

## REQUEST FOR PROPOSALS

### TO PROVIDE DOCUMENT IMAGE PROCESSING SERVICES

#### **INTRODUCTION**

The New Jersey Health Care Facilities Financing Authority (the “Authority”) is an independent State financing authority in the New Jersey Department of Health, created by the New Jersey Legislature in 1972 by the New Jersey Health Care Facilities Financing Authority Law, N.J.S.A. 26:2I-1 et seq. as amended January 1998 (the “Act”). The Authority is the primary issuer of municipal bonds for New Jersey’s health care organizations. The Authority has issued more than \$26.7 billion in bonds and notes on behalf of over 186 health care organizations throughout the State since its creation. Currently, the Authority has approximately \$6.9 billion in debt outstanding on behalf of its borrowers. The majority of the Authority’s financings have been completed on behalf of acute care hospitals and health systems. However, under the Act, the Authority may provide financing for all health care organizations in New Jersey. The Authority’s primary purpose is to ensure that all health care organizations have access to financial resources to improve the health and welfare of the citizens of the State and to provide assistance in the restructuring of the State’s health care system. To accomplish these purposes, the Authority is authorized to issue bonds, notes or other evidence of indebtedness to the investing public and loan the proceeds to not-for-profit and for-profit health care organizations located in the State, as well as, to collect information and data and prepare reports and recommendations to the New Jersey Department of Health and New Jersey Department of Human Services. The interest on most Authority bonds is exempt from federal taxation and New Jersey state income taxes.

As defined in the Act, a health care organization is one which is located in New Jersey which is authorized or permitted by law, whether directly or indirectly through a holding corporation, partnership or other entity, to provide health care-related services, including, but not limited to, hospital, outpatient, public health, continuing care retirement communities, home health care, residential care, assisted living, hospice, health maintenance organization, blood bank, alcohol or drug abuse, halfway house, diagnostic treatment, rehabilitation, extended care, skilled nursing care, nursing care, intermediate care, tuberculosis care, chronic disease care, maternity, mental health, boarding or sheltered care or day care, or services provided by a physician in his office, or any other service offered in connection with health care services or by an entity affiliated with a health care organization or an integrated delivery system. An integrated delivery system means a group of legally affiliated health care organizations.

The Authority is governed by a seven-member board (each a “Member”), three of whom are ex-officio. The Commissioner of Health, serving as Chairperson, the Commissioner of Human Services, and the Commissioner of Banking and Insurance serve during their respective terms of office. Four public Members are appointed by the Governor with the consent of the Senate and serve staggered four-year terms.

For further information regarding the Authority, refer to the Authority’s web site [www.njhcffa.com](http://www.njhcffa.com).

## PURPOSE AND INTENT

The purpose of this Request for Proposals (“RFP”) is to solicit proposals from Bidders (collectively “Bidders” and individually the “Bidder”) qualified to provide document imaging processing services to the Authority in accordance with N.J.A.C. 15:3 Subchapter 4: *Image Processing of Public Records* and N.J.A.C. 15:3 Subchapter 5: *Registration of Image Processing Systems*. This RFP and the resulting Contract are designated as a *Set-Aside Contract for Categories 1, 2 or 3 for Small Businesses*. “Small Business” means a business that has its principal place of business in the State of New Jersey, is independently owned and operated, and has no more than 100 full-time employees.

As such, eligibility to bid is limited to Bidders that meet statutory and regulatory requirements and have had their eligibility determined by the Division of Revenue & Enterprises Services (“DORES”). The definitions of each Small Business set-aside category can be found at N.J.A.C. 17:13-1.2 or N.J.A.C. 12A:10-1.2 or by accessing the following websites: <http://www.state.nj.us/treasury/revenue/> or <http://www.nj.gov/njbusiness/contracting/sbsa/index.shtml>.

To register as a small business, click on the link at the bottom of the website or go to <https://www.njportal.com/DOR/SBERegistry/>

Any additional information concerning registration may be obtained by contacting the Division of Revenue & Enterprise Services, Small Business Registration and MWBE Certification Services Unit at 609-292-2146.

## GENERAL QUALIFICATIONS

This list is not intended to be all inclusive. Bidders should familiarize themselves with New Jersey Administrative Code, Title 15., Chapter 3: Records Retention, Subchapter 4: Image Processing of Public Records and Subchapter 5: Registration of Image Processing Systems.

- The Bidder must be registered as a qualifying Small Business with DORES by the date the contract is awarded. Evidence that the Bidder has registered with DORES as a Small Business should be submitted with the bid proposal.
- Bidder must be familiar with all aspects of the State of New Jersey, DORES, Records Management Services specifications for the Imaging (as such term is defined at N.J.A.C. 15:3-4.2) and conversion of public records and able to assist the Authority in its Imaging system evaluation and certification. The Bidder will be responsible for remaining in compliance with DORES requirements at all times. If modifications are required by DORES for the certification of the Authority’s electronic files, it will be the Bidder’s responsibility to make those modifications at no additional charge to the Authority.
- The Imaging system shall not be capable of altering a public record as scanned except for standard computer-enhancement routines used to improve the legibility of scanned documents. Editing of recorded text or characters by an image processing system used for keeping public records shall not be permitted. Where computer-enhancement is necessary, such computer-enhancement processes and procedures shall be thoroughly documented for proof of authenticity of the records maintained on the imaging system.

- The Bidder's system should conform to a standard architectural framework for open systems standards with customization at Application Program Interface (API) level. (See N.J.A.C. 15:3-4.3(g) & (h)).
- All documents must be scanned at 300 dots per inch (dpi) bitonal, which is above the DORES minimum requirement.
- Scanned images must be converted to TIFF file format with CCITT Group III and/or IV compression, Portable Network Format (PNG) for grayscale or color images and Open Document Architecture/Open Document Interchange Format (ODA/ODIF) for text. (See N.J.A.C. 15:3-4.5(a)).
- Bidder will perform a visual quality control evaluation for each and every scanned image before permanently storing onto CD.
- The scanning density for documents shall be selected and validated using tests on samples of the actual documents to be scanned before scanning is begun, and shall be tested periodically thereafter according to procedures established under N.J.A.C. 15:3-4.7(e). Testing and review procedures shall include the comparison of selected recorded images against the original documents after the documents are scanned and recorded, to ensure that records are adequately reproduced and recorded.
- The image processing system shall include an indexing system and procedures for adequate indexing which permit rapid identification and retrieval for viewing or reproducing of all related records maintained in the system. (See N.J.A.C. 15:3-4.7).
- Bidder shall create and maintain logs of all system and file access and activities (see N.J.A.C. 15:3-4.8(f)1) and provide a copy to the Authority upon their request.
- Bidder must be able to turnaround the job within a month's time.

### **TERM OF CONTRACT**

The selected Bidder chosen, will be expected to enter into a formal Contract with the Authority in form and content satisfactory to an Authorized Officer of the Authority. A draft form of the Contract is outlined as "Schedule C".

The Contract shall be in force for the period of five (5) years.

The Authority reserves the right to terminate, without reason, any contract entered into as a result of this RFP, providing written notice has been given to the Bidder at least thirty (30) days prior to such proposed termination date.

### **ACCEPTANCE OF PROPOSAL CONTENT**

The contents of the proposal from the successful Bidder will survive and be incorporated into any contract awarded as a result of this RFP. Terms in proposals that conflict with those terms and conditions contained in this RFP or the Contract, as may be amended by addenda, or that diminish the Authority's rights under any contract resulting from the RFP will be considered null and void. The Authority is not responsible for identifying conflicting terms and conditions before issuing a contract award. In the event that prior to the notice of intent to award, the Authority notifies the Bidder of any such term or condition and the conflict it poses, the Authority may require the Bidder to either withdraw the term or condition or withdraw its proposal.

After award of Contract:

- a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP or Contract, the term or condition of the Contract and/or the RFP will prevail; and
- b) if the result of the application of a supplemental term or condition included in the proposal would diminish the Authority's rights, the supplemental term or condition will be considered null and void.

## ORAL INTERVIEWS

Bidders that submit a proposal in response to the RFP may be required to participate in an oral interview. This will provide an opportunity for the Bidder to clarify or elaborate on its proposal. Original submissions cannot be supplemented, changed or corrected in any way. No comments regarding other Bidders or proposals are permitted, and Bidders may not attend interviews of their competitors. The Authority's Evaluation Committee will schedule the time and location of these interviews.

## REVISIONS TO THE REQUEST FOR PROPOSAL

In the event it becomes necessary for the Authority to revise any part of this RFP, revisions will be posted on the Authority's website at [www.njhcffa.com](http://www.njhcffa.com). Also, if revisions are found to be necessary after conducting the oral interviews, all of those Bidders who participated in the oral interview will be notified of such revisions. It is the Bidder's responsibility to check the Authority's website for any updates.

## QUESTIONS

All questions regarding this RFP should be directed **via email ONLY** to Alpa Patel, Controller to [apatel@njhcffa.com](mailto:apatel@njhcffa.com) and Cindy Kline, Assistant to the Executive Director & Officer Manager to [ckline@njhcffa.com](mailto:ckline@njhcffa.com). **All inquiries must be received by 3:00pm (EDT) on Friday, August 8, 2025.**

If the Authority determines that any answers to such questions should be provided to all Bidders the Authority will provide such answers on the Authority's website. All answers to questions or addenda shall be incorporated into and made part of this RFP.

No Bidder submitting a proposal may make any inquiries concerning this RFP except as expressly set forth herein to any other employee of the Authority, Member of the Authority, or any other State Official until final selection has been determined.

## **SUBMISSION OF PROPOSALS**

Proposals must be received by the Authority via email to [apatel@njhcffa.com](mailto:apatel@njhcffa.com) and [ckline@njhcffa.com](mailto:ckline@njhcffa.com) **no later than 3:00 p.m. EDT, on Friday, August 22, 2025**, as described above. Proposals may not be delivered by mail or by fax. Proposals received after this time and date will be rejected and will not be considered.

It is expected, but not certain, that Authority staff will make a recommendation to the Authority's governing body at its public meeting scheduled for September 25, 2025. If a successful Bidder is approved at that meeting, the action will be subject to the Governor's veto period and may take up to ten (10) business days following the delivery of meeting minutes to become effective (i.e. October 10, 2025). Execution of services can then occur on October 13, 2025.

The Authority seeks proposals from Bidders in accordance with the terms and conditions set forth in this RFP. The below Standard Terms and Conditions are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. All of the Authority's Standard Terms and Conditions will become a part of any contract(s) or order(s) awarded as a result of this RFP, whether stated in part, in summary or by reference. In the event the Bidder's terms and conditions conflict with the Authority's, the Authority's Standard Terms and Conditions will prevail, unless the Bidder is notified in writing of the Authority's acceptance of the Bidder's terms and conditions. Questions regarding exceptions to any of the Authority's Standard Terms and Conditions must be posed during the question period, as provided above. The Authority is under no obligation to consider or accept any exception taken to its Standard Terms and Conditions.

