## Attachment 5 – Vendor’s Insurance Requirements

The Vendor shall be required to procure, at its sole cost and expense, all insurance required by Section B of this Attachment 5, and, unless otherwise required by this Attachment, provide proof of the same with Solicitation response. For all required insurance for all Lots, evidence of insurance must be provided in the form acceptable to OGS as specified in Section B of this Attachment 5. Evidence of insurance shall be submitted in accordance with Solicitation Section 3.1 Content. OGS reserves the right to require Vendors to explain or supplement their evidence of insurance prior to Contract award.

After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request, according to the timelines set forth in Section A.14 below.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment 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 Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York.  OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company’s strong financial rating. If, during the term of a policy, the carrier’s A.M. Best rating falls below “A-,” Class “VII,” the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

The Vendor shall deliver to OGS evidence of the insurance required by this Attachment in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve the Vendor of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

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.

1. ***General Conditions Applicable to Insurance.*** All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:
2. ***Coverage Types and Policy Limits.*** The types of coverage and policy limits required from the Vendor are specified in Section B-*Insurance Requirements* below*.*
3. ***Policy Forms.*** Except as otherwise specifically provided herein, or agreed to in writing by OGS, all policies of insurance required by this Attachment shall be written on an occurrence basis.
4. ***Certificates of Insurance/Notices.*** The Vendor shall provide OGS with a Certificate or Certificates of Insurance, in the form satisfactory to OGS (e.g., an ACORD certificate), with Solicitation response. Certificates shall reference the Solicitation or award number and shall name “The New York State Office of General Services, Procurement Services, Empire State Plaza, Corning Tower, 38th Floor, Albany New York, 12242” as the certificate holder.

Certificates of Insurance shall:

* Be in the form acceptable to OGS 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 materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
* Refer to this Solicitation and any Contract resulting from this Solicitation by award 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 People of the State of New York, the New York State Office of General Services, 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 insured.

Only original documents (certificates 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.

Except for (i) Data Breach and Privacy/Cyber Liability coverage, (ii) Technology Errors and Omissions, and (iii) Crime insurance coverages, OGS generally requires Vendors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Vendors are requested to refrain from submitting entire insurance policies, unless specifically requested by OGS.  If an entire insurance policy is submitted but not requested, OGS 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 OGS does not constitute proof of compliance with the insurance requirements and does not discharge Vendors from submitting the requested insurance documentation.

1. ***Forms and Endorsements.*** For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Vendor shall provide, a Schedule of Forms and Endorsements with the Solicitation response and, upon request, all Forms and Endorsements, unless otherwise agreed to in writing by OGS. The Forms and Endorsements shall provide evidence of compliance with the requirements of this Attachment. Only original documents 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.
2. ***Primary Coverage.*** All liability 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 Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, 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 Vendor’s insurance.
3. ***Breach for Lack of Proof of Coverage.*** The failure to comply with the requirements of this Attachment at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, 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 any Contract resulting from this Solicitation or at law or in equity.
4. ***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 OGS. 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 Vendor 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 at the time of Solicitation response.
5. ***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 Attachment and maintain the same in force during the term of any work performed by that Subcontractor.
6. ***Waiver of Subrogation.*** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Vendor 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 Office of General Services, 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 OGS upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
7. ***Additional Insured.*** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Vendor 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 insured: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Additional Insured Endorsements shall be provided with Solicitation response and upon request to:

The New York State Office of General Services

Procurement Services - 22802

38th Floor, Corning Tower

Empire State Plaza

Albany, New York 12242

A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Vendors who are self-insured, Vendor shall be obligated to defend and indemnify the above-named additional insured with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Vendor would have been required to pursuant to this Attachment had Vendor obtained such insurance policies.

As clarification, “The People of the State of New York” means the State of New York and its subsidiary governmental entities. This is the name in which the State, as a governmental entity, enters into contracts, takes title to property, and initiates legal actions. Using the term “People” does not mean that the insurer is insuring all residents of New York State; rather, it means that the State government is being insured.

