ATTACHMENT 4
Contractor Insurance Requirements

Upon tentative award, Bidder shall be required to procure, at its sole cost and expense, all insurance required by this section, with the exception of proof of workers' compensation and disability benefits insurance coverage, which should be submitted at the time of bid opening. In addition**,** Contractor shall maintain in force at all times during the term of this Contract, at its sole cost and expense, policies of insurance as herein below set forth, written by A licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" Class "VII" or better. If during the term of the policy, a carrier's rating falls below "A-" Class "VII" the insurance must be replaced no later than the renewal date of the policy with an insurer rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

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

I. General Conditions Applicable to Insurance. All policies of insurance required by this Contract must meet the following requirements:

A. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph II Insurance Requirements below.

B. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.

C. **Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance and all required endorsements, in a form satisfactory to OGS, upon tentative award and within three (3) business days of request to OGS.

1. Certificates shall reference the New York State Contract Number.

2. **ALL OF THE REFERENCED FORMS MUST NAME**: The New York State Office of General Services, New York State Procurement Services, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

3. Certificates shall be submitted to:
   The New York State Office of General Services
   New York State Procurement Services
   Corning Tower- 38th Floor
   Empire State Plaza
   Albany, NY 12242

4. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days' prior, written notice except for non-payment, in which case, notice shall be provided as required by law to OGS, Attention: NYS Procurement Services, Corning Tower – 38th Floor, Empire State Plaza, Albany, New York 12242. 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 period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

5. Certificates of Insurance shall:
   a. Be in the form approved by OGS (i.e.: an ACORD);
   b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by this Contract;
   c. Specify the Additional Insureds and Named Insured as required herein;
   d. Refer to this Contract by its New York State Contract Number and any other attachments on the face of the certificate; and,
   e. Be signed by an authorized representative of the insurance carrier or producer.

   Notwithstanding the foregoing, OGS will also require that a Schedule of Forms and Endorsements and all Forms and Endorsements be submitted in addition to a Certificate for the Data Breach/Cyber Liability and Technology Errors and Omissions insurance required pursuant to this section. These documents must be submitted in compliance with the timeframes established for submission of certificates in this section.

   Only original documents or electronic forms that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution (Certificates of Insurance and other attachments) will be accepted.

D. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by the State of New York, OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance.

E. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the State than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph I.C. Certificates of Insurance/Notices, above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further payments due under this Contract or treat such failure as a breach or default of this Contract. In the event of such a breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to OGS. The Contractor's failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of this Contract, subject only to a five (5) business day cure period. Any termination by OGS or any delay, time lost or additional cost incurred as a result of the Contractor not having insurance required by this Contract or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a breach of this Contract and no liability shall be incurred or arise against OGS or any Authorized User, its agents and employees therefrom for lost profits or any other damages.

F. **Self-Insured Retention/Deductibles.** Certificates of Insurance must disclose deductibles or self-insured retentions above $100,000. Those deductibles or self-insured retentions are subject to approval from OGS, which shall not be unreasonably conditioned, delayed or withheld. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions.

G. **Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this Contract the insurance requirements of this document on the Subcontractor, as applicable. Proof thereof shall be supplied to OGS.

All insurance required by this Contract shall name The People of the State of New York, The New York State Office of General Services, any entity authorized to use this Contract and their officers, agents, and employees as additional insureds hereunder. The General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85 or the equivalent. Such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term. Additional Insured Endorsements shall be upon tentative award and within three (3) business days of request to OGS, NYS Procurement Services, Corning Tower – 38th Floor, Empire State Plaza, Albany, New York 12242. The additional insured requirement does not apply to Workers' Compensation, Disability, Data Breach/Cyber Liability insurance, Technology Errors and Omissions insurance and Crime insurance. Notwithstanding the foregoing, The People of the State of New York, The New York State Office of General Services, any entity authorized to use this Contract and their officers, agents, and employees shall be named as Loss Payees under the Crime insurance required by this section.