## **BIDDER RESPONSIBILITIES**

The Bidder will be required to assume complete responsibility for all work as required by this RFP. The Authority will consider the Bidder to be the sole point of contact with regard to contractual matters.

## **COST LIABILITY**

The Authority assumes no responsibility and no liability for costs incurred by any Bidders prior to the execution of a contract.

## **ASSIGNMENT**

The selected Bidder is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the contract or its rights, title or interest therein or its power to execute such contract to any other person, company or corporation without the express written consent of an Authorized Officer of the Authority.

## **SUBCONTRACTING/OUTSOURCING**

Subcontracting or outsourcing of any of the proposed services is strictly forbidden. The Bidder must make an affirmative statement that no subcontracting or outsourcing of work will occur and the Bidder has all the necessary equipment and personnel to complete the work proposed.

## INDEMNITY

The Bidder will indemnify the Authority and the State of New Jersey and the Authority Members, officers and employees of the Authority and State against any claim for performance of its services contemplated by this RFP. Further, **under no circumstances will the Authority provide indemnification and any proposal which states indemnification by the Authority as a term will not be considered.** Please see Section III.H. of the Standard Terms and Conditions below for further information.

## PUBLIC RECORD

All material submitted in response to this RFP will become a matter of public record and will not be returned. Bidders are responsible for all costs incurred in the preparation of a proposal and will not be reimbursed for said costs by the Authority.

Proposals submitted in response to this RFP can be released to the public pursuant to N.J.A.C. 17:12-1.2(b) and (c), or under the New Jersey Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1 et seq., or the common law right to know.

After the opening of proposals, all information submitted by a Bidder in response to this RFP is considered public information notwithstanding any disclaimers to the contrary submitted by the Bidder.

If the RFP contains a negotiation component, the proposal will not be subject to public disclosure until the contract has been awarded.

As part of its proposal, a Bidder may designate any data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, explaining the basis for such assertion. The Bidder must provide a detailed statement clearly identifying those sections of the proposal that it claims are exempt from production, and the legal and factual basis that supports said exemption(s) as a matter of law. The Authority will not honor any attempts by a Bidder to designate its entire proposal as proprietary, confidential and/or to claim copyright protection for its entire proposal. See the Section entitled “COMPLIANCE FORMS REQUIRED TO BE SUBMITTED WITH PROPOSAL” below for further information.

The Authority reserves the right to make the determination as to what is proprietary or confidential, and will advise the Bidder accordingly. Any proprietary and/or confidential information in a proposal will be redacted by the Authority. Copyright law does not prohibit access to a record which is otherwise available under OPRA.

In the event of any challenge to the Bidder’s assertion of confidentiality with which the Authority does not concur, the Bidder shall be solely responsible for defending its designation, but in doing so, all costs and expenses associated therewith shall be the responsibility of the Bidder. The Authority assumes no such responsibility or liability.



## SCOPE OF WORK

The Bidder selected for this engagement shall provide the services outlined below.

1. Trustee Bank Statements (approximately 35,000 pages)
  - a) A separate CD for each numbered box
  - b) A document index for all facilities included on the CD
  - c) Each facility scanned in separate PDF file by year
  - d) Files to be named as provided
  - e) Each CD will have one Adobe Search Index for all files on CD
2. All documents to be scanned at 300 dpi bitonal.
3. Images provided in TIFF, Group III and Group IV compression.
4. Document prep performed by Bidder which includes removing staples, paper clips, etc.
5. One complete set of CDs provided to the Authority, which includes a TIFF CD as required by DORES. The Authority has the right to make backup copies as needed.
6. One complete set of CDs stored off site at Bidder's location.
7. Bidder to pick up work files at the Authority's location.
8. Destruction of work files to be handled by Bidder at the direction of the Authority.
9. The Authority shall not be bound to any minimum or maximum.

## INFORMATION TO BE CONTAINED IN PROPOSAL

1. Name, address, telephone number, and email of the person authorized to contractually bind the organization for any proposal in response to this RFP, and the primary contact. Please include resumes and a summary of pertinent staff, experience and qualifications, including licensure, if any.
2. A brief description of your firm and how long it has been in business.
3. Indicate whether your firm is principally located in New Jersey.
4. Whether the firm is certified by New Jersey as a minority and/or woman-owned business, or a veteran or disabled veteran-owned business in New Jersey or a Small Business Enterprise.
5. Whether the firm is familiar with New Jersey State laws regarding the imaging of public records and the associated standards and certification process promulgated and coordinated by New Jersey Division of Revenue and Enterprise Services – Records Management Services.

6. Whether the firm provides document image processing services to other State Departments, Agencies, Authorities or Municipal/Local Agencies. If so, what type of work is performed?
7. Whether the firm has assisted any other State Department, Agency, Authority or municipality in the certification of a Public Records Image Processing System. If so, what type of assistance did the firm provide?
8. Whether the firm meets the basic system requirements as outlined in N.J.A.C 15.3-4 et seq.
9. Proposed fee schedule in the format outlined in Schedule A and Schedule B.
10. Provide a description and sample of your firm's approach to laying out each of the projects outlined above.
11. Identify any existing or potential conflicts of interest, as well as your representation of parties or other relationships that might be considered a conflict of interest, that may affect or involve this assignment, the Authority or the State of New Jersey. Any such disclosure shall be supplemented as necessary on an ongoing basis. See the Section V.I. of the Standard Terms and Conditions below for more information on Conflicts of Interest.
12. Provide a description of any ongoing investigations, or litigation matters involving your firm, its directors, officers and principals and any individuals employed by the firm.
13. Provide at least three references from firms you are currently working with. Please prioritize New Jersey state entities first, followed by financing authorities from other states, then other entities.

## **COMPLIANCE FORMS REQUIRED TO BE SUBMITTED WITH PROPOSAL**

1. Ownership Disclosure Form. Pursuant to N.J.S.A. 52:25-24.2, in the event the Bidder is a corporation, partnership or sole proprietorship, the Bidder must complete and sign an Ownership Disclosure Form, which can be found on the Division of Purchase and Property's website at <https://www.state.nj.us/treasury/purchase/forms.shtml>. A current completed Ownership Disclosure Form must be received prior to or accompany the submitted proposal. A Bidder's failure to submit the completed and signed form with its proposal will result in the rejection of the proposal as non-responsive and preclude the award of a contract to said Bidder. If the Proposer is a limited partnership, each Ownership Disclosure Form must be signed by a general partner. Please see Section V.O. of the Standard Terms and Conditions below for further information.
2. Disclosure of Investment Activities in Iran Form. Please see Section V.K. of the Standard Terms and Conditions below for further information on this required form which may be accessed at <http://www.state.nj.us/treasury/purchase/forms.shtml>



3. Certification with respect to Engagement in Prohibited Activities in Russia or Belarus. Please see Section V.M. of the Standard Terms and Conditions below for further information on this required form which may be accessed at <https://www.nj.gov/treasury/administration/pdf/DisclosureofProhibitedActivitesinRussiaBelarus.pdf>
4. Confidentiality and Commitment to Defend Form. If the Bidder objects to the disclosure of any portions of its proposal under OPRA or the common law right to know, the Bidder must advise the Authority and must attach a detailed statement clearly identifying those sections of the Proposal that Bidder claims are exempt from disclosure. In requesting any exemption, the Bidder must identify the specific statutory or other legal justification for each requested exemption and the factual basis that supports said exemption. This form can be found on the Division of Purchase and Property's website at <https://www.state.nj.us/treasury/purchase/forms.shtml>

### **COMPLIANCE FORMS THAT SHOULD BE SUBMITTED WITH PROPOSAL**

1. Business Registration. Please see section V.L. of the Standard Terms and Conditions below for further information on the Business Registration requirement. The Bidder may register with the Division of Revenue and Enterprise Services to obtain a copy of an existing Business Registration Certificate ("BRC") or obtain information necessary to seek re-instatement of a revoked BRC online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>
2. Source Disclosure Form. Pursuant to N.J.S.A. 52:34-13.2, prior to an award of any contract primarily for the performance of services, the Bidder is required to submit a completed Source Disclosure Form. The required Source Disclosure Form (Full Version PDF) can be found on the State's Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.shtml>. Please see Section III.S., entitled "Service Performance Within the United States" in the Standard Terms and Conditions below regarding this requirement.
3. Disclosure of Investigations and Other Actions Involving The Vendor Form. Please see Section III.W. of the Standard Terms and Conditions below for further information regarding this requirement. The required form and instructions are available for review on the Division of Purchase and Property's website at <https://www.nj.gov/treasury/purchase/forms/DisclosureofInvestigations.pdf>.

### **COMPLIANCE FORMS THAT MUST BE SUBMITTED PRIOR TO CONTRACT AWARD**

1. Affirmative Action. Please see Section V.C. of the Standard Terms and Conditions below for further information regarding this required form. Pursuant to N.J.A.C. 17:27-1.1, the Bidder must submit to the Authority a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program.

2. Political Contribution Disclosure. Please see Section V.N. of the Standard Terms and Conditions below for further information regarding this required disclosure.
3. Proof of Insurance. Please see Section III.G. of the Standard Terms and Conditions below for further information regarding this requirement.

THESE AND OTHER IMPORTANT TERMS AND CONDITIONS ARE INCLUDED BELOW IN THE AUTHORITY'S STANDARD TERMS AND CONDITIONS. PLEASE READ THEM IN THEIR ENTIRETY. THEY ARE INCORPORATED AS PART OF THIS RFP AND WILL BECOME PART OF THE FINAL CONTRACT WITH THE SUCCESSFUL BIDDER. IT SHOULD BE NOTED THAT THE AUTHORITY IS NOT ABLE TO WAIVE THE REQUIREMENTS OF THE STANDARD TERMS AND CONDITIONS.

### **METHODOLOGY TO BE USED IN ANALYZING BID PROPOSALS**

The proposals will be reviewed by an evaluation committee of relevant Authority staff. The proposals will be evaluated on a variety of factors, including but not limited to pricing and experience.

### **RESERVED RIGHTS**

The Authority reserves the right to modify this RFP by notification to all of those Bidders who have indicated an intention to submit a proposal. The Authority also reserves the right to waive any irregularities or informalities in the proposals submitted or in the submission process.

### **ADDITIONAL DATA**

Provide any additional information considered essential to your proposal. Limit this additional information to three (3) pages.

