



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

November 15, 2021

To: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Iannello, Treasurer

From: Karen A. Prendergast, Chief Financial Officer *KAP*

Subject: NYS Low Income Household Water Assistance Program

The NYS Office of Temporary and Disability Assistance (OTDA) is administering the Low-Income Household Water Assistance Program (LIHWAP) funded through the Consolidated Appropriations Act of 2021, and the American Rescue Plan Act of 2021. New York received \$69.8 million to assist low-income households with drinking and wastewater bills.

Our customers will be able to apply for up to \$2,500 in assistance for unpaid water bills through a portal on the OTDA website. The anticipated launch date of the application process is December 1, 2021 and will continue through September 30, 2023 or until funding is exhausted. Phase one will target households with unpaid water bills. If funding is available, phase two will assist low-income households in paying current water bills.

I have registered the Authority as an eligible vendor to receive payments should any of our customers apply and receive assistance. As a condition of participation, the Authority must execute a Vendor Agreement. I have included a resolution authorizing the execution of the agreement on the November 24th meeting.

cc T. McCracken
M. Carney
R. Stoll

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** _____
Project Description: Low Income Household Water Assistance Program (LIHWAP)

Item Description:

<input checked="" type="checkbox"/> Agreement	<input type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input type="checkbox"/> Contract Documents	<input type="checkbox"/> Addendum
<input type="checkbox"/> Recommendation for Award of Contract	<input type="checkbox"/> Recommendation to Reject Bids		
<input type="checkbox"/> ~ Request for Proposals			
<input type="checkbox"/> Other _____			

Action Requested:

<input checked="" type="checkbox"/> Board Authorization to Execute	<input type="checkbox"/> Legal Approval
<input type="checkbox"/> Board Authorization to Award	<input type="checkbox"/> Execution by the Chairman
<input type="checkbox"/> Board Authorization to Advertise for Bids	<input type="checkbox"/> Execution by the Secretary to the Authority
<input type="checkbox"/> Board Authorization to Solicit Request for Proposals	
<input type="checkbox"/> Other _____	

Approvals Needed:

APPROVED AS TO CONTENT:

<input type="checkbox"/> Other (if Applicable)	_____	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer	<u>Russell J. Steel</u>	Date: <u>11/16/2021</u>
<input type="checkbox"/> Executive Engineer	_____	Date: _____
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input checked="" type="checkbox"/> Chief Financial Officer	<u>Karen A. Bendegast</u>	Date: <u>11/16/2021</u>
<input checked="" type="checkbox"/> Legal	<u>[Signature]</u>	Date: <u>11-16-2021</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority	<u>[Signature]</u>	Date: <u>11-16-21</u>
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Remarks: _____

Resolution Date: _____ **Item No:** _____



Office of Temporary and Disability Assistance

KATHY HOCHUL
Governor

BARBARA C. GUINN
Executive Deputy Commissioner

November 05, 2021

Dear New York State Drinking Water and/or Wastewater Supplier:

This is to provide you with information and a Vendor Agreement for the New York State Low Income Household Water Assistance Program (LIHWAP). Please review all enclosed materials carefully.

LIHWAP was established through the Consolidated Appropriations Act, 2021 and the American Rescue Plan Act, 2021. New York State will use these funds to assist low income households, particularly those with the lowest incomes, that pay a high proportion of household income for drinking water and wastewater services. Benefits will be issued directly to drinking water and wastewater providers to restore or prevent loss of drinking water or wastewater services. The Office of Temporary and Disability Assistance (OTDA) will operationalize LIHWAP benefits in two phases. Phase one funding and outreach will target households with arrears for unpaid charges for drinking water and/or wastewater services. In phase two, OTDA will reevaluate available funding and if feasible, focus on establishing a benefit to assist eligible households with current drinking water and/or wastewater bills. This is a New York State administered program that will start on December 1, 2021 and end on September 30, 2023, or when funding is exhausted, whichever occurs first.

Vendor Agreement:

- A signed Vendor Agreement and completed Substitute Form W9/AC 3237-S (Rev. 1/17) are required in order to participate in and receive LIHWAP payments. The signed agreement will apply to all customers in your service territory within New York State. Vendor Agreements and program participation will be managed centrally by OTDA through the LIHWAP Bureau.
- Please review all documents carefully before signing.
- You may not make any changes to the Vendor Agreement, please contact us if you have any questions at: NYSLIHWAP.vendor@otda.ny.gov.

