentiality obligations.

1. **Information Security Breach and Notification**

Contractor expressly agrees to comply with the provisions of Section 208 of the State Technology Law (the "Law") and any future amendments thereto. Contractor shall comply with all obligations imposed by the notice provisions of the Law with respect to any computerized "private information" (as defined in the Law) received, handled, processed, uploaded, or maintained by Contractor on behalf of the Department under this Agreement (hereinafter, the "Department Information"). In the event of a "breach of the security of the system" (as defined by the Law), Contractor shall promptly notify the Department upon discovery or notification of such breach. Such notice to the Department shall be made by contacting the Department's Information Security Office by email to: ISO.Mail@tax.ny.gov. Contractor shall promptly commence an investigation, in cooperation with the Department, to determine the scope of the breach and to restore the security of the system. Upon completion of Contractor’s investigation, prompt notice will be provided to the Department. To the extent the Department determines that notifications are required to be sent out pursuant to the Law, Contractor shall be responsible for providing such notifications to all required recipients including, in accordance with New York State policy, non-New York State residents whose private information is reasonably believed to have been exposed as a result of the breach, and all costs associated with providing such notices shall be borne by Contractor. It is expressly agreed that Contractor shall be obligated to receive authorization from the Department prior to making any notifications to any individuals, the State Office of Information Technology Services, the Department of State – Division of Consumer Protection, the Attorney General's Office or any consumer reporting agencies concerning a breach of the security of the system, or prior to making any determination whether or not to delay notifications due to law enforcement investigations. Contractor agrees that the Department shall have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a breach of the security of the Department Information. Nothing contained herein shall be interpreted as reducing or altering Contractor's obligations under section 899-aa of the General Business Law.

**ARTICLE VIII. RESERVED RIGHTS**

In addition to its other rights as allowed under this Agreement, the Department reserves the following rights:

1. To require the removal of any Contractor staff assigned to this project for work-related cause upon written notification to the Contractor. Such notification shall set forth the reasons for the request for removal. In such event, the Contractor shall promptly provide a substitution;
2. To request a copy of Federal Form I-9, Employment Eligibility Verification, for each individual assigned to work under this Agreement, if the Contractor is so legally obligated to obtain and retain such Form I-9. The social security number of the employee, if listed on Form I-9, shall be redacted from the form;
3. To terminate the Agreement should the Contractor not cooperate with a State investigation. This includes, but is not limited to, not providing immediate and unfettered access to personnel and records relating to the Agreement;
4. To terminate the Agreement if the Contractor does not resolve a conflict of interest to the State’s satisfaction;
5. To send its officers and/or employees or agents into the office sites and plants of the Contractor and any Subcontractor for inspection of the facilities and operations provided for performance of any Services. On the basis of such inspection, where the Contractor/Subcontractor is found to be non-compliant with Agreement safeguards, the Contractor/Subcontractor shall promptly take action to remedy such non-compliance. Such determination will be made at the sole discretion of DTF; and
6. To negotiate mutually acceptable modifications throughout the term of this Agreement.

**ARTICLE IX. CONTRACTOR COMPLIANCE WITH IFB REQUIREMENTS**

Contractor agrees to comply with all Requirements for providing the Services as set forth in IFB 20-202. Performance monitoring, reviews and/or audits will be conducted by the State to determine the Contractor’s compliance with the Requirements.

1. **Notice of Deficiency/Corrective Action/Forfeiture**

If the State determines that Contractor is deficient in meeting any Requirement, including but not limited to, implementation of the processes/Services, then the State may email a Notice of Deficiency (“NOD”) to Contractor informing Contractor of the Deficiency and requesting it be cured. The State may, but is not required to, provide the Contractor with a Corrective Action Plan (“CAP”) outlining steps to be taken to cure the Deficiency.

If a Deficiency is not resolved within the timeframe set by the State in the NOD, the State may email a second NOD to the Contractor or impose invoice retainage as detailed herein. The State, may, at its option retain 10% of any amount due to Contractor until the Deficiency is rectified. If the Deficiency is rectified within a time period satisfactory to the State, then the State shall pay to the Contractor the retained amounts. If, however, the Deficiency is not corrected within that timeframe, then Contractor shall forfeit the retained amounts as a penalty for the uncured Deficiency. Thereafter, Contractor shall continue to forfeit 10% of the amount of the invoices for each month, until such time as the Deficiency is corrected, or the State determines to pursue other remedies.

1. **Cover and Substitute Services**

If Contractor’s failure to meet the Requirements results in the State’snormal business operations being materially interrupted, then the State, as the case may be, will be entitled to immediately seek and obtain cover, e.g., substitute Services, at Contractor’s expense until Contractor’s failure has been cured. The Contractor will not be paid for the Services affected by the performance failure if substitute Services must be performed by a third party or by the State, or if the State must pay any additional costs for substitute Services.

**ARTICLE X. DISPUTE RESOLUTION**

In the event of a dispute not subject to the provisions set forth in **Article IX. Contractor Compliance with IFB Requirements** above, resolution will first be sought through conference between the State and the Contractor. The party initiating the process will notify the other parties in writing and set forth the issues for resolution and provide all necessary documentation. Unresolved disputes will be resolved by the State, whose decision is final and binding. During the dispute resolution period all Services will be performed. If the Contractor pursues any legal or equitable remedy outside this resolution process, the Contractor shall continue to perform work in accordance with the direction of DTF until such proceedings may be concluded and will continue to be paid in accordance with the Agreement, less any amounts attributable to the dispute.