## **SCHEDULE A: PRICING PROPOSAL**

<b><u>DESCRIPTION</u></b>	<b><u>PER PAGE/ UNIT COST</u></b>
<b>TRUSTEE STATEMENTS</b>	
Convert 8.5 x 11 B&W Simplex Images to PDF Format	_____
<b>OTHER CHARGES</b>	
Charge per TIFF CD provided to the Authority- as required by DORES	_____
Charge per Non-TIFF CD provided to the Authority	_____
Charge per TIFF/Non-TIFF CD stored off site at Bidder location	_____
Charge per pick up at the Authority offices (approximately 4 pick-ups)	_____
Charge per lb. for shredding documents (approximately 900 lbs.)	_____

## SCHEDULE B: SAMPLE BILLING

Bidders are required to complete this Sample Billing using the information provided in Schedule A. The quantities provided are based on approximate totals from previous years:

<u>DESCRIPTION</u>	<u>PER PAGE/ QUANTITY</u>	<u>UNIT COST</u>	<u>PRICE</u>
<b>TRUSTEE STATEMENTS</b>			
Convert 8.5 x 11 B&W Simplex Images to PDF Format	35,000 pages	_____	_____
<b>OTHER CHARGES</b>			
Charge per TIFF CD provided to the Authority - as required by DORES 8 CDs		_____	_____
Charge per Non-TIFF CD provided to the Authority	8 CDs	_____	_____
Charge per TIFF/Non-TIFF CD stored off site at Bidder location	16 CDs	_____	_____
Charge per pick up at the Authority offices	4 pick-ups	_____	_____
Charge per lb. for shredding documents	900 lbs.	_____	_____
			<b>Total Cost</b> _____

## **SCHEDULE C: FORM OF CONTRACT**

### **CONTRACT FOR DOCUMENT IMAGING SERVICES**

This Contract (“Contract”) is effective as of [ ] day of October 2025 (“Effective Date”) between the New Jersey Health Care Facilities Financing Authority ("the Authority"), with offices at 22 South Clinton Avenue, Building 4, Floor 4, Trenton, New Jersey 08609, and the Bidder (the “Bidder”) with offices at [location]. (Collectively, the Authority and the Bidder are the “Parties”, and singularly each a “Party”). Capitalized terms used herein but not defined in this Contract shall have the meaning given to them in the Request for Proposals (“RFP”) (as further described herein).

**WHEREAS**, the Bidder is a document imaging service organized under the laws of the [State];

**WHEREAS**, the Authority has selected the Bidder to provide document imaging services, which include but are not limited to the scope of services set forth in the RFP dated [date], 2025 ;

**NOW THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the Parties hereto covenant and agree as follows:

#### **1. CONTRACT**

This Contract shall commence as of the Effective Date and continue in full force and effect for a period of five (5) years immediately following the Effective Date, ending December 31, 2030, except as otherwise set forth in this Contract.

- a. The Bidder shall provide the required services in accordance with the terms, conditions, specifications, and scope of work set forth in:
  - i. The RFP attached hereto as “Exhibit A”;
  - ii. The Authority’s Standard Terms and Conditions, attached to the RFP;
  - iii. The Bidder's proposal dated [date], 2025 in response to said RFP, attached hereto as “Exhibit B”.
- b. The aforementioned documents are hereby incorporated by reference into this Contract as if set forth in their full text herein, and together with this Contract are the entire agreement of the Parties relating to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, correspondence, understandings, and agreements of the Parties relating to the subject matter hereof.
- c. In the event that there exists a conflict in terms, conditions, specifications, or scope of work between the RFP, the Standard Terms and Conditions, the Bidder’s proposal, and this Contract, the order of precedence as to which documents’ terms shall prevail is as follows: (i) the Standard Terms and Conditions, (ii) this Contract, (iii) the provisions of the RFP, (iv) the Bidder’s proposal.

#### **2. SERVICES AND COMPENSATION**

- a. **Services.** The Bidder agrees that it shall be directly responsible to, and shall submit production items contracted for, to the Authority, at the address indicated in Section 8, for approval before any payments are made in accordance with the terms of this Section 2. Production items contracted for include but are not limited to CDs containing trustee bank statements. The Authority shall compensate the Bidder in accordance with the Pricing Proposal set forth in the Bidder's proposal.
- b. **Invoicing and Payment.** Bidder will submit invoices to the Authority for services rendered no more frequently than monthly. The Bidder must submit supporting evidence with the invoices identifying the tasks for which billing is submitted. All disbursements and expenses shall be itemized. Payment of the invoiced amount is due from the Authority to the Bidder within forty-five (45) days of the Authority's receipt of Bidder's invoice. Final payment shall be withheld by the Authority until all services under this Contract have been performed in a manner satisfactory to an Authorized Officer of the Authority and upon submission of any final report if stipulated in the supporting documentation.
- c. It is the responsibility of the Authority to ascertain that services have been performed in a proper and satisfactory manner in accordance with the terms and conditions set forth in the Contract prior to the approval of such invoices. However, approval of invoices for payment by the Authority shall not constitute a release or waiver of any claim the Authority has or may have for latent defects or errors or other breaches of this Contract on the part of Bidder, or of any claims for breach of warranty, negligence or misconduct.
- d. The Authority's obligations hereunder are contingent upon the availability of assessed or appropriated funds from which payment for contract purposes can be made in accordance with the provisions of the New Jersey Health Care Facilities Financing Act, **N.J.S.A. 26:21-1 et. seq.** (the "Act"). No legal liability on the part of the Authority for payment of any money shall arise unless and until funds are available each year to the Authority from administrative fees or other funds made available each year to the Authority.

### 3. CONFIDENTIALITY

- a. The obligations of the Authority are subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena.
- b. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the Contract. The Bidder's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Bidder Confidential Information"). Notwithstanding the previous sentence, the Bidder acknowledges the terms and pricing of the Contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
- c. The Authority's Confidential Information shall consist of all information or data contained in documents supplied by the Authority or the State, any information or data



gathered by the Bidder in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not).

- d. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.
- e. The Authority and the Bidder agree to hold each other's Confidential Information in confidence, using at least the same degree of care used to protect their own confidential information.
- f. In the event that the Authority receives a request for Bidder's Confidential Information related to the Contract pursuant to a court order, subpoena, or other operation of law, the Authority agrees, if permitted by law, to provide the Bidder with as much notice, in writing, as is reasonably practicable and the Authority's intended response to such order of law. The Bidder shall take any action it deems appropriate to protect its documents and/or information.
- g. In addition, in the event that the Bidder receives a request for the Authority's Confidential Information pursuant to a court order, subpoena, or other operation of law, the Bidder shall, if permitted by law, provide the Authority with as much notice, in writing, as is reasonably practicable and the Bidder's intended response to such order of law. The Authority shall take any action it deems appropriate to protect its documents and/or information. Notice to the Authority shall not relieve the Bidder of its obligation to take action to protect such information if the Bidder is aware of a legal reason to do so.
- h. Notwithstanding the requirements of nondisclosure described in this section, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction; or (ii) pursuant to a lawfully issued subpoena or other lawful document request: (a) in the case of the Authority, if the Authority determines the documents or information are subject to disclosure and Bidder does not exercise its rights as described in subsection F above, or if Bidder is unsuccessful in defending its rights as described in subsection F above, or (b) in the case of the Bidder, if the Bidder determines the documents or information are subject to disclosure and the Authority does not exercise its rights as described in subsection G above, or if the Authority is unsuccessful in defending its rights as described in subsection G above.
- i. Any use, sale or offering of this data in any form by the Bidder, his employees, agents, servants or assignees will be considered in violation of the Contract and will cause the information to be reported to the State Attorney General for possible prosecution. Penalties for violations of this provision include, but are not limited to, termination of the contract award and/or legal action without the Authority or the State being liable for damages, costs and/or attorney fees. The Bidder shall be liable for any and all damages arising from its breach of this confidentiality provision.

#### 4. MAINTENANCE OF RECORDS AND AUDITS

Pursuant to N.J.A.C. 19:70-1.6(b), the contract partner as that term is defined pursuant to N.J.A.C. 19:70-1.2, shall maintain all documentation related to products, transactions, or services under this Contract for a period of five years from the date of final payment.

The Authority may request, receive, review, and audit copies of any and all records and documents related to this Contract at any time. The Bidder shall make a good faith effort to cooperate with the request and upon receipt of the request, the Bidder shall promptly provide the requested records and documents free of charge in the time, place, and manner specified. Failure of the Bidder to comply with the request or the audit may be used by the Authority to establish contract non-compliance, to take any action, or seek any remedy available under the Contract, at law, or in equity.

#### 5. OWNERSHIP OF DOCUMENTS

All documents and records, regardless of form, prepared by the Bidder in fulfillment of this Contract shall be transmitted to the Authority and shall become the property of the Authority.

#### 6. AMENDMENTS

This Contract may be amended at any time, if for some reason the Bidder must perform additional work not anticipated within the scope of the services set forth in Attachment A or for any other reason, but only in writing executed by an Authorized Officer of the Authority and the Bidder.

#### 7. TERMINATION

- a. **Performance Based.** In the event that Bidder, in the reasonable judgment of the Authority, has failed to perform any of the services specified in this Contract in a timely and proper manner, and has not timely cured such failure, the Authority may terminate this Contract by giving Bidder written notice of that fact, including the reason therefor and the date of such termination.
- b. **Thirty-Day Advance Notice.** The Authority may terminate this Contract for any reason by providing thirty (30) days advance written notice to the Bidder.
- c. **Non-Payment.** Bidder may terminate this Contract for the Authority's failure to pay in accordance with Section 2 above by providing thirty (30) days advance written notice to the Authority.
- d. **Final Payment.** Upon termination of the Contract for any reason, Bidder shall be entitled to and shall receive compensation for such services as have been satisfactorily performed up to the date of termination.
- e. **Transfer of Information.** Upon termination, Bidder will transfer all requested information related to the Authority to such persons or organizations as the Authority designates in writing.

- f. **Reports.** Upon termination, Bidder shall furnish to the Authority such report or reports as may be required hereunder based upon work completed under the provisions of this Contract.

## **8. STANDARD OF CARE / RELIANCE BY THIRD PARTIES**

- a. Bidder shall perform its services with the judgment, care, skill, prudence, diligence and intelligence which other firms serving in a like capacity and experienced in the performance of these services would use when performing like services, and consistent with the applicable professional standards.
- b. It is agreed and understood that Bidder's work will be based upon the data provided to Bidder by the Authority. To the extent that the data provided is incorrect or incomplete, Bidder shall not be liable for the results of work based on that data, unless Bidder was negligent with respect to such data. Bidder shall have no obligation to discern any errors, omissions, or irregularities relating to data provided to Bidder by the Authority, except to the extent that Bidder's failure to discern such errors, omissions, or irregularities is inconsistent with the applicable professional standards.