Vendor Payment and Remittance Information:

- Payments will be made directly to vendors via Electronic Funds Transfer issued through the NYS Office of the Comptroller (OSC).
- The OSC State Vendor Resource Page is available at: <https://www.osc.state.ny.us/state-vendors>. This resource page provides information and guidance to vendors on their payments and how to view those payments through the self-service vendor portal.
- Vendors who need assistance in enrolling in the online Vendor Self Service application: <http://www.sfs.ny.gov>, should contact the Statewide Financial System (SFS) Help Desk at either (855) 233-8363 or helpdesk@sfs.ny.gov.

Please return the signed Vendor Agreement and completed Substitute Form W9/AC 3237-S (Rev. 1/17) forms as soon as possible to:

**New York State OTDA
LIHWAP Bureau
40 N. Pearl St. Floor 11B
Albany, NY 12243**

Phone: (518) 473-0332

Fax: (518) 486-1528

Email: NYSLIHWAP.vendor@otda.ny.gov

Your company's name will not be added to the NYS LIHWAP vendor list until a signed agreement and a completed Substitute Form W9/AC 3237-S (Rev. 1/17) is on file.

We look forward to continuing to work with your company and staff as we assist LIHWAP eligible households in meeting their drinking water and/or wastewater needs. Please contact the NYS LIHWAP Bureau staff at (518) 473-0332 with any questions or concerns.

Sincerely,

/s/ AB/ 11-05-2021

Andrew Bryk
HEAP/LIHWAP Bureau Chief
Employment and Income Support Programs

Attachments (3):

LIHWAP Vendor Agreement
Attachment 1 - OTDA Security and Confidentiality Terms
Substitute Form W9/AC 3237-S (Rev. 1/17)



NEW YORK STATE LOW INCOME HOUSEHOLD WATER ASSISTANCE PROGRAM VENDOR AGREEMENT

This Agreement (“Agreement”) shall govern the purchase of water services from the Water Service Provider (Vendor) on behalf of households eligible for the Low Income Household Water Assistance Program (LIHWAP). Federal funds awarded under LIHWAP shall be used as part of an overall emergency effort to prevent, prepare for, and respond to the COVID-19 pandemic, with the public health focus of ensuring that low income households have access to drinking water and wastewater services. The funds will be used to cover and/or reduce arrearages, rates and fees associated with reconnection or prevention of disconnection of services. If funding is available, the New York State Office of Temporary and Disability Assistance (NYS OTDA) will evaluate providing bill assistance to eligible households to reduce the household’s cost for drinking water and wastewater services. This Agreement is a contract between NYS OTDA and the Vendor for the provision of direct vendor payments to assist low income households with drinking water and wastewater reconnection and ongoing services.

The parties acknowledge that this Agreement and the services provided by the Vendor are governed by and subject to federal laws and regulations in addition to issued federal and State guidance in relation to the Low Income Household Water Assistance Program.

In order to receive LIHWAP payments on behalf of eligible households, the Vendor agrees and assures to NYS OTDA to abide by the below listed provisions contained in this agreement. Drinking water and/or wastewater service benefits paid directly to Vendors will be issued through the NYS Office of the State Comptroller (NYS OSC).

1. Households receiving assistance from LIHWAP shall not be treated adversely on the basis of receipt of such assistance under applicable provision of the LIHWAP Supplemental Terms and Conditions 11h under Federal LIHWAP Assistance Listing No. 93.568(B) (with modifications based on P.L. 116-260).
2. Vendors will not discriminate, either in the costs of goods supplied or the services provided, against the household on whose behalf LIHWAP payments are made.
3. The Vendor understands that payment and satisfaction of any claims under LIHWAP will be made by NYS OTDA, through the NYS OSC. The Vendor further understands that they must comply with all applicable requirements of the Consolidated Appropriations Act of 2021 (CAA) and the American Rescue Plan Act of 2021 (ARPA), as well as all applicable policy determinations and directives of the NYS OTDA. The Vendor may be prosecuted under applicable federal and/or State law for false claims, statements or documents or concealment of material fact.
4. The Vendor agrees to accept all LIHWAP benefits authorized on behalf of residential customers and without imposing any conditions precedent. “Residential customer” is defined in accordance with Title 16 of the New York Compilation of Codes, Rules and Regulations, Part 14.2(b)(18).
5. The Vendor agrees to continue, establish or reestablish service for LIHWAP authorized residential customers and maintain such service for such LIHWAP authorized residential customer for ninety (90) calendar days after receipt of each LIHWAP benefit authorized and received on behalf of residential customers.