**ARTICLE XI. TERMINATION OR SUSPENSION**

1. **Termination or Suspension for Cause**

In the event of a Material Breach or if the State deems the Contractor’s performance unsatisfactory at any time during the term of this Agreement, the State reserves the right to terminate or suspend this Agreement in whole or in part, or to terminate or suspend the Contractor’s Services with respect to a specific matter or matters, immediately upon written notice to the Contractor.

Examples of Material Breach include, but are not limited to, the following:

* 1. Failure of Contractor to maintain financial stability as set forth under the Agreement, such that the State cannot reasonably expect Contractor to satisfactorily perform its obligations through the term of this Agreement and which are of a material nature and directly and negatively impact the Services. Contractor may be provided with an opportunity to demonstrate that it has restored its financial stability, and has obtained sufficient resources to continue to perform through the term of this Agreement.
	2. Significant or repeated failure of Contractor to perform its obligations under the Agreement.
	3. Failure of Contractor to maintain the confidentiality of and/or security of Confidential Information, including taxpayer data or tax administration policies and procedures as set forth in the Agreement.
	4. Failure of the Contractor to remain a responsible Contractor consistent with applicable New York State law, regulations and/or policy.
	5. A finding that the certification filed by the Contractor in accordance with Procurement Lobbying was intentionally false or intentionally incomplete.
	6. A finding that the information filed by the Contractor in accordance with the requirements for Vendor Responsibility is incomplete, untrue or inaccurate.
	7. Failure of Contractor to maintain vendor responsibility substantially similar to, or superior to, its status as of the execution of this Agreement.
	8. A finding that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law was not timely filed, was intentionally false or intentionally incomplete.
	9. Failure of Contractor to cooperate fully with DTF, or their designees during reviews or audits conducted in connection with the Services.

If it is subsequently determined for any reason that the Contractor was not in Material Breach or that the Contractor’s failure to perform or make progress in performance was due to causes beyond the control and without the fault or negligence of the Contractor, the State will have the option to deem the Termination or Suspension for Cause to have been issued hereunder as a Termination or Suspension for Convenience or to allow the Contractor to resume performance under the Agreement without an increase in cost.

In the event of Termination or Suspension for Cause, Contractor shall be liable for the State’s direct damages resulting from such Material Breach, subject to the limitations and exclusions contained in **Article XII, Indemnification and Limitation of Liability**.

1. **Termination or Suspension for Convenience**

The State may terminate or suspend this Agreement in whole or in part, or terminate or suspend the Services with respect to a specific matter or matters, without cause upon 30 days prior written notice without penalty or other early termination charges due.

1. **Notice of Termination or Suspension**

In the event of termination or suspension of the Agreement by the State, a written notice of termination or suspension will be issued. Except as otherwise provided, where any notice is required to be provided by the State to Contractor, such notice will be delivered in accordance with **Article XXIII Paragraph N, Notices**.

1. **Procedure for Termination**

In the event of termination for cause or convenience, the parties agree to cooperate in a manner to effectuate an orderly termination of the Contract. In the event of termination for any reason, the Contractor will be reimbursed for all services performed up to the date of termination. Such termination will not give rise to any cause of action against the State for any kind of damages, loss of profits, or other remuneration of any kind.

**ARTICLE XII. INDEMNIFICATION AND LIMITATION OF LIABILITY**

1. **Indemnification**

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify, defend and save harmless the Department from all suits, actions, damages and costs of every name and description including 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, without limitation, provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Department.

Subject to the availability of lawful appropriations and consistent with Section 8 of the New York Court of Claims Act, the State shall hold Contractor harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State or of its officers or employees when acting within the course and scope of their employment.

1. **Intellectual Property Rights Indemnity**

Contractor shall fully indemnify, defend and save harmless the Department/State, its officers, employees, and agents or Subcontractors without monetary limitation from and against any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses), arising out of or related to any claim of, or action for, infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party intellectual property rights in each case to the extent caused by any product or Services provided by Contractor hereunder, provided that such claim arises out of any product or Services as supplied by the Contractor, and not out of any modification of the product or Services made by the Department or by someone other than the Contractor at the direction of the State without Contractor’s approval. The Department shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, promptness of which shall be established by the Department upon the furnishing of written notice and verified receipt, (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 at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the Department may require the Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Department shall require. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense when it determines there is an issue involving a significant public interest.

In the event that any action at law or equity is commenced against the Department/State arising out of a claim that the Department’s use of the product or Services infringes any patent, copyright, trademark, trade secret, or proprietary right, the Contractor will indemnify the Department/State for any expense due to such claim and will cooperate with the Department and the Attorney General in the defense of that claim. If the Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Department and the New York State Office of the Attorney General in writing and shall specify to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Department and seek to secure a continuance to permit the Department to appear and defend its interest in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Department may have.