## **9. NOTICE**

Any notice required or permitted by the terms of this Contract shall be given in writing by first class mail and/or email and properly addressed as follows:

### **New Jersey Health Care Facilities Financing Authority**

Attention: Cindy Kline, Assistant to the Executive Director & Officer Manager  
c: Alpa Patel, Controller

Mailing Address:  
P.O. Box 366  
Trenton, NJ 08625-0366

Overnight Address:  
Station Plaza, Bldg. #4, Floor #4  
22 South Clinton Avenue  
Trenton, NJ 08609-1212

Email Addresses:

[ckline@njhcffa.com](mailto:ckline@njhcffa.com)  
[apatel@njhcffa.com](mailto:apatel@njhcffa.com)

**[Bidder]**

Email Addresses:

Any such notice shall be deemed to have been given on the date when first received.

## **10. GENERAL PROVISIONS**

- a. **Independent Contractor.** Bidder's status under this Contract is that of an independent contractor. Services provided by Bidder pursuant to this Contract shall be subject to the supervision of the Bidder. In providing such services, neither Bidder nor Bidder's

- employees or agents shall act as officers, employees, or agents of the Authority. No partnership, joint venture, or other joint relationship is created hereby.
- b. **Governing Law.** This Contract shall be governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and to the extent not preempted by ERISA, the laws of the State of New Jersey.
  - c. **Uncontrollable Circumstances ("Force Majeure").** Neither party will be liable to the other for any delay or inability to perform its obligations if such delay or inability arises from any act of God, fire, natural disaster, act of war (declared or undeclared), act of terrorism (domestic or international), riot, civil disturbance, pandemic or other public health crisis (arising during the term of the Contract). In the event of such a delay or inability to perform, the time for performance will be extended by an amount reasonable under the specific circumstances and mutually agreed-upon date sufficient to allow the Bidder to perform the work delayed by the force majeure.
  - d. **Waiver.** The failure of the Authority or Bidder to insist, in any one or more instances, upon performance of any of the terms or conditions of this Contract, shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant, or condition.
  - e. **Severability.** Should any part of this Contract for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Contract had been executed with the invalid portion thereof eliminated.
  - f. **Assignment.** This Contract may not be assigned without the prior written consent of the other Party, and it shall terminate automatically on the occurrence of such assignment made without such consent. If the Contract is so terminated, Bidder shall receive equitable compensation for such services as have been satisfactorily performed up to the date of termination.
  - g. **Survival.** The rights, effects, and obligations under Sections 2, 3, 4, 5, 7(d), 7(e), 7(f), 8, and 10 shall survive the termination of this Contract.
  - h. **Third Parties.** This Contract is not intended to benefit any third party and does not confer any rights on any entity or person not a Party hereto.

This Contract may be executed by the parties hereto in two counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Contract to produce or account for more than one such counterpart, which together shall constitute but one and the same Contract.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed by these authorized representatives as of the dates indicated.

Witness: New Jersey Health Care Facilities Financing Authority

\_\_\_\_\_

By:  
Frank Troy, Executive Director

Dated: \_\_\_\_\_

Witness: [The Bidder]

\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

Dated: \_\_\_\_\_

## STANDARD TERMS AND CONDITIONS

By submitting a proposal in response to the RFP for services, the Bidder certifies that it understands and agrees that all of the following terms, conditions and definitions (collectively, “Standard Terms and Conditions”) are part of any contract(s) awarded as a result of the RFP unless specifically and expressly modified by reference in the RFP or in a writing executed by an Authorized Officer of the Authority.

- I. Definitions:** As used in these Standard Terms and Conditions, the following terms shall have the definitions set forth in this paragraph. These definitions shall also apply to the entire Contract and RFP unless otherwise defined therein.

“Authority” means the New Jersey Health Care Facilities Financing Authority. The Authority is the intended beneficiary of the Contract.

“Authorized Officer” means with respect to the Authority, the Chairman, Vice Chairman, Secretary, Treasurer, Assistant Treasurer, Executive Director or Deputy Executive Director of the Authority or such other Person who is authorized by the by-laws or any resolution of the Authority to act in such capacity.

“Bidder” means any person or entity submitting a proposal in response to the RFP to provide the Authority services specified in the RFP; or to whom (or which) the Contract is awarded.

“Contract” means a mutually binding legal relationship obligating the Bidder to furnish services and the Authority to pay for them. The Contract consists of these Standard Terms and Conditions, the RFP, the proposal submitted by the Bidder, the subsequent written document memorializing the agreement (if any), any amendments or modifications and any attachments, addenda or other supporting documents of the foregoing.

The Contract and/or its terms cannot be modified or amended by conduct or by course of dealings. Thus, the “contract” does not include the aforementioned actions and such actions, or reliance thereon, afford no rights whatsoever to any party to the Contract. The Contract can only be modified or amended by a writing signed by an Authorized Officer of the Authority and of the Bidder.

“Request for Proposals” or “RFP” means a request for offers or proposals to provide the sought after services as specified herein.

“Shall” denotes a mandatory condition.

“State” means the State of New Jersey.

The following definitions shall apply to information technology contracts:

“Acceptance” means the written confirmation by the Authority that the Bidder has completed a Deliverable according to the specified requirements.

“Bidder Intellectual Property” means any intellectual property that is owned by the Bidder and contained in or necessary for the use of the Deliverables or which the Bidder makes available for the Authority to use as part of the work under the Contract. Bidder Intellectual Property includes COTS or Customized Software owned by the Bidder, the Bidder’s technical documentation, and derivative works and compilations of any Bidder Intellectual Property.



As defined by N.J.S.A. 56:8-161, “Breach of Security” means unauthorized access to electronic files, media, or data containing Personal Data that compromises the security, confidentiality, or integrity of Personal Data when access to the Personal Data has not been secured by encryption or by any other method or technology that renders the Personal Data unreadable or unusable. Good faith acquisition of Personal Data by an employee or agent of the Bidder for a legitimate business purpose is not a Breach of Security, provided that the Personal Data is not used for a purposes unrelated to the business or subject to further unauthorized disclosure.

“Commercial Off the Shelf Software” (“COTS”) means Software provided by the Bidder that is intended for general use.

“Custom Software” means Software and Work Product that is developed by the Bidder at the request of the Authority to meet the specific requirements of the Authority and is intended for its use.

“Customized Software” means COTS that is adapted by the Bidder to meet specific requirements of the Authority that differ from the standard requirements of the base product.

“Deliverable” means the Goods, Products, Services and Work Product that the Bidder is required to deliver to the Authority under the Contract.

“End User” means the user of the Bidder’s solution.

“Goods” and “Products” shall be deemed to include, without limitation, Software and Hardware.

“Hardware” shall be deemed to include computer equipment and any Software provided with the Hardware that is necessary for the Hardware to operate.

“Information Technology Contract” shall mean, notwithstanding any definition in New Jersey Statutes, a Contract for one or more of the following: Hardware, Software, Services, telecommunication goods and services, and all related goods.

“Mobile Device” means any device used by the Bidder that can move or transmit data, including but not limited to laptops, hard drives, and flash drives.

“Non-Public Data” means data, other than Personal Data, that is not subject to distribution to the public as public information. Non-Public Data is data that is identified by the Authority as non-public information or otherwise deemed to be sensitive and confidential by the Authority because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

“Personal Data” means: (1) “Personal Information” as defined in N.J.S.A. 56:8-161, means an individual’s first name or first initial and last name linked with any one or more of the following data elements: (a) Social Security number, (b) driver’s license number or State identification card number or (c) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account. Dissociated data that, if linked would constitute Personal Information is Personal Information if the means to link the dissociated were accessed in connection with access to the dissociated data. Personal Information shall not include publicly available information that is lawfully made available to the general public from federal, state or local government records, or widely distributed media. (2) data, either alone or in combination with other data, that includes information relating to an individual that identifies the person

or entity by name, identifying number, mark or description that can be readily associated with a particular individual and which is not a public record, including but not limited to, Personally Identifiable Information (PII); government-issued identification numbers (e.g., Social Security, driver's license, passport); Protected Health Information (PHI) as that term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and defined below; and Education Records, as that term is defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

“Personally Identifiable Information” or “PII,” as defined by the U.S. Department of Commerce, National Institute of Standards and Technology, means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

“Protected Health Information” or “PHI,” has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 means Individually Identifiable Health Information (as defined below) transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer. The term “Individually Identifiable Health Information” has the same meaning as the term is defined in the regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (1996) and found in 45 CFR Parts 160 to 164 and means information that is a subset of Protected Health Information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

“Recovery Time Objective” or “RTO,” means the maximum tolerable length of time that the Bidder's solution may be unavailable after a failure or disaster occurs.

“Security Incident” means the potential access by non-authorized person(s) to Personal Data or Non-Public Data that the Bidder believes could reasonably result in the use, disclosure, or access or theft of Authority's unencrypted Personal Data or Non-Public Data within the possession or control of the Bidder. A Security Incident may or may not turn into a Breach of Security.

“Service Level Agreement” or “SLA,” means the document that is part of the Bidder's SFA that typically includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.

“Services” shall be deemed to include, without limitation (i) Information Technology (“IT”) professional services; (ii) Software and Hardware-related services, including without limitation, installation, configuration, and training and (iii) Software and Hardware maintenance and support and/or Software and Hardware technical support services.

“Software” means, without limitation, computer programs, source codes, routines, or subroutines supplied by the Bidder, including operating software, programming aids, application programs, application programming interfaces and software products, and includes COTS, Customized Software and Custom Software, unless the context indicates otherwise.

“State Data” means all data and metadata created or in any way originating with the Authority, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the Authority, whether such data or output is stored on the Authority’s hardware, the Bidder’s hardware or exists in any system owned, maintained or otherwise controlled by the Authority or by the Bidder. State Data includes Personal Data and Non-Public Data.

“State Intellectual Property” means any intellectual property that is owned by the Authority. State Intellectual Property includes any derivative works and compilations of any State Intellectual Property.

“Third Party Intellectual Property” means any intellectual property owned by parties other than the Authority or the Bidder and contained in or necessary for the use of the Deliverables. Third Party Intellectual Property includes COTS owned by Third Parties, and derivative works and compilations of any Third Party Intellectual Property.

“Work Product” means every invention, modification, discovery, design, development, customization, configuration, improvement, process, Software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by the Bidder or the Bidder’s subcontractors or a third party engaged by the Bidder or its subcontractor pursuant to the Contract. Notwithstanding anything to the contrary in the preceding sentence, Work Product does not include State Intellectual Property, Bidder Intellectual Property or Third Party Intellectual Property.