6. The Vendor agrees that arrears are charges for which payment has not been made more than 20 calendar days after payment was due. A payment is considered to be made on the date when it is received by the Vendor or one of its authorized agents. Payment is due whenever specified by a Vendor on its bill, as long as the date is not before the bill is hand-delivered to the customer, or less than three (3) calendar days after the bill is mailed.
7. Vendors may not transfer or cash-out LIHWAP benefits to recipients. Unexpended funds due to account closing and/or incorrect payments and funds that are unable to be credited to a recipient's account must be returned to NYS OTDA no later than thirty (30) business days after discovery, or September 30th of the current program year, whichever comes first, or upon request by NYS OTDA. A LIHWAP Vendor Refund Form must accompany all refunds. The vendor must contact NYS OTDA for a copy of this form at: NYSLIHWAP.vendor@otda.ny.gov.
8. The Vendor cannot apply LIHWAP payments to commercial accounts for non-residential services. LIHWAP payments must only be applied to LIHWAP authorized residential customer accounts.
9. The Vendor shall maintain an accounting system and supporting fiscal records adequate to audit for a period of not less than three program years (current year plus three years) and will otherwise verify the proper disbursement of LIHWAP funds. The Vendor shall allow NYS OTDA representatives access to all books and records relating to LIHWAP households for the purpose of compliance verification with this Agreement.
10. The Vendor shall permit and cooperate with federal and/or State audits and/or investigations undertaken in accordance with the CAA, and ARPA, and also any State and/or county investigations undertaken to ensure program integrity.
11. The Vendor shall treat all information relative to LIHWAP and, in particular, information relating to recipients, as confidential information, and shall not use any information so obtained in any manner except as necessary to the proper discharge of their obligation and the securement of their rights hereunder. The Vendor further agrees to protect all confidential information in accordance with all applicable federal and State laws, rules and regulations. The Vendor further agrees to abide, at a minimum, by the requirements set forth in Attachment 1, the OTDA Security and Confidentiality Terms.
12. The Vendor agrees to continue or restore service for the minimum time periods outlined in this agreement when notified by NYS OTDA that a LIHWAP benefit will be issued on behalf of an eligible household and vendor acknowledges acceptance of LIHWAP benefits. The time period begins from the date of the earliest notification by NYS OTDA.
13. The Vendor agrees to clearly identify the amount of LIHWAP payment(s) received in a manner which identifies the payment as received from LIHWAP on household statements, receipts, or accounts.
14. The Vendor understands that failure to cooperate with any Federal, State, or local investigation, audit, or program review may result in the immediate disqualification from participation in LIHWAP.
15. The Vendor agrees to take corrective action in the time frame specified by NYS OTDA if violations of this Agreement are discovered. Corrective action may include, but is not limited to, providing detailed documentation of changes made and detailed plans for future changes that will bring the Vendor into compliance. The vendor understands that failure to implement corrective actions may result in the immediate disqualification from participation in LIHWAP.
16. This Agreement shall remain in effect unless superseded by another Agreement or terminated by either party. A written agreement must be submitted thirty (30) business days in advance of the effective date to replace, modify or terminate the agreement.

17. Vendor agrees that any modification to this agreement must be reviewed and agreed to by NYS OTDA. Vendor agreement modification must be made in writing and submitted to NYS OTDA through NYSLIHWAP.vendor@otda.ny.gov.

Check here to hereby declare to the New York State Office of Temporary and Disability Assistance (NYS OTDA) that you, the vendor or vendor's representative, have the authority to bind such vendor, that you have read and understand the above, and that it is your intention to sign and submit this Vendor Agreement on behalf of the vendor to NYS OTDA, and further agree that the vendor will comply with and abide by the Vendor Agreement while participating as a Vendor in the New York State Low Income Household Water Assistance Program.

Vendor or Vendor's Representative name _____

Vendor or Vendor's Representative signature _____

Vendor Business Name _____

Address _____

Vendor TIN _____

Vendor Type:

_____ Drinking Water

_____ Wastewater

_____ Combined Drinking Water/Wastewater

Primary Contact _____

Phone _____

Email _____

FAX _____

Secondary Contact _____

Phone _____

Email _____

FAX _____

OTDA SECURITY AND CONFIDENTIALITY TERMS

Last Updated: June 2021

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

1. DEFINITIONS

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

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

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

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

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

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

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

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

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

2. DATA TO BE DISCLOSED

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

3. PURPOSE OF DATA

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

4. OWNERSHIP OF DATA

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

5. DATA EXCHANGE DETAILS

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

6. DATA PROTECTION

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

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

7. DATA SECURITY

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

agreement will be sufficient to allow OTDA and/or their designee(s) to audit compliance with this Agreement.