1. **Limitation of Liability**

Except as otherwise set forth in the Indemnification paragraphs above, Contractor’s liability for any claim, loss or liability arising out of, or connected with the Services, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed: (i) three times (3X) the annual amount payable by the Department under the Contract in the year giving rise to the liability; or (ii) the data recovery and/or development costs and any excess operating costs to cover moving the services in-house or to a subsequent Contractor; or (iii) $1 million, whichever is greatest. ; provided, however, that such dollar limitation shall not apply to direct damages resulting from Contractor's (i) willful, malicious, intentional misconduct, (ii) intentional tortious conduct, or (iii) gross negligence.

NOTWITHSTANDING THE FOREGOING, CONTRACTOR REMAINS LIABLE WITHOUT MONETARY LIMITATION, FOR DIRECT DAMAGES FOR PERSONAL INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY OR INTELLECTUAL PROPERTY ATTRIBUTABLE TO THE NEGLIGENCE OR OTHER TORT OF CONTRACTOR, ITS OFFICERS, EMPLOYEES OR AGENTS.

**ARTICLE XIII. FORCE MAJEURE**

Neither party shall be responsible to the other for a delay resulting from its failure to perform if neither the fault nor negligence of the Department or the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to: acts of God, wars, acts of public enemies, strikes, fire or floods, or other similar causes beyond the control of either party, or for any of the foregoing which affects Subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, the aggrieved party shall notify the other party, by certified or registered United States mail return receipt requested, facsimile transmission, personal delivery, expedited delivery service, or email of the delay or potential delay and the cause(s) thereof either (a) within ten calendar days after the cause which creates or will create the delay first arose if the aggrieved party could reasonably foresee that a delay could occur by reason thereof, or (b) if the delay is not reasonably foreseeable, within five calendar days after the date the aggrieved party first had reason to believe that a delay could result. The foregoing shall constitute the aggrieved party’s sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given to the other party, any performance so suspended or delayed shall be performed by the aggrieved party at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Department that the delay will significantly impair the value of the Agreement to the Department. In the event of such determination, the Department may immediately terminate the Agreement with written notice.

**ARTICLE XIV. VENDOR RESPONSIBILITY**

* 1. General Responsibility

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

* 1. Suspension of Work (for Non-Responsibility)

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

* 1. Termination (for Non-Responsibility)

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

**ARTICLE XV. SALES AND COMPENSATING USE TAX**

The Contractor shall comply with all documentation requirements of Section 5-a of the Tax Law, as set forth in IFB 20-202 at **Section 6.19 of Administrative Requirements, Tax Law § 5-A**, which is incorporated in its entirety herein by reference.

**ARTICLE XVI. PROCUREMENT LOBBYING**

If this Agreement is renewed or amended, Contractor shall be subject to the Procurement Lobbying requirements set forth in IFB20-202and shall submit updated Procurement Lobbying forms as are required by the Department.

**ARTICLE XVII. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**

1. **General Provisions**
	1. The Department is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.
	2. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Department, to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
2. **Contract Goals**

For purposes of this Contract, the Department hereby establishes an overall goal of 0% percent for MWBE participation, 0% percent for New York State-certified minority-owned business enterprise (“MBE”) participation and 0% percent for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.

1. **Equal Employment Opportunity (“EEO”)**
	1. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
	2. In performing the Contract, the Contractor shall:
		* + 1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
				2. The Contractor shall submit an EEO policy statement to the Department within seventy-two (72) hours after the date of the notice by the Department to award the Contract to the Contractor.
				3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, the Department may require the Contractor or subcontractor to adopt a model statement (see IFB **Attachment 5 - Minority and Women-Owned Business Enterprises - Equal Employment Opportunity Policy Statement**).
				4. The Contractor’s EEO policy statement shall include the following language:
2. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
3. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
4. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
5. The Contractor will include the provisions of Subdivisions a. through c. of this Subsection (d) and Section 4. General Provisions, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
	1. Workforce Utilization Report (see IFB **Exhibit B**)
		* + 1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Department on a quarterly basis during the term of the Contract.
				2. Separate forms shall be completed by the Contractor and any subcontractors.
	2. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**ARTICLE XVIII. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The Department of Taxation and Finance recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of The Department of Taxation and Finance contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, The Department of Taxation and Finance conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: https://ogs.ny.gov/veterans/ Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

**ARTICLE XIX. CONTRACTOR AND SUBCONTRACTORS**

1. **Contractor**

The Contractor is acting as the prime Contractor under this Agreement and agrees not to subcontract any of its Services, unless as indicated in its proposal, without the prior written approval of DTF. Approval shall not be unreasonably withheld upon written request to subcontract. Any such approval does not relieve Contractor of its ultimate responsibility for all Services performed under the Agreement. The Contractor shall be:

* 1. Responsible for, and liable to, the Department for performing in accordance with this Agreement. Contractor shall not in any way be relieved of any financial, programmatic or service responsibility under the Agreement by its agreement with any Subcontractor or by the Department’s approval of such an agreement with a Subcontractor.
	2. Responsible for supervising the work of its Subcontractors performing any Services under the Agreement consistent with industry standards applicable to such work.
	3. As fully responsible for the acts and omissions of its Subcontractors and employees as it is for acts and omissions of its own employees and agents.
	4. Responsible for payment of all Subcontractors and suppliers engaged by or through the Contractor in performance of this Agreement.
1. **Subcontractors**

Contractor may arrange for a portion/s of its responsibilities under this Agreement to be subcontracted to qualified, responsible Subcontractors, subject to the approval of DTF. A Subcontractor shall be defined as any firm or person who is not a full-time employee of the Contractor, engaged or assigned to perform work under the Agreement. If the Contractor determines to subcontract a portion of the services, the Subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this Agreement must be fully explained by the Contractor to DTF. As part of this explanation, the Subcontractor must submit to DTF a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form.