**II. Applicability and incorporation of Standard Terms and Conditions:** The “Contract” shall consist of the following documents: (1) these Standard Terms and Conditions; (2) the form of contract, attached to the RFP; (3) the RFP; and (4) the Bidder’s proposal including any attachments or documents incorporated by reference (hereinafter “Proposal”). In the event of a conflict in the terms and conditions among the documents comprising this Contract, the order of precedence, for purposes of interpretation thereof, listed from highest ranking to lowest ranking as noted above. These Standard Terms and Conditions shall prevail over any conflicts set forth in a Bidder’s Proposal.

### **III. Bidder’s Status and Responsibilities:**

- A. **Bidder’s Status:** The Bidder’s status shall be that of an independent contract and not that of an employee of the State of the Authority. The Bidder shall not be an employee of an acute care hospital in New Jersey.
- B. **Bidder’s Certification as to its Representations:** The Bidder certifies that all representations made by it in its proposal or other related and/or supporting materials are true, subject to penalty of law. Further, the Bidder agrees that the violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract may be cause for termination of the contract award. In addition, the Bidder’s violation of any statute or regulation relating to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the

Contract shall serve as a legal bar to the Bidder's enforcement of its rights under the Contract including any and all claims at law or equity.

- C. **Bidder's Performance:** The Bidder agrees to perform in a good, skillful and timely manner all services set forth in the Contract. The Bidder has an affirmative obligation to promptly notify, in writing, the Authority of any changes in circumstances which might affect the Bidder's ability to be awarded or to perform its obligations under the Contract.

D. **Responsibilities of the Bidder:**

1. The Bidder is responsible for the quality, technical accuracy and timely completion and delivery of all services to be furnished by the Bidder under the Contract.
2. The Bidder shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services furnished under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the Authority of any rights under the Contract or of any cause of action arising out of the Bidder's performance of the Contract.
3. The acceptance of, approval of or payment for any of the services performed by the Bidder under the Contract shall not constitute a release or waiver of any claim the Authority has or may have for latent defects or errors or other breaches of warranty or negligence.
4. The Bidder's obligations under this clause are in addition to the Bidder's other expressed or implied assurances under the Contract or law and in no way diminish any other rights that the Authority may have against the Bidder.

- E. **Investigation:** By submitting a proposal in response to the RFP, the Bidder certifies and warrants that it has satisfied itself, from its own investigation, of the conditions to be met and that it fully understands its obligations and if awarded the Contract agrees that it will not make any claim for, or have right to, cancellation or relief from the Contract without penalty because of its misunderstanding or lack of information.

- F. **Cost Liability:** The Authority assumes no responsibility and no liability for costs incurred by the Bidder prior to the award of the Contract and thereafter only as specifically provided in the Contract.

- G. **Insurance:** The Bidder shall secure and maintain in force for the term of the Contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide thirty (30) days written notice of cancellation or material change to the Authority at the address shown below. If the Bidder's insurer cannot provide 30 days written notice, then it will become the obligation of the Bidder to provide the same. The Bidder shall provide the Authority with current certificates of insurance for all coverages and renewals thereof. Renewal Certificates shall be provided within thirty (30) days of the expiration of the insurance. The Bidder shall not begin to provide services or goods to the Authority until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the Contract in the Description of Operations box and shall list the New Jersey Health Care Facilities Financing Authority, P.O. Box 366, Trenton, New Jersey 08625 in the Certificate Holder box.

The certificates and any notice of cancellation shall be emailed to the Authority at: [INFO@njhcffa.com](mailto:INFO@njhcffa.com). The insurance to be provided by the Bidder shall be as follows:

1. Occurrence Form Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the Authority, its officers, and employees as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
2. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The Authority must be named as an “Additional Insured” and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the Authority’s behalf or on Authority controlled property.
3. Worker’s Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
  - a) \$1,000,000 BODILY INJURY, EACH OCCURRENCE
  - b) \$1,000,000 DISEASE EACH EMPLOYEE
  - c) \$1,000,000 DISEASE AGGREGATE LIMIT

This \$1,000,000 amount may be raised when deemed necessary by Authorized Officer of the Authority.

4. Professional Liability Insurance: The Bidder shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the Bidder from any liability arising out the professional obligations performed pursuant to the requirements of this RFP. The insurance shall be in the amount of not less than \$1,000,000 and in such policy forms as shall be approved by an Authorized Officer of the Authority. If the Bidder has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.
5. Cyber Breach Insurance: The Bidder shall carry Cyber Breach Insurance in sufficient to protect the Bidder from any liability arising out of its performance pursuant to the requirements of this Contract. The insurance shall be in an amount of not less than \$2,000,000 in such policy forms as shall be approved by an Authorized Officer of the Authority. The insurance shall at a minimum cover the following: Data loss, ransomware and similar breaches to computers, servers and software; Protection against third-party claims; cost of notifying affected parties; cost of providing credit monitoring to affected parties; forensics; cost of public relations consultants; regulatory compliance costs; costs to pursue indemnity rights; costs to Data Breach and Credit Monitoring Services analyze the insured’s legal response obligations; costs



of defending lawsuits; judgments and settlements; regulatory response costs; costs of responding to regulatory investigations; and costs of settling regulatory claims.

#### **H. Indemnification:**

1. The Bidder's liability to the Authority and the State of New Jersey and the employees of each in third party suits shall be as follows:
  - a) The Bidder shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the Authority and the State of New Jersey, and the officers, officials, agents, servants and employees of each, from and against any and all third-party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith:
    - (1) For or on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under this Contract or order; and
    - (2) For or on account of the use of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") furnished or used in the performance of this Contract.
  - b) In the event a patent and copyright claim or suit involving third-party Intellectual Property Rights, the Bidder, and its option may:
    - (1) Procure the Authority the legal right to continue the use of the product;
    - (2) Replace or modify the product to provide a non-infringing product that is the function equivalent; or
    - (3) In the event that the Bidder cannot a "(1)" or "(2)", refund the purchase price less a reasonable allowance for use that is agreed to by both parties.
2. The Bidder's indemnification and liability under subsection "1." is not limited by but is in addition to the insurance obligations. The provisions of this indemnification clause shall in no way limit the Bidder's obligations assumed in the Contract, nor shall they be construed to relieve the Bidder from any liability, nor preclude the Authority or the State from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity. The Bidder agrees that any approval by the Authority of the work performed and/or reports, plans or specifications provided by the Bidder shall not operate to limit the obligations of the Bidder assumed in the Contract.
3. The Bidder will be relieved of its responsibilities under Subsection "1" for any claims made by a third-party that arise solely from the actions or omissions of the Authority, its officers, employees or agents.
4. The Authority will:



- a) Promptly notify the Bidder in writing of the claim or suit;
  - b) Give the Bidder control of the defense and settlement of any claim that is subject to Section “1.A”; provided; however that the Authority must approve any settlement of the alleged claim, which approval shall not be unreasonably withheld. The Authority may observe the proceedings relating to the alleged claim and confer with the Bidder at its expense.
5. Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the appropriation and availability of funds, the Authority will be responsible for any cost or damage arising out of actions or inactions of the Authority, its employees or agents under Subsection 1.A which results in an unaffiliated third-party claim.
6. The Authority and the State will not indemnify, defend, pay or reimburse for claims on behalf of the Bidder. The Authority and the State will not indemnify, defend or hold harmless the Bidder. The Authority and the State will not pay or reimburse for claims absent compliance with Section “5.” and a determination by the Authority to pay the claim or a final order of a court of competent jurisdiction.
7. Neither the Bidder nor any attorney engaged by the Bidder shall defend the claim in the name of the Authority, the State, or any Authorized Purchaser, nor purport to act as legal representative of the Authority, the State, or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of the Division of Purchase and Property. The Authority and the State may, at its election and expense, assume its own defense and settlement.
8. Notwithstanding the foregoing, the Bidder has no obligation or liability for any claim or suit concerning third-party Intellectual Property Rights arising from:
  - a) the Authority’s unauthorized combination, operation, or use of a product supplied under this Contract with any product, device, or Software not supplied by Bidder;
  - b) the Authority’s unauthorized alteration or modification of any product supplied under this Contract;
  - c) the Bidder’s compliance with the Authority’s designs, specifications, requests, or instructions, provided that if the Authority provides the Bidder with such designs, specifications, requests, or instructions, the Bidder reviews same and advises that such designs, specifications, requests or instructions present potential issues of patent or copyright infringement and the Authority nonetheless directs the Bidder to proceed with one (1) or more designs, specifications, requests or instructions that present potential issues of patent or copyright infringement; or
  - d) the Authority’s failure to promptly implement a required update or modification to the product provided by Bidder after the Bidder has given written notice to the Authority of a need for such an update or modification.
9. This section states the entire obligation of the Bidder and its suppliers, and the exclusive remedy of the Authority and the State, in respect of any infringement or alleged infringement of any Intellectual Property Rights. This indemnity obligation and remedy are given to the

Authority and the State solely for its benefit and in lieu of, and the Bidder disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.

- I. **Limitation of Liability:** The Bidder's liability to the Authority and the State for actual, direct damages resulting from the Bidder's performance or non-performance of, or in any manner related to the Contract, for any and all third-party claims, shall be limited in the aggregate to 200% of the total value of the Contract. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than \$1,000,000. This limitation of liability shall not apply to the following:

1. The Bidder's obligation to indemnify as described in subsection H above.
2. The Bidder's breach of its obligations of confidentiality; and
3. The Bidder's liability with respect to copyright indemnification.

Notwithstanding the foregoing exclusions, where a Breach of Security is a direct result of Bidder's breach of its contractual obligation to encrypt Personal Data pursuant to the RFP or otherwise prevent its release as reasonably determined by the Authority, the Bidder shall bear the costs associated with (1) the investigation and resolution of the Breach of Security; (2) notifications to individuals, regulators, or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state or federal law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record, per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute for the public sector at the time of the Breach of Security; and (5) completing all corrective actions as reasonably determined by Bidder based on root cause of the Breach of Security.

The Bidder's indemnification obligation is not limited by but is in addition to the insurance obligations.

The Bidder shall not be liable for punitive, special, indirect, consequential, or incidental damages.

- J. **Force Majeure:** Neither party will be liable to the other for any delay or inability to perform its obligations if such delay or inability arises from any act of God, fire, natural disaster, act of war (declared or undeclared), act of terrorism (domestic or international), riot, civil disturbance, pandemic or other public health crisis (arising during the term of the contract). In the event of such a delay or inability to perform, the time for performance will be extended by an amount reasonable under the specific circumstances and mutually agreed-upon date sufficient to allow the Bidder to perform the work delayed by the force majeure.