II. Insurance Requirements. The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

A. **Commercial General Liability Insurance (CGL)** covering the liability of the Contractor for bodily injury, property damage and personal/advertising injury from all work and operation under this Contract. The limits under such policy shall not be less than the following:

1. Each Occurrence limit - $2,000,000.00
2. General Aggregate - $2,000,000.00
3. Products/Completed Operations Aggregate - $2,000,000.00
4. Personal/Advertising Injury - $1,000,000.00
5. Damage to Rented Premises - $50,000.00
6. Medical Expenses - $5,000.00
7. Coverage shall include, but not be limited to, the following:
   a. premises liability;
   b. independent contractors;
   c. blanket contractual liability, including tort liability of another assumed in a contract;
   d. defense and/or indemnification obligations, including obligations assumed under this Contract;
   e. cross liability for additional insureds;
   f. products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by this Contract;
   g. explosion, collapse, and underground hazards; and,
   h. contractor means and methods.
8. The following ISO forms must be endorsed to the policy:
   a. <u>CG 20 10 11 85 or an equivalent</u> – Additional Insured-Owner, Lessees or Contractors (Form B)
   b. Waiver of Subrogation

B. Comprehensive Business Automobile Liability Insurance covering liability arising out of any automobile in connection with the work required under the Contract between the Contractor and OGS, 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 and shall 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 utilize the Contract as an Authorized User and their officers, agents, and employees as additional insureds. 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 vehicles to fulfill the requirements of the Contract, the Contractor must attest to that fact and does not need to obtain business automobile liability insurance. If, however, during the term of the Contract, the Contractor acquires, leases, or hires a vehicle that will

be used to fulfill the requirements of the Contract, the Contractor must obtain business automobile liability insurance that meets all of the requirements set forth in the Contract and provide evidence of such coverage no more than 10 days following the date automobile liability insurance coverage is bound.

Waiver of Subrogation. For the coverages required above, the Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the People of the State of New York, The New York State Office of General Services, any entity authorized to use this Contract and their officers, agents, and employees. Waiver of Subrogation Endorsements upon tentative award and within three (3) business days of request to OGS, NYS Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

C. Data Breach/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 User's systems due to the actions of the Contractor which results in unauthorized access to the Authorized User or their data with a limit of not less than $2,000,000. The limits may be provided through a combination of primary and excess liability policies. This insurance shall provide coverage for damages arising from, but not limited to, the following:

1. Breach of Duty to Protect the Security and Confidentiality of Nonpublic Proprietary Corporate Information;
2. Personally Identifiable Nonpublic Information (e.g., medical, financial or personal in nature in electronic or non-electronic form)
3. Privacy Notification Costs;
4. Regulatory Defense and Penalties;
5. Website Media Liability; and
6. Cyber Theft of Authorized User's Property, including but not limited to Money and Securities.

D. **Technology Errors and Omissions insurance** with a limit of not less than $2,000,000.00 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 limits may be provided through a combination of primary and excess liability policies. The policy shall include coverage for third party fidelity including cyber theft if the same is not provided as part of the Data Breach and Privacy/Cyber Liability insurance. If such insurance is written on a claims-made basis, the Contractor shall provide proof that the policy has an Extended Discovery Clause providing coverage for up to three (3) years after work is completed in the event that coverage is cancelled or not renewed.

E. **Crime Insurance** on a "loss sustained form" in an amount not less than $50,000, including coverage for:

1. Employee Theft;
2. Forgery or Alteration;
3. Inside the Premises-Theft of Money and Securities;
4. Inside the Premises-Robbery or Safe Burglary of Other Property;
5. Outside the Premises;
6. Computer Fraud and Funds Transfer Coverage;
7. Third Party Fidelity; and
8. Money Orders and Counterfeit Paper Currency.

The limits may be provided through a combination of primary and excess liability policies.

Additional requirements for this insurance:

- 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 three (3) years with respect to events which occurred but were not reported during the term of the policy;
- 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, must be included as "Loss Payees" with respect to this specific amount, as their interests may appear;
- Any warranties required by the Contractor's insurer as a result of this Contract must be disclosed and complied with;
- Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees of the Contractor as a result of this Contract;
- The policy shall include coverage for third party fidelity including cyber theft if not provided as part of the Cyber Liability insurance; and The policy shall not contain a condition requiring an arrest and conviction.

III. Workers' Compensation Insurance and Disability Benefits Requirements

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in Contractor not being considered for this Contract or renewal of same.

A. Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage.

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:
   a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
   b. Obtain such coverage from an insurance carrier; or
   c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

2. The Contractor shall provide one of the following forms to the Office of General Services before this Contract can be executed by the Commissioner.
   a. 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 Workers' Compensation Board's website (www.wcb.ny.gov).
   b. Certificate of Workers' Compensation Insurance:
      i. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
      ii. Form U-26.3 if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
   c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
   d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

B. Proof of Compliance with Disability Benefits Coverage Requirements:

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, a contractor shall:
   a. Be legally exempt from obtaining disability benefits coverage; or
   b. Obtain such coverage from an insurance carrier; or
   c. Be a Board-approved self-insured employer.

2. The Contractor shall provide one of the following forms to the Office of General Services before this Contract can be executed by the Commissioner.
   a. 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 Workers' Compensation Board's website (www.wcb.ny.gov).
   b. Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
   c. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.