The Department reserves the right to reject any proposed Subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed Subcontractor is on the Department of Labor’s list of companies with which New York State cannot do business; the Department determines that the Subcontractor is not qualified; or unsatisfactory contract performance or service has been previously provided by such Subcontractor.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this Agreement including, but not limited to:

* 1. That the work performed by the Subcontractor must be in accordance with the terms of the Agreement including, but not limited to, Appendix A and IFB 20-202;;
	2. That Subcontractor shall comply with the provisions of section 5-a of the Tax Law and all Secrecy provisions;
	3. That all subcontracts between the Contractor and Subcontractor to perform services in connection with this Agreement shall expressly name the State, through DTF, as the sole intended third party beneficiary of such subcontract;
	4. That nothing contained in such subcontract shall impair the rights of the Department;
	5. That nothing contained herein shall create any contractual relation between any Subcontractor and the Department;
	6. That Subcontractor shall maintain all records with respect to work performed under the Subcontractor in the same manner as required of the Contractor; and
	7. That the Department shall have the same authority to audit the records of all Subcontractors as it does those of the Contractor.

DTF reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make DTF or the State a party to any subcontract or create any right, claim, or interest in the Subcontractor or proposed Subcontractor against DTF.

DTF reserves the right, at any time during the term of the Agreement, to (1) request and be provided with a copy of the written subcontract between the Contractor and Subcontractors and (2) to verify that the written subcontract is in compliance with all the provisions of this Section and any subcontract provisions contained in this Agreement.

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

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

**ARTICLE XX. ETHICS PROVISIONS**

1. **Public Officers Law/Former State Employees**

The Contractor shall subscribe to and comply with all applicable requirements of Public Officers Law Sections 73 and 74, the Procurement Lobbying Reform Act of 2005, and other New York State statutes, rules, and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

The Contractor, and any Subcontractors, may hire former DTF employees. However, former employees of DTF may neither appear nor practice before DTF, nor receive compensation for services rendered on a matter before DTF, for a period of two years following their separation from DTF service. In addition, former DTF employees are subject to a “lifetime bar” from appearing before DTF or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with DTF.

1. **Ethics Requirements**

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

**ARTICLE XXI. NO CONFLICT OF INTEREST (CONTRACTOR & SUBCONTRACTORS)**

1. The Contractor has provided a form (**Attachment 10** to the IFB, **Vendor Assurance of No Conflict of Interest or Detrimental Effect**), signed by an authorized executive or legal representative attesting that the Contractor’s performance of the Services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with the State of New York, that the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.
2. The Contractor hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor’s satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Agreement. The Contractor shall have a duty to notify DTF immediately of any actual or potential conflicts of interest.
3. In conjunction with any subcontract under this Agreement, the Contractor shall obtain and deliver to DTF, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the Subcontractor. The Contractor shall also require in any subcontracting agreement that the Subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to DTF a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its Subcontractors prior to entering into a subcontract.
4. DTF and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The State will review the nature of any relationship and reserves the right to terminate this Agreement for any reason, or for cause, if, in the judgment of the State, a real or potential conflict of interest cannot be cured.

**ARTICLE XXII. INSURANCE**

The Contractor is required to provide proof of Workers’ Compensation and Disability Insurance as set forth in IFB 20-202 at **Section 6.12.1., Workers’ Compensation and Disability Benefits Certifications,** which requirements are incorporated herein in their entirety by reference. The Contractor shall also procure, at its sole cost and expense, insurance as set forth below, and provide proof of compliance with all requirements of this section.

During the term of the Agreement, the Contractor shall maintain in force, at its sole cost and expense policies of insurance as set forth below. All insurance shall be written by companies licensed or authorized by the New York State Department of Financial Services (NYSDFS) to issue insurance in the State of New York and that have an A.M. Best Company rating of “A-,” Class “VII” or better. 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 an insurer licensed or authorized by the NYSDFS to issue insurance in the state of New York and rated at least “A-,” Class “VII” in the most recently published Best’s Insurance Report.

The Contractor shall deliver to the State evidence of the insurance required by this section in a form acceptable to the Department. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by the State does not, and shall not be construed to, relieve the Contractor of any obligations, responsibilities or liabilities under this Agreement. The Contractor shall not take any action, or fail to take any action, that would suspend or invalidate any of the insurance coverages during the term of this Agreement.