K. **Maintenance of Records and Audits:**

1. Pursuant to N.J.A.C. 19:70-1.6(b), the contract partner as that term is defined pursuant to N.J.A.C. 19:70-1.2, shall maintain all documentation related to products, transactions, or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.
2. The Authority may request, receive, review, and audit copies of any and all records and documents related to the Contract at any time. The Bidder shall make a good faith effort to

cooperate with the request and upon receipt of the request, the Bidder shall promptly provide the requested records and documents free of charge in the time, place, and manner specified. Failure of the Bidder to comply with the request or the audit may be used by the Authority to establish contract non-compliance, to take any action, or seek any remedy available under the Contract, at law, or in equity.

**L. Accessibility Compliance:** The Bidder acknowledges that the Authority may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Bidder agrees that any information that it provides to the Authority in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard. In the event that the Authority relied on any of Bidder's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794, the Bidder agrees to provide the Authority, upon request, with technical information to support such VPAT. In addition, Bidder shall defend any claims against the Authority that the Software does not meet the accessibility standards set forth in the VPAT provided by Bidder in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the Authority with regard to any claim made against the Authority and with regard to any judgment or settlement resulting from those claims to the extent the Bidder's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Bidder's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

**M. Confidentiality:**

1. The obligations of the Authority under this provision are subject to the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena.
2. By virtue of the Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the Contract. The Bidder's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Bidder Confidential Information"). Notwithstanding the previous sentence, the Bidder acknowledges the terms and pricing of the Contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
3. The Authority's Confidential Information shall consist of all information or data contained in documents supplied by the Authority or the State, any information or data gathered by the Bidder in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not).
4. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

5. The Authority and the Bidder agree to hold each other's Confidential Information in confidence, using at least the same degree of care used to protect their own confidential information.
6. In the event that the Authority receives a request for Bidder's Confidential Information related to the Contract pursuant to a court order, subpoena, or other operation of law, the Authority agrees, if permitted by law, to provide the Bidder with as much notice, in writing, as is reasonably practicable and the Authority's intended response to such order of law. The Bidder shall take any action it deems appropriate to protect its documents and/or information.
7. In addition, in the event that the Bidder receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, the Bidder shall, if permitted by law, provide the Authority with as much notice, in writing, as is reasonably practicable and the Bidder's intended response to such order of law. The Authority shall take any action it deems appropriate to protect its documents and/or information. Notice to the Authority shall not relieve the Bidder of its obligation to take action to protect such information if the Bidder is aware of a legal reason to do so.
8. Notwithstanding the requirements of nondisclosure described in this Section M, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction; or (ii) pursuant to a lawfully issued subpoena or other lawful document request: (a) in the case of the Authority, if the Authority determines the documents or information are subject to disclosure and Bidder does not exercise its rights as described in subsection 6 above, or if Bidder is unsuccessful in defending its rights as described in subsection 6 above, or (b) in the case of the Bidder, if the Bidder determines the documents or information are subject to disclosure and the Authority does not exercise its rights as described in subsection 7 above, or if the Authority is unsuccessful in defending its rights as described in subsection G above.

Any use, sale or offering of this data in any form by the Bidder, his employees, agents, servants or assignees will be considered in violation of the Contract and will cause the information to be reported to the State Attorney General for possible prosecution. Penalties for violations of this provision include, but are not limited to, termination of the contract award and/or legal action without the Authority or the State being liable for damages, costs and/or attorney fees. The Bidder shall be liable for any and all damages arising from its breach of this confidentiality provision.

- N. **Suspension and Debarment Notice:** The Bidder is advised that pursuant to Executive Order 34 (1976), the Department of the Treasury maintains a list of all individuals or entities that have been debarred or suspended from conducting business within the State of New Jersey. The Bidder understands that it may be excluded from any contract award consideration due to debarment, suspension, or disqualification and such exclusion shall apply universally across all state contracting and subcontracting activities under the jurisdiction of the department or agency imposing the exclusion.
- O. **Workplace Accountability in Labor List:** The Bidder is further advised that pursuant to N.J.S.A. 34:1A-1.16 et seq., if any person, as defined by the Act, is found to be in violation of any State wage, benefit, or tax laws and against whom a final order has been issued by the commissioner or other appropriate agency officer for any violation of State wage, benefit and tax laws, such person shall be prohibited from contracting with any public body until the liability for violations of State

wage, benefit, and tax laws have been resolved to the satisfaction of the Commissioner of the Department of Labor and Workforce Development or the Commissioner's duly authorized representative.

- P. **Ownership of Documents:** All documents and records, regardless of form, prepared by the Bidder in fulfillment of the Contract shall be transmitted to the Authority and shall become the property of the Authority.
- Q. **News Releases:** The Bidder is not permitted to issue news releases pertaining to any aspect of the services being provided under the Contract without prior written consent of an Authorized Officer of the Authority.
- R. **Advertising:** The Bidder shall not use the State's name, seal, or logos as a part of any commercial advertising without first obtaining the prior written consent of the New Jersey Secretary of State. The Bidder shall not use the Authority's name, seal, logos, images, or any data or results arising from the Contract as a part of any commercial advertising without first obtaining the prior written consent of an Authorized Officer of the Authority.
- S. **Service Performance Within the United States:** Pursuant to N.J.S.A. 52:34-13.2, services under the Contract, including any subcontracted services, shall be performed within the United States, except when the Director of the Division of Purchase and Property certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer. A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the Contract, the Bidder proceeds to shift the performance of any of the services outside the United States, the Bidder shall be deemed to be in breach of Contract, which contract shall be subject to termination for cause pursuant to Section VII.B, unless previously approved by the Director and the Division of Purchase and Property and the State Treasurer.
- T. **Performance Guarantee of Bidder:** The Bidder hereby certifies that:
1. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
  2. All equipment supplied to the Authority and operated by electrical current is UL listed where applicable;
  3. All new machines are to be guaranteed as fully operational for the period stated in the Contract from time of written acceptance by the Authority. The Bidder shall render prompt service without charge, regardless of geographic location;
  4. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
  5. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;



6. During the warranty period the Bidder shall replace immediately any material which is rejected for failure to meet the requirements of the Contract;
7. All services rendered to the Authority shall be performed in strict and full accordance with the specifications stated in the Contract. The Contract shall not be considered complete until final approval by the Authority is rendered;
8. COTS and Customized Software:
  - a) Unless the Bidder's Standard Form Agreement provides greater coverage as determined by the Authority, in its sole discretion, the Bidder warrants that COTS and Customized Software products licensed to the Authority shall operate in all material respects as described in the RFP and/or Bidder technical documentation for ninety (90) days after Acceptance. The Authority shall notify the Bidder of any COTS or Customized Software product deficiency within ninety (90) days after Acceptance. For a Contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized Software or Custom Software shall be deemed a notice that triggers the warranty provisions in this subsection T.
  - b) Except for the portion of the Bidder's COTS or Customized Software product that intentionally contains one or more of the following for the purpose of anti-virus protection, the Bidder warrants that, at the time of delivery and installation of the COTS or Customized Software provided pursuant to the Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the COTS or Customized Software, collect unlawful personally identifiable information on users, or prevent the COTS or Customized Software from performing as required under the Contract.
  - c) In the event of any breach of this warranty, the Bidder shall correct the product errors that caused the breach of warranty, or if the Bidder cannot substantially correct such breach in a commercially reasonable manner, the Authority may end its usage and recover the fees paid to the contractor for the license and any unused, prepaid, technical support fees paid. Under no circumstances does this warranty provision limit the Bidder's obligation in the event of a breach of confidentiality.
  - d) The Bidder does not warrant that COTS or Customized Software is error-free or that it will operate uninterrupted.
9. Custom Software:
  - a) Unless the Bidder's Standard Form Agreement provides greater coverage, as determined by the Authority, in its sole discretion, the contractor warrants that Custom Software Deliverables shall operate in all material respects as described in the applicable specification documentation for one hundred and eighty (180) days after Acceptance. The Authority shall notify the Bidder of any Custom Software deficiency within one hundred and eighty (180) days after Acceptance of the Custom Software Deliverable (the "Notice Period"). Where the Bidder is providing multiple Custom Software Deliverables over the term of the Contract, the Notice Period shall begin to run after the Acceptance of the final



Custom Software Deliverable under the Contract. At that time, the Authority may assert defect claims relating to any and all of the Custom Software Deliverables provided under the Contract; however, the Authority may also assert claims earlier, in its discretion, without waiving the Notice Period.

- b) For a Contract requiring the delivery of COTS or Customized Software and Custom Software, a notice within one hundred eighty (180) days that describes a deficiency in functional terms without specifying whether the deficiency is with COTS, Customized Software or Custom Software shall be deemed a notice that triggers the warranty provisions in this subsection T.
- c) The Bidder warrants that, at the time of Acceptance of the Custom Software Deliverable provided pursuant to the Contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Custom Software, collect unlawful personally identifiable information on users, or prevent the Custom Software from performing as required under the Contract. Under no circumstances does this warranty provision limit the Bidder's obligation in the event of a breach of confidentiality.
- d) In the event of any breach of this warranty, the Bidder shall correct the Custom Software errors that caused the breach of warranty, or if the Bidder cannot substantially correct such breach in a commercially reasonable manner, the Authority may recover a portion of the fees paid to the Bidder for the Custom Software with the uncorrected defect or in the event that the Custom Software is still deemed, by the Authority in its sole discretion, to be usable by the Authority even with the uncorrected defect, the Authority may recover a portion of the fees paid to the Bidder for the Custom Software (up to the total amount of such charges for such Custom Software) to reflect any reduction in the value of the Custom Software Deliverable as a result of the uncorrected defect. Under no circumstances does this warranty provision limit the Bidder's obligations in the event of a breach of confidentiality.
- e) The Bidder does not warrant that Custom Software is error-free or that it will operate uninterrupted.

#### 10. IT Services:

- a) Unless the Bidder's Standard Form Agreement provides greater coverage, as determined by the Authority, in its sole discretion, the Bidder warrants that all Services will be provided in a professional manner consistent with industry standards. The Authority shall notify the Bidder of any Services warranty deficiencies within ninety (90) days from performance of the deficient Services.
- b) In the event of any breach of this warranty, the Bidder shall re-perform the deficient Services, or if the Bidder cannot substantially correct a breach in a commercially reasonable manner, the Authority may end the relevant Services and recover the fees paid to the Bidder for the deficient Services.