8. DATA LOCATION

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

9. CONTRACT AND DATA CENTER AUDIT

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

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

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

The contractor will provide, at Contractor's expense, an independent third-party audit of all data center(s) used to perform the services under the resulting Contract showing no deficiencies. Thereafter on an annual basis, at the contractor's expense, a full version of the audit report will be provided to

the State, within 30 days of the anniversary date of the Agreement. A Service Organization Control (SOC) 2 Type 2 audit report or approved equivalent sets the minimum level of a third-party audit.

10. ACCESS

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

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

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

Notice of all such changes will be sent to:

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

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

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

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

11. TRAINING

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

12. CONFIDENTIALITY AGREEMENTS

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

13. BACKGROUND INVESTIGATION AND FINGERPRINTING

Contractor shall have a written personnel security policy that ensures a background investigation is completed for any individual who will need access to perform his/her job duties to Protected Information with heightened compliance obligations. The policy will identify the process, steps, and timeframes for determining whether an employee may be granted access to such Protected Information. The results of the background check will be reviewed by the Contractor to determine whether the applicant is suitable for access to such Protected Information. Suitability is defined as having verified citizenship or residency and no prior criminal offense or offenses where the nature of the offense creates a risk of misuse of such Protected Information as defined within this Agreement. Written background investigation policies and procedures must be provided to OTDA for review and approval. Policies and procedures, as well as a sample of completed background investigations, must be available for inspection upon request by OTDA or its agents.

14. NOTIFICATION OF LEGAL REQUESTS

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

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

15. REPORT OR PUBLICATION

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

16. RETURN/DESTRUCTION OF PROTECTED INFORMATION

In the event of termination or expiration of the Agreement, Contractor shall immediately implement an orderly return of all Protected Information, whether in digital or any other form, in a mutually agreeable format at a time agreed to by the parties and/or at the direction of OTDA. Thereafter, the Contractor shall, unless otherwise advised in writing by OTDA, immediately destroy and/or sanitize, as appropriate to the medium, such data and any extracts, copies, or backups of same thoroughly and irretrievably. The method for the sanitization of data shall, at a minimum, comport with the standards set by the [NYS CISO](#) for the sanitization of data. Contractor shall thereafter certify in writing and provide proof that these actions have been completed within 30 days of termination or expiration of this Agreement or within seven days of the request of an agent, employee or officer of OTDA, at the discretion of OTDA. The Contractor will not make, retain, copy, duplicate, or otherwise use any copies of Protected Information after completion of the purpose for which the data disclosed is served without prior written permission from OTDA.

17. DATA RETENTION

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

18. COMPLIANCE WITH INFORMATION SECURITY BREACH NOTIFICATION ACT AND OTHER LAWS

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

19. VULNERABILITY SCANNING

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

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

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

20. INFORMATION SECURITY INCIDENT AND INFORMATION SECURITY BREACH

If the Contractor or any Authorized Person becomes aware of or has knowledge of either any potential Information Security Incident (Security Incident) or Information Security Breach (Security Breach), then the Contractor shall within 30 minutes

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

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

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

Notification and Assistance to Affected Persons.

Contractor shall be responsible for:

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

Contractor's failure to satisfactorily provide Affected Persons Assistance.

21. BUSINESS CONTINUITY AND DISASTER RECOVERY

The Disaster Recovery system shall be accessible by all users 24 hours a day, seven days a week, 365 days a year and available 99.982% of the time (uptime) per month and must not be rendered inoperable for any longer period for the purposes of maintenance, upgrades or hardware additions. OTDA will work with the Contractor to provide a listing of all essential functions related to the Agreement that must be sustained and maintained for the duration of the agreement. The Contractor shall have no less than one redundant data centers separated by at least 100 miles and on separate network fiber and separate power grids.

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

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

22. SUSPENSION/TERMINATION

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

23. GENERAL TERMS

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

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

24. ASSIGNMENT OR SUBCONTRACTING

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

25. CLOUD COMPUTING PROVISIONS

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