**General Conditions**

1. ***Conditions Applicable to Insurance.*** All policies of insurance required by this section shall comply with the following:
	1. ***Coverage Types and Policy Limits.*** The types of coverage and policy limits required from the Contractor are specified below in Paragraph B-*Insurance Coverage/Limits.*
	2. ***Policy Forms.*** Except as otherwise specifically provided herein, or agreed to in writing by the Department, all policies of insurance required by this section shall be written on an occurrence basis.
	3. ***Certificate of Insurance/Notices.*** The Contractor should provide the Department with a Certificate or Certificates of Insurance, in a form satisfactory to the Department (i.e., an ACORD certificate), within twenty (20) business days of tentative award, or at the request of the Department, but in all events prior to commencement of Services under the Agreement, and thereafter, within thirty (30) days after renewal or within three (3) business days of a request from the Department therefor. Certificates shall reference the Agreement number and shall name the People of the State of New York, New York State Department of Taxation and Finance, Procurement Services, Building 9, W.A. Harriman State Office Campus, Albany, NY 12227, the City of New York Department of Finance (Municipal Bldg., 1 Centre St., Room 1040, New York, NY 10007), and their officers agents and employees as the certificate holders. The certificates shall be signed by an authorized representative of the referenced insurance carriers.

Policies shall be written to include the requirements for notice of cancellation contained in the New York State Insurance Law. The Contractor shall provide DTF with a copy of any written notice of cancellation or non-renewal received from an insurer along with proof of replacement coverage that complies with the requirements of this section within ten (10) business days of Contractor’s receipt. Only original documents (an ACORD form and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

The Contractor is requested to refrain from submitting entire insurance policies, unless specifically requested by the Department.  If an entire insurance policy is submitted but not requested, DTF 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 Department does not constitute proof of compliance with the insurance requirements and does not discharge Contractor from submitting the requested insurance documentation.

* 1. ***Primary Coverage.*** All insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Department of Taxation and Finance, the City of New York Department of Finance, and their officers, agents, and employees.  Any other insurance maintained by the People of the State of New York, the New York State Department of Taxation and Finance, the City of New York Department of Finance and their officers, agents, and employees, shall be in excess of and shall not contribute with the Contractor’s insurance.
	2. ***Breach for Lack of Proof of Coverage.*** The term of this Agreement shall not commence if the coverage provisions and limits of the policies provided by the Contractor do not meet the provisions of this section or proof of compliance is not provided to the Department. In addition, the failure to comply with this section at any time during the term of any Agreement shall be considered a breach of the terms of the Agreement and shall allow the Department to avail itself of all remedies available under the Agreement or at law or in equity, except that the State shall not procure insurance and seek reimbursement from the Contractor.
	3. ***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 from the State. 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.
	4. ***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.
	5. ***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 People of the State of New York, the New York State Department of Taxation and Finance, the City of New York Department of Finance, and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to the State within three (3) days of request.
	6. ***Additional Insured.*** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included of each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage) naming as additional insureds: The People of the State of New York, the New York State Department of Taxation and Finance, the City of New York Department of Finance, and their officers, agents, and employees.  An Additional Insured Endorsement evidencing such coverage should be provided to the State within twenty (20) business days of tentative award and within three (3) days of request.
1. ***Insurance Coverage/Limits.*** The Contractor shall, at its own expense, obtain and maintain in full force and effect during the term of this Agreement, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):
	1. **Commercial General Liability Insurance** (“CGL”) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Agreement. The limits under such policy shall not be less than the following:
* Each Occurrence Limit – $1,000,000
* General Aggregate Limit – $2,000,000
* Products/Completed Operations Limit – $2,000,000
* Personal Advertising Injury Limit – $1,000,000
* Damage to Rented Premises Limit – $50,000
* Medical Expenses Limit – $5,000

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

* Premises liability;
* Independent contractors;
* Blanket contractual liability, including tort liability of another assumed in a contract;
* Defense and/or indemnification obligations, including obligations assumed under this Agreement;
* Cross liability for additional insureds;
* Products/Completed Operations for a term of no less than three years commencing upon acceptance of the work;
* Explosion, collapse, and underground hazards;
* Contractor means and methods; and
* Liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the Policy:

* + - * 1. CG 00 01 12 07 or an equivalent – Commercial General Liability Coverage Form;

and

* + - 1. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B).

The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence Limit” specified above, must be endorsed to be primary with respect to the coverage afforded the Additional Insureds, and such policy/policies shall be primary to, and non-contributing with, any other insurance maintained by the State of New York and the Department or the City of New York Department of Finance. Any other insurance maintained by the State of New York, the Department and the City shall be excess of and shall not contribute with the Contractor’s or Subcontractor’s insurance, regardless of the “Other Insurance” clause contained in any party’s policy of insurance.

* 1. **Comprehensive Business Automobile Liability Insurance (“Auto”)** covering liability arising out of any automobile used in connection with performance under this Agreement, 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 this Agreement, the Contractor does not need to obtain Comprehensive Business Automobile Liability Insurance, butmust attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under this Agreement on a form provided by the State. If, however, during the term of this Agreement, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under this Agreement, 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 the State within ten (10) days following the date the coverage is bound.

* 1. **Umbrella and Excess Liability**

When the limits of the CGL, Auto and/or Employers Liability policies procured by the Contractor are insufficient to meet the limits specified, the Contractor shall procure and maintain additional limits via Commercial Umbrella and/or Excess Liability policies. The limits of these policies, in combination with those of the primary policies, may be used to satisfy the requirements; provided, however, that the total amount of insurance coverage is at least equal to the requirements set forth above. Such policies shall follow the same form as the primary. If Umbrella and/or Excess policies are procured to meet policy limits, the Contractor shall provide the State with a Schedule setting forth the insurance policies under the Umbrella and/or Excess policies.