#### 11. Hardware:

- a) Unless the Bidder's Standard Form Agreement provides greater coverage, as determined by the Authority, in its sole discretion, the Bidder warrants that the equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
  - b) The Bidder warrants that all equipment supplied to the Authority and operated by electrical current is UL listed where applicable.
  - c) The Bidder warrants that all new machines are to be guaranteed as fully operational for one (1) year from time of Acceptance by the Authority. For the avoidance of doubt, Acceptance with respect to Hardware in this subsection (d) shall occur no later than sixty (60) days after delivery, as evidenced by a signed delivery receipt. The Bidder shall render prompt service without charge, regardless of geographic location.
  - d) The Bidder warrants that sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
  - e) The Bidder warrants that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
  - f) The Bidder warrants that all Software included with the Hardware shall perform substantially in accordance with specifications, for one (1) year from the time of Acceptance. The Bidder warrants that Software media will be free from material defects in materials and workmanship for a period of one (1) year from the date of Acceptance.
  - g) In the event of any breach of this warranty, the Bidder shall promptly repair, replace or refund the purchase price of product rejected for failure to conform with the Bidder's product specifications.
12. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND THE BIDDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
- U. **Audit Notice and Dispute Resolution:** To the extent the Bidder's Proposal or Standard Form Agreement permits the Bidder to conduct periodic audits of the Authority's usage of the Bidder Intellectual Property provided thereunder, such provision is amended to include the following audit notice and dispute resolution process:
- 1. **AUDIT NOTICE** – Notwithstanding anything to the contrary in the Bidder's Proposal or Standard Form Agreement, in the event that the Bidder seeks to exercise a right in its Proposal or Standard Form Agreement to audit the Authority's use of Bidder Intellectual Property, the Bidder shall deliver simultaneous written notice, no less than thirty days in advance of the audit start date (unless the Bidder's notice provides a longer notice period), to the Authority.

2. The notice shall reference the specific audit provision(s) in the Bidder's Proposal or Standard Form Agreement being exercised and include copies of same, specify the means by which the Bidder will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.
3. **AUDIT DISPUTE RESOLUTION** -- If the Authority, in good faith, provides the Bidder with written notice of an alleged error in the amount of underpaid fees due the Bidder as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the Contract while they endeavor to resolve the dispute under this paragraph.
4. **AUTHORITY NOT LIABLE FOR AUDIT COSTS** -- Notwithstanding anything to the contrary in the Bidder's Proposal or Standard Form Agreement, the Authority will not reimburse the Bidder for any costs related to an audit.
5. **NO AUDIT RIGHT CREATED** -- In the event that the Bidder's Proposal or Standard Form Agreement does not permit audits of the Authority's usage of Bidder Intellectual Property, these Standard Terms and Conditions shall not be interpreted to provide such an audit right.

**V. Delivery Requirements:**

1. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the Contract;
2. The Bidder shall be responsible for the delivery of material in first class condition to the Authority under the Contract and in accordance with good commercial practice;
3. Items delivered must be strictly in accordance with the Contract;
4. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the Contract, the Authority shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the Bidder. Unless otherwise noted elsewhere in the scope of work, all delivery times are 30 calendar days after receipt of order (ARO) and prices for items in proposals shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days ARO/F.O.B.);
5. The Bidder shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the Authority. Thirty-calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on the receiving platform of the Authority at any destination in the State of New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the Bidder's convenience when a single shipment is ordered. The weights and measures of the Authority shall govern; and

6. Collect On Delivery (C.O.D) terms will not be accepted.

**W. Disclosure of Investigations and Other Actions:** The Bidder must submit the Disclosure of Investigations and Other Actions Form which provides a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If the Bidder does not submit the form with the Proposal, the Bidder must comply within seven (7) business days of the Authority's request or the Authority may deem the Proposal non-responsive.

**X. Licenses and Permits:** The Bidder shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform the Contract. The Bidder shall supply the Authority with evidence of all such licenses, permits and authorizations required. All costs associated with any such licenses, permits, and authorizations are the responsibility of the Bidder.

**Y. New Jersey Business Ethics Guide Certification:** The New Jersey State Treasurer has established a business ethics guide to be followed by the Bidder in dealings with the Authority. The guide can be found at: <https://www.nj.gov/treasury/purchase/pdf/BusinessEthicsGuide.pdf>

**Z. Data Protection Obligations:**

1. **Data Ownership:** The Authority will own all right, title and interest in its State Data that is related to the services provided by this Contract. The Bidder shall not use or access State user accounts or State Data, except (i) in the course of data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at the Authority's written request.

The Bidder shall not collect, access, or use State Data except as strictly necessary to provide its solution to the Authority. No information regarding the Authority's use of the solution may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Contract.

2. **Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the Bidder to ensure that there is no inappropriate or unauthorized use of State Data at any time. To this end, the Bidder shall safeguard the confidentiality, integrity, and availability of State Data and comply with the following conditions:

a) The Bidder shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized good industry practice and not less stringent than the measures the Bidder applies to its own Personal Data and Non-Public Data of similar kind.

b) All Personal Data shall be encrypted at rest and in transit with controlled access. The Bidder is responsible for encryption of the Personal Data. The level of protection and encryption for all Personal Data shall be identified and made a part of this Contract.

- c) The Bidder shall encrypt all Non-Public Data at rest and in transit. The level of protection and encryption for all Non-Public Data shall be identified and made a part of this Contract.
  - d) Personal Data shall not be stored on Mobile Devices. Where Mobile Devices are required for the Bidder to accomplish the work, the Bidder shall ensure the Mobile Device is hard drive encrypted consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data.
  - e) At no time shall any data or processes, which either belongs to or are intended for the use of Authority or its officers, agents, or employees, be copied, disclosed, or retained by the Bidder or any party related to the Bidder for subsequent use in any capacity that does not include the Authority.
3. Data Location: The Bidder shall provide its services to Authority and its End Users solely from data centers in the U.S. Storage of State Data at rest shall be located solely in data centers in the U.S. The Bidder shall not allow its personnel or contractors to store State Data on Mobile Devices, including personal computers, except for devices that are used and kept within the physical structure of its U.S. data centers. The Bidder shall permit its personnel and contractors to access State Data remotely only as required to provide technical support or upon prior notice and approval. The Bidder may provide technical user support on a seven-day by 24-hour basis, unless otherwise prohibited in this Contract.
4. Security Incident and Breach of Security Responsibilities:
- a) Security Incident Reporting Requirements: Once the Bidder reasonably determines that a Security Incident occurred, the Bidder shall report a Security Incident to the appropriate Authority identified contact within 24 hours by the agreed upon method as defined in the Contract. The Bidder will provide the Authority regular updates and all available relevant information including a description of the incident and those measures taken by the Bidder in response to the Security Incident.
  - b) Breach of Security Reporting Requirements: If the Bidder confirms or reasonably believes that there has been a Breach of Security, the Bidder shall (1) immediately notify the appropriate Authority identified contact by the agreed upon method within 24 hours, unless a shorter time is required by applicable law, (2) take commercially reasonable measures to address and investigate the Breach of Security in a timely manner and (3) cooperate with the Authority as reasonably requested by the Bidder and/or law enforcement to investigate and resolve the Breach of Security. The Bidder will provide the Authority regular updates and all available information to assist the Authority with notification to law enforcement and third parties as required by applicable law, including a description of the Breach of Security and those measures taken by the Bidder in response to the Breach of Security.
  - c) Incident Response: When commercially reasonable to do so, the Bidder may communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries (subject to preapproval by the Authority if the Bidder specifically identifies the Authority or State Data), and seeking external expertise as mutually agreed at the time, defined by law, or contained in the SLA. Discussing Security Incidents with the Authority should be handled on an urgent as needed basis, as part of Bidder communication and mitigation processes as mutually agreed at the time, defined by law, or contained in the SLA.

- d) Following a Security Incident or Breach of Security, the Bidder shall promptly implement necessary remedial measures, if necessary, and document responsive actions taken related to the Security Incident or Breach of Security, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
5. Termination and Suspension of Service:
- a) In the event of termination of the contract, the Bidder shall implement an orderly return of State Data in a mutually agreeable format and the subsequent secure disposal of State Data remaining in the Bidder's possession.
  - b) Suspension of services: During any period of suspension, the Bidder shall not take any action to intentionally erase any State Data.
  - c) Unless otherwise stipulated, in the event of termination of any services, SLA, or this contract in its entirety, the Bidder shall not take any action to intentionally erase any State Data for a period of:
    - (1) 10 business days after the effective date of termination, if the termination is in accordance with the expiration of the defined contract term;
    - (2) 30 business days after the effective date of termination, if the termination is for convenience; or
    - (3) 60 business days after the effective date of termination, if the termination is for cause.

After such period, the Bidder shall no obligation to maintain or provide any State Data and shall thereafter, unless legally prohibited, delete all State Data in its systems or otherwise in its possession or under its control in accordance with subsection (e) below.
  - d) Post-Termination Assistance: The Authority shall be entitled to any post-termination assistance with respect to the services unless a unique data retrieval arrangement has been established as part of the Contract.
  - e) Secure Data Disposal: When requested by the Authority, the Bidder shall destroy all requested data in all of its forms, including but not limited to: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the Authority.
6. Background Checks: The Bidder shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Bidder shall promote and maintain an awareness of the importance of securing the State's Data among the Bidder's employees and agents.
7. Access to security logs and other reports: The Bidder shall provide logs and reports to the Authority in a format as specified in the Contract and agreed to by both the Bidder and the



- Authority. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State Data related to this Contract, including but not limited to data, file management, transactions, or tools used to provide, manage, secure, or analyze the State's Data. The Bidder shall maintain the reports and logs for the contract term and for two (2) years after the conclusion of the term, and shall provide them to the Authority in the course of an Authority audit or upon written request from the Authority.
8. **Service Level Audit:** The Bidder shall allow the Authority to audit conformance to the Contract terms. The Authority may perform this audit or contract with a third party at its discretion, at the Authority's expense.
  9. **Data Center Audit:** The Bidder shall have an independent third party audit of its data center(s) performed at least annually at their own expense, and provide the audit report to the Authority upon request.
  10. **Change Control and Advance Notice:** The Bidder shall give advance notice to the Authority of any upgrades (e.g. major upgrades, minor upgrades, system changes) that may impact service availability and performance. Said notice shall be provided at least thirty days in advance of the upgrade, unless otherwise agreed in the SLA.
  11. **Security:** The Bidder shall disclose its non-proprietary security processes and technical limitations to the Authority by completing the State's Security Controls Checklist or equivalent system security document, available upon request from the Office of Information Technology, as updated from time to time, such that adequate protection and flexibility can be attained between the Authority and the Bidder.
  12. **Non-disclosure and Separation of Duties:** The Bidder shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of State Data to that which is absolutely needed to perform job duties.
  13. **Import and Export of Data:** The Authority shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Bidder. This includes the ability for the Authority to import or export data to/from other Bidders.
  14. **Responsibilities and Uptime Guarantee:** The Bidder shall be responsible for the acquisition and operation of all hardware, software, and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environment are the responsibilities of the Bidder. The system shall be available 24 hours per day, 365 days per year (with agreed-upon maintenance downtime), and the Bidder shall provide service to the Authority as defined in the Service Level Agreement.
  15. **Right to Remove Individuals:** The Authority shall have the right at any time to require that the Bidder remove from interaction with the Authority any Bidder representative who the Authority believes is detrimental to its working relationship with the Bidder. The Authority will provide the Bidder with notice of its determination, and the reasons it requests the removal. If the Authority signifies that a potential security violation exists with respect to the request, the Bidder shall immediately remove such individual. The Bidder shall not assign the person to any aspect of the Contract or future work orders without the Authority's consent.