1. ***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 with Solicitation response and upon request.
2. ***Notice of Cancellation or Non-Renewal.*** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Vendor shall provide OGS 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 Solicitation and any Contract resulting from this Solicitation.
3. ***Policy Renewal/Expiration*.** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OGS. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.
4. ***Deadlines for Providing Insurance Documents after Renewal or Upon Request.*** During the term of any Contract resulting from this Solicitation, as set forth herein, certain insurance documents must be provided to the OGS 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 OGS as soon as possible but in no event later than the following time periods:

* For certificates of insurance: 5 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 promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

1. ***Insurance Requirements:*** Vendors and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of this Solicitation, or any Contract resulting from this Solicitation, or as required by law, whichever is greater.

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| **PLEASE NOTE – FOR LOT 3 CLOUD AND LOT 4 IMPLEMENTATION ONLY** |
| Depending upon the risk, Authorized User(s) may require the Contractor to provide additional insurance and/or increased insurance coverages. Authorized User(s) must define these requirements in the Authorized User(s) RFQ. Contractors shall not exceed Contract pricing in response to an Authorized User(s) RFQ. |

#### **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.

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| **Minimum Insurance 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 writing by OGS. 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 any Contract resulting from this Solicitation;
* Cross liability for additional insureds; and
* Explosion, collapse and underground hazards.

1. ***Comprehensive Business Automobile Liability Insurance*** covering liability arising out of any automobile used in connection with performance under any Contract resulting from this Solicitation, 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 any Contract resulting from this Solicitation, 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 the Contract on a form provided by OGS. If, however, during the term of any Contract resulting from this Solicitation, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

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

1. ***Data Breach and Privacy/Cyber Liability:*** Contractors are required to maintain during the term of any Contract resulting from this Solicitation 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:

| **Data Breach and Privacy/Cyber Liability** | | |
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| **Lot** | | **Minimum Insurance Coverage** |
| Lot 1 – Software | | $1,000,000 |
| Lot 2 – Hardware | | $1,000,000 |
| Lot 3 – Cloud \* | Low Risk | $2,000,000 |
| Moderate Risk | $5,000,000 |
| High Risk | $10,000,000 |
| Lot 4 - 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; and
* Cyber theft of customer’s property, including but not limited to money and securities.

If the policy is written on a claims made basis, Vendor must include with Solicitation response 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 (1) 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.

1. ***Technology Errors and Omissions:*** Contractors are required to maintain during the term of any Contract resulting from this Solicitation and as otherwise required herein, Technology Errors and Omissions Insurance. Said insurance shall be maintained in the following limits:

| **Technology Errors and Omissions** | | |
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| **Lot** | | **Minimum Insurance Coverage** |
| Lot 1 – Software | | $1,000,000 |
| Lot 2 – Hardware | | $1,000,000 |
| Lot 3 – Cloud \* | Low Risk | $2,000,000 |
| Moderate Risk | $5,000,000 |
| High Risk | $10,000,000 |
| Lot 4 – 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 the following:

1. Consulting;
2. Data processing;
3. Programming;
4. System integration;
5. Hardware or software development;
6. Installation;
7. Distribution or maintenance;
8. Systems analysis or design;
9. Training;
10. Staffing or other support services; and
11. 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, Vendor must include with Solicitation response 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 (1) 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.

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

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| **Crime Insurance** | | |
| **Lot** | | **Minimum Insurance Coverage** |
| Lot 1 – Software | | $2,000,000 |
| Lot 2 – Hardware | | $2,000,000 |
| Lot 3 – Cloud \* | Low Risk | $2,000,000 |
| Moderate Risk | $5,000,000 |
| High Risk | $10,000,000 |
| Lot 4 - 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.  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. | | |

Crime Insurance 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 (1) year with respect to events which 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 Solicitation 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 Solicitation.
* The policy shall include coverage for third party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an Authorized User and their officers, agents, and employees as “Loss Payees” for all Third Party coverage secured. An Endorsement naming as Loss Payees “The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an Authorized User 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.

# *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 a Bid or any contract renewal. A Vendor will not be awarded a Contract unless proof of workers’ compensation and disability insurance is provided to OGS. Proof of workers’ compensation and disability benefits coverage, or proof of exemption must be submitted to OGS 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 OGS by the Vendor’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 OGS upon request from the Vendor; or
* 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 Vendor’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](http://www.wcb.ny.gov));
* Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Vendor’s insurance carrier upon request; or
* 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.