Any insurance maintained by the State of New York and/or DTF or any additional insured shall be considered excess of and shall not contribute with any other insurance procured and maintained by the Contractor including primary, umbrella and excess liability regardless of the other insurance clause contained in any party’s policies.

**ARTICLE XXIII: GENERAL TERMS AND CONDITIONS**

1. **Americans with Disabilities Act**

The Contractor’s and Subcontractor’s operations sites must be in compliance with applicable building codes and the Americans with Disabilities Act.

1. **Appendix A**

The Contractor has read and agrees to **Appendix A (Standard Clauses For New York State Contracts**) which is incorporated as part of the Agreement without revision.

1. **Assignment of Rights and Duties**

The Contractor may not assign the Agreement except in accordance with Section 138 of the State Finance Law and **Appendix A**. The State may assign this Agreement to any New York State agency provided that the assignee agrees in writing to be bound by the terms and conditions of this Agreement. The State agrees to provide the Contractor 30 days’ prior written notice of any such assignment.

1. **Authorized Representatives**

The following individuals are authorized representatives of the Parties and by signing documents do bind their respective party:

On behalf of the Department:

* Commissioner
* Executive Deputy Commissioner
* Chief Financial Officer
* Director, Procurement Services

On behalf of the Contractor:

\_\_\_\_\_[To be provided]\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. **Continuity of the Agreement**

The terms and conditions of this Agreement shall remain in full force and effect for the term of this Agreement and the Contractor agrees to provide all Services for such term, regardless of any reorganizations, consolidations or mergers to which the Contractor is, or may become, a party.

Notwithstanding the foregoing, **Appendix A, Standard Clauses for NYS Contracts;** **Article VII. Secrecy; Article XII. Indemnification and Limitation of Liability; and subsection H. of this Article XXIII, General Terms and Conditions, Evidence and Litigation Support;** shall survive the expiration or termination of this Agreement. Any insurance requirements set forth herein shall survive six months beyond the termination of this Agreement, or longer, as otherwise prescribed in **Article XXII, Insurance** of this Agreement.

1. **Cooperation with Department, State and/or Federal Investigations**

The Contractor must cooperate fully with any investigation conducted by the State or its designee acting on its behalf including, but not limited to, the Inspector General's Office, the DTF Office of Internal Affairs, the New York State Police or any local, state or federal law enforcement agency. If the State determines it necessary to investigate relative to a possible or actual (1) crime, or (2) breach of confidentiality or security, in either case related to the Services provided under this Agreement, Contractor and its Subcontractors shall cooperate fully with the State's efforts to investigate and identify the responsible individuals. Upon written notification from the State, Contractor and its Subcontractors shall make their employees and all relevant records, including personnel records and employee photographs, available to investigators. The Contractor must allow the State to interview Contractor's employees and/or agents on matters related to the Agreement during normal business hours. Contractor representatives may be disallowed from being present when the State determines (at its sole discretion) that such presence would present a potential conflict or impede an investigation or review. The Contractor shall provide immediate and unfettered access to the State to all records deemed necessary by the State for the conduct of an investigation. In the case of criminal investigations, an out of state Contractor or out of state Subcontractor performing any of the Services, must accept a subpoena served upon one of its New York State branches/offices or the Secretary of State designated for this purpose. Additionally, the Contractor must refer, to the Department’s Office of Internal Affairs, any information indicating there is reasonable cause to believe that any of its employees or third-party servicers might have engaged in fraud or other criminal misconduct in the administration of the Agreement.

1. **Dual Employment Provision**

The Contractor shall implement and administer a "dual employment policy" under the Code of Ethics in Government Act. The Contractor will not knowingly or recklessly employ a State employee in the provision of the Services under this Agreement. Further, if the Contractor discovers that an employee is also an employee of the State, the Contractor shall immediately notify the Department and take appropriate action to remove such employee from the provision of Services under this Agreement. The Contractor agrees that all the Contractor’s personnel, whether permanent or temporary, involved in providing Services pursuant to this Agreement shall be required to sign a document at the time of employment attesting that they are not employed by the State.

1. **Evidence/Litigation Support**

During the term of this Agreement (including extensions and transition periods, if applicable) and for a reasonable time thereafter, the Contractor shall cooperate with any request by the Department to provide an affidavit or equivalent document (and supporting testimony to the extent reasonably necessary) to establish the accuracy, trustworthiness, authenticity or admissibility, in any administrative or judicial proceeding involving the Department, of any systems and procedures utilized by the Contractor, and any records generated by the Contractor in connection with the Services provided under this Agreement, subject to any right of the Contractor to make a claim to the presiding officer in any administrative or judicial proceeding that such records are confidential and/or privileged. The provisions of this section shall survive the termination or expiration of this Agreement.

1. **Extension of Use**

The terms and conditions of this Agreement may be extended to any other New York State agency, political subdivision, governmental jurisdiction or other authorized entity, through the use of a formally executed agreement between the Contractor and the state agency, political subdivision, governmental jurisdiction, or other authorized entity, subject to review and approval of the Office of the New York State Attorney General and the Office of the New York State Comptroller, if applicable. New York State reserves the right to negotiate pricing discounts based on any increased volume generated by such extensions.

1. **Funding**

In accordance with Section 41 of the State Finance Law, the State shall have no liability under this Agreement to the Contractor or to anyone else beyond funds appropriated and available for this Agreement. Accordingly, this Agreement will be performed only as long as the New York State legislature appropriates funds and the Governor allocates such funds to the State. Failure of New York State to enact a timely Budget may result in the State being unable to reimburse the Contractor for Services provided in the new fiscal year. All work approved and accepted by the State will subsequently be reimbursed when the Budget has been signed into law.

1. **Governing Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its principles of conflict of laws. Venue must be laid in a court of competent jurisdiction in New York in Albany County.

1. **Independent Contractor**

The legal status of the Contractor, its agents, officers and employees under this Agreement is that of an independent Contractor and in no regard shall they be deemed employees of the Department, and are therefore not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Agreement to maintain at the Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance, including workers’ 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 FICA contributions.

1. **Mergers, Acquisitions or Consolidation**

In the event of any merger, acquisition, or consolidation involving the Contractor which affects this Agreement, the Contractor agrees to transfer all responsibilities for the performance of this Agreement to the successor entity with the approval of the Department, which approval will not be unreasonably withheld.

1. **Notices**

All notices provided hereunder shall be in writing and transmitted either:

* 1. Via certified or registered United States mail, return receipt requested;
	2. By facsimile transmission;
	3. By personal delivery;
	4. By expedited delivery service; or
	5. By email.

Unless otherwise provided herein, such notices shall be addressed to the individuals designated below or to others as the Parties may from time to time designate:

**Notices to the Department from the Contractor:**

Amber Alexander

Director, Procurement Services

New York State Department of Taxation and Finance

Office of Budget and Management Analysis

W. A. Harriman State Office Building Campus

Albany, NY 12227

Email: BFS.Contracts@tax.ny.gov

**Notices to the Contractor from the Department:**

\_\_\_\_\_[To be provided]\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Any such notice shall be deemed to have been given either 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 provided herein, or in the case of facsimile transmission or email, upon completed transmission.

The Parties may, from time to time, specify any new or different address in the United States as the address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for Dispute Resolution.

1. **Payment Records**

The Contractor must maintain adequate records as prescribed by the Department to substantiate all claims for payment and must make those records available in New York State for examination and copying.

1. **Pending Litigation**

The Contractor shall notify the Department of any pending litigation, regulatory action or commencement of legal or regulatory actions which may have a material adverse impact on the ability of the Contractor to perform Services under this Agreement. Such notification shall be in writing, and directed to the Department’s Director of Procurement.

1. **Publicity**

Neither the Contractor nor any of its officers, directors, employees, affiliates, agents or Subcontractors shall, at any time, during or after termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the Services performed or data collected under this Agreement without the prior written approval of the Department.

Neither party grants the other the right to use any of its trademarks, trade names, logos, seals, or other designations, whether in any promotion, publication, or otherwise, without the other party's prior written consent.

1. **Required Approvals**

This Agreement and any amendments will not be effective until approved by the Department, the Office of the New York State Attorney General, and the Office of the New York State Comptroller.

1. **Severability**

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding such provision, the remainder of this Agreement shall remain in full force and effect, and such term or provision shall be deemed null and void. In addition, if any provision of this Agreement, for any reason, is declared to be unenforceable, the Parties shall make a reasonable effort to substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the Parties.

1. **Tax Liabilities**

All outstanding tax liabilities due to the State of New York from the Contractor, or the Contractor's partners, agents and Subcontractors engaged in providing services under this Agreement, other than tax liabilities being contested by any such entity, must be satisfied prior to the execution of this Agreement, or a payment schedule arranged for their satisfaction.

1. **Unauthorized Use of Information**

The Contractor, its officers, employees, Subcontractors, or agents shall not use information, confidential or otherwise, obtained in the course of providing the Services to the State, to obtain benefits, financial or otherwise, for themselves or anyone else. Neither can the Contractor or its officers, employees, Subcontractors, or agents use or disclose such information to cause embarrassment or injury to others.

1. **Waiver of Breach**

No waiver of breach or failure to exercise any option, right, or privilege under the terms of this Agreement or any order on any occasion or occasions shall be construed to be a waiver of the same or any other option, right, or privilege on any other occasion. All waivers must be in writing and a waiver of one provision does not constitute a waiver of any other provision. The failure to act or a delay in acting shall not constitute a waiver of any right or remedy.

1. **Public Announcements**

Public announcements or news releases relating to this IFB or the resulting Contract shall not be made by any Bidder or its agent without the prior approval of the Department. All requests for public announcements should be directed to one of the designated contacts specified herein. Such requests for approval shall not be considered until an executed Contract is in place.

1. **Request for Exemption from Disclosure**

The bids are presumptively available for public inspection. If this would be unacceptable to Bidders, they should apply to the Department for trade secret protection of their bid.

In applying for trade secret protection, it would be unacceptable to indiscriminately categorize the entire proposal as such. The Bidder should point out those sections of the proposal that are trade secrets and explain the reasons therefore. The Bidder may wish to review with its legal counsel Restatement of Torts, Section 757, comment b, and the cases under the Federal Freedom of Information Act, 5 USC Section 522, as well as the Freedom of Information Law (FOIL). The Department will review applications and grant trade secret protection, if appropriate.

To obtain trade secret protections, the Bidder must submit with its response, a letter specifically identifying the page number, line or other appropriate designation of the information that is trade secret and explain in detail why such information is a trade secret and would be exempt from disclosure.

***(Remainder of Page Intentionally Left Blank)***

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, effective upon the date of OSC approval as indicated below. In addition to the acceptance of this Agreement, the DTF and Contractor signatures on this page also certify that originals of this signature page will be attached to all other originals of this Agreement.

|  |  |  |
| --- | --- | --- |
| **[CONTRACTOR]** |  | **New York State Department of Taxation and Finance** |
|  |  |  |
| Signature |  | Signature |
|  |  |  |
| Print Name |  | Print Name |
|  |  |  |
| Title |  | Title |
|  |  |  |
| Date |  | Date |

CORPORATION

STATE OF: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTY OF:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

On this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did depose and state that he/she is a member of the corporation of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and that he/she executed the foregoing instrument in the name of the corporation of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and that he had authority to sign same, and he did duly acknowledge to me that he executed the same as the act and deed of said corporation of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for the uses and purposes mentioned therein.

Notary Public

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Attorney General** |  | **Office of the State Comptroller** |



**Attachment 15 - Tax Information Access and Non-Disclosure Agreement**

**DTF-202**

(6/19)

**Purpose of this form**

This form legally binds those who sign it to comply with the secrecy provisions of the New York State Tax Law and the Internal Revenue Code (IRC). Individuals who come into contact with, or otherwise access state or federal income tax information, are subject to the secrecy provisions of the Tax Law and the IRC and are subject to statutory penalties for violating those laws.

**It is a crime to access your own, a friend’s or a family member’s tax information.**

**Violators are subject to penalties as noted below.**

**Unauthorized disclosure**

Any unauthorized disclosure is a **crime** punishable by **fine** or **imprisonment**, or both. It is **unlawful** to intentionally disclose tax information such as:

* any information contained in a tax return, report, physical document, or computer file;
* confidential systems information including functional, technical, and detailed systems design and architecture;
* automated analysis techniques, systems developed by the department, audit selection methodologies; and
* vendor products such as software packages.

Unauthorized disclosure includes:

* divulging or making known in any manner the contents disclosed in any report or return required under the Tax Law,

including computer files;

* the willful browsing or accessing of taxpayer information by a person not authorized to view it; and
* accessing or viewing taxpayer information without a legitimate business or work-related need.

**Violations**

**New York State Tax Law:** Any violation of the secrecy provisions of this agreement is punishable by a fine of up to $10,000, imprisonment up to one year, or both. Corporations may be subject to a fine of up to $20,000. State

officers and employees making unlawful disclosures are also subject to dismissal from public office for a period of five years. [Tax Law § 1825]

**New York State Penal Law:** Any violation of Section 195.00 in relation to misconduct of public servants is punishable by

up to one year of imprisonment. Other New York State Penal Law violations may also apply.

**Internal Revenue Code:** Any violation of the secrecy provisions of this agreement is punishable by a fine of up to

$1,000 for each access or unauthorized disclosure, imprisonment of up to one year, or both, together with the costs of

prosecution. [IRC §§ 6103, 7213, and 7213A]

**Who must sign**

This form must be signed by:

* All officers and agents of the Tax Department.
* Any contractor or subcontractor hired by the Tax Department, including their designated employees.
* Any bank or other depository, its officers or employees, that may receive a return or report required under the Tax Law.
* Any person who is permitted by law to inspect a return or report, including employees of other NYS agencies, or who may have access to a return or report.
* Unescorted visitors to any Tax Department building or premises.

*(continued on page 2)* [***www.tax.ny.gov***](http://www.tax.ny.gov/)

**Page 2** of 2 **DTF-202** (6/19)

**We will not process this form and may revoke your access if:**

* you leave **any** fields **incomplete or blank**;
* any of your entries are **illegible**;
* you do not **sign and date** where indicated;
* your signature is **not** original; or
* the **home address** you entered is not your place of residence.

**Certifications**

By signing below, you certify the following:

* You have read the contents of this *Tax Information Access and Non-Disclosure Agreement*, understand the Tax Department secrecy provisions, and will adhere to these provisions even after your relationship with the Tax Department ends.
* Your access to Tax Department information is for a proper purpose and does not constitute an unauthorized disclosure.
* You have read this document and understand its contents.

**Access to tax information and Tax Department systems is subject to monitoring.**

|  |  |  |
| --- | --- | --- |
| Individual’s signature | Printed name and title of individual | Date signed |
| Individual’s email address | Individual’s phone number |
| Individual’s home address *(house number and street)* City State ZIP code |
| Printed name of employer |
| Supervisor’s name | Supervisor’s title |
| Employer’s business address *(number and street)* City State ZIP code |

**Properly complete all fields and sign where indicated.**

Return this completed form to: **NYS TAX DEPARTMENT**

**OFFICE OF INTERNAL AFFAIRS W A HARRIMAN CAMPUS ALBANY NY 12227-0811**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services.*

**Questions?**

Call us at 518-530-4391.

[***www.tax.ny.gov***](http://www.tax.ny.gov/)