16. **Business Continuity and Disaster Recovery:** The Bidder shall provide a business continuity and disaster recovery plan upon request and ensure that the Authority's Recovery Time Objective (RTO) is met. The RTO shall be defined in the SLA.

#### **IV. Contractual Relationship:**

- A. **Subcontracting:** The Bidder may not subcontract other than as identified in the Bidder's proposal without the prior written consent of an Authorized Officer of the Authority. Such consent, if granted in part, shall not relieve the Bidder of any responsibility under the Contract, nor shall it create privity of contract between the Authority and any subcontractor. If the Bidder uses a subcontractor to fulfill any of its obligations, the bidder shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws. Nothing contained in any of the contract documents, shall be construed as creating any contractual relationship between any subcontractor and the Authority.

B. **Mergers, Acquisitions, Dissolution, and Assignments:**

1. **Merger or Acquisition:** If, during the term of the Contract, the Bidder shall merge with or be acquired by another firm, the Bidder shall give notice to the Authority as soon as practicable and in no event longer than 30 days after said merger or acquisition. The Bidder shall provide such documents as may be requested by the Authority, which may include but need not be limited to the following: corporate resolutions prepared by the awarded Bidder and new entity ratifying acceptance of the original Contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause in accordance with Section VII.B.
2. **Dissolution:** If, at any time during the term of the Contract, the Bidder's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Authority must be so notified. All responsible parties of the dissolved business entity must submit to the Authority in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Authority.
3. **Assignment:** The Bidder may not assign its responsibilities under the Contract, in whole or in part, without the prior written consent of an Authorized Officer of the Authority.

- V. **Mandatory Compliance with Law:** The Bidder's compliance with the legal requirements set forth in this paragraph as well as any other applicable laws, regulations or codes is mandatory and cannot be waived by the Authority. The lists of laws, regulations and/or codes cited herein is not intended to be an exhaustive list and are available for review at the State Library, 185 West State Street, Trenton, New Jersey 08625, [https://www.njstatelib.org/research\\_library/legal\\_resources/](https://www.njstatelib.org/research_library/legal_resources/)

A. **Corporate Authority:**

1. All New Jersey corporations must obtain a Certificate of Incorporation from the Office of the New Jersey Secretary of State prior to conducting business in the State of New Jersey.

2. If a Bidder is a corporation incorporated in a state other than New Jersey, the Bidder must obtain a Certificate of Authority to do business from the Office of the Secretary of State of New Jersey prior to receipt of the final contract award. Within seven (7) days of its receipt of a notice of intent to award, the successful Bidder shall provide either a certification or notification of filing with the Secretary of State. Further, in accordance with P. L. 2001, c. 134, which requires all Bidders provide proof of their registration with the Department of the Treasury, Division of Revenue, the Bidder must submit a copy of their "Business Registration Certificate" to the Authority within 30 days of enactment of this contract award. Failure to comply may result in the Authority withdrawing the notice of intent to award.
  3. If the Bidder awarded the Contract is an individual, partnership or joint venture not residing in this State or a partnership organized under the laws of another state, then the Bidder shall execute a power of attorney designating the Secretary of State as his true and lawful attorney for the sole purpose of receiving process in any civil action which may arise out of the performance of the Contract. The appointment of the Secretary of State shall be irrevocable and binding upon the Bidder, his heirs, executors, administrators, successors and assigns. Within ten (10) days of receipt of this service, the Secretary of State shall forward same to the Bidder at the address designated in the Bidder's proposal.
- B. Anti-Discrimination:** All parties to any contract with the Authority agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The Bidder agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.
- C. Affirmative Action:** In accordance with N.J.A.C. 17:27-1.1, prior to award, the Bidder must submit to the Authority a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Bidders or subcontractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at [https://www.state.nj.us/treasury/contract\\_compliance/](https://www.state.nj.us/treasury/contract_compliance/).
- D. Equal Employment Opportunity:** During the performance of the Contract, the Bidder agrees to comply with the requirements of N.J.S.A. 10:5-31 et seq. (P.L. 1975, c.127) and N.J.A.C. 17:27-1.1 et seq., as follows:
- The Bidder will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Bidder will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and

applicants for employment, notices to be provided by the Authority Compliance Officer setting forth provisions of this nondiscrimination clause.

The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The Bidder will send to each labor union or representation of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Authority's contracting officer, advising the labor union or workers' representative of the Bidder's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

1. The Bidder agrees to comply with the regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time, and the Americans with Disabilities Act.
2. The Bidder agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
3. The Bidder agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
4. The Bidder agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal Law and applicable Federal court decisions.
5. In conforming with the targeted employment goals, the Bidder agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The Bidder shall submit to the Authority, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

1. Letter of Federal Affirmative Action Plan Approval;
2. Certificate of Employee Information Report; or

3. Employee Information Report Form AA302 (electronically provided by the Division of Purchase and Property and distributed to the Authority through the Division's website at [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance) ).

The Bidder shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and the Authority shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

**E. Additional Affirmative Action Requirements:** N.J.S.A. 10:2-1 requires that during the performance of the contract, the Bidder must agree as follows:

1. In the hiring of persons for the performance of work under the Contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under the Contract, no Bidder, nor any person acting on behalf of such Bidder, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
2. No Bidder, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under the Contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
3. There may be deducted from the amount payable to the Bidder by the contracting public agency, under the Contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the Contract; and
4. The Contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the Contract occurring after notice to the Bidder from the contracting public agency of any prior violation of this section of the Contract.

**F. Americans with Disabilities Act:** The Bidder must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C., Sec. 12101, et seq.

**G. New Jersey's Diane B. Allen Equal Pay Act:** Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a Bidder performing "qualifying services" or "public work" to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

**H. Warranty of No Solicitation on Commission or Contingent Fee Basis:** The Bidder warrants and represents that no person or selling agency has been employed or retained to solicit or secure the



Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Bidder for the purpose of securing business. If a breach or violation of this section occurs, the Authority shall have the right to terminate the contract without liability or, in the Authority's discretion, to deduct from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

**I. Standards Prohibiting Conflicts of Interest:** The following prohibitions on Bidder activities shall apply to all contracts made with the Authority, pursuant to Executive Order 189 (Kean 1988).

1. No Bidder shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any officer or employee of the State or the Authority, or special State officer or employee as defined in N.J.S.A. 52:13D-13b and e, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by an officer or employee of the Authority shall be reported in writing forthwith by Bidder to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission.
3. No Bidder may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement express or implied, or sell any interest in such Bidder to any officer or employee of the Authority or special State officer or employee, or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
4. No Bidder shall influence, or attempt to influence or cause to be influenced any officer or employee of the Authority in his official capacity in any manner which might tend to impair the objectivity or independence or judgment of said officer or employee.
5. No Bidder shall cause or influence, or attempt to cause or influence, any officer or employee of the Authority to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Bidder or any other person.
6. It is agreed and understood that the Authority reserves the right to determine whether a conflict of interest or the appearance of a conflict of interest exists which would under State law adversely affect or would be contrary to the best interest of the Authority.
7. The provisions cited above in paragraphs 1 through 6 shall not be construed to prohibit an officer or employee of the Authority from receiving gifts from or contracting with vendors



under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission, may promulgate under paragraph 3c of Executive Order No. 189.

J. **Pay to Play Prohibitions:** New Jersey law insulates the negotiation and award of State contracts from political contributions that pose a risk of improper influence, purchase of access or the appearance thereof. P.L.2005, c.51, as amended by the Elections Transparency Act, P.L.2023, c.30, codified at N.J.S.A. 19:44A-20.13 to 20.25 (“Chapter 51”) and Executive Order No. 333 (Murphy 2023) (“E.O. 333”). Pursuant to Chapter 51, a “fair and open process” means, at a minimum, that the contract shall be: publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract; awarded under a process that provides for public solicitation of proposals or qualifications and awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications; and publicly opened and announced when awarded. A contract awarded under a process that includes public bidding or competitive contracting pursuant to State contracts law shall constitute a fair and open process. N.J.S.A. 19:44A-20.23. The Authority will need to determine whether the procurement meets the Election Transparency Act definition of a “fair and open process” and instruct vendors on the applicability of Chapter 51.

1. **For Contracts Awarded Pursuant to a Fair and Open Process:** Pursuant to Chapter 51 and E.O. 333, contracts awarded pursuant to a fair and open process do not require a certification or disclosure of any solicitation or contribution of money, or pledge of contribution, including in-kind contributions.
2. **For Contracts Awarded Pursuant to a Non-Fair and Open Process:** Pursuant to Chapter 51 and E.O. 333, the Authority shall not enter into an agreement or otherwise contract to procure from any business entity services or any material, supplies or equipment, or to acquire, sell, or lease any land or building, where the value of the transaction exceeds \$17,500, if that business entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate or holder of the public office of Governor, or to any State or county political party committee during certain specified time periods. It shall be a breach of the terms of any contract entered into as the result of this bid application for a business entity to (i) make or solicit a contribution in violation of P.L.2005, c. 51; (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of P.L.2005, c. 51; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange or contributions to circumvent the intent of P.L.2005, c. 51; or (viii) directly or indirectly, through or by any other person or means, do any act which would subject that entity to the restrictions of Chapter 51.

Any business entity that is the awardee of a contract or agreement shall, on a continuing basis, report any contributions it makes during the term of the contract or agreement, and any extensions thereof, at the time any such contribution is made.

A “Continuing Political Committee” means any political organization (a) organized under section 527 of the Internal Revenue Code; and (b) consisting of any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least \$5,500 to the aid or promotion of the candidacy of an individual, or of the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions, and which may be expected to make contributions toward such aid or promotion or passage or defeat during a subsequent election, provided that the group, corporation, partnership, association or other organization has been determined to be a Continuing Political Committee by the New Jersey Election Law Enforcement Commission under N.J.S.A.19:44A-8. A Continuing Political Committee does not include a “political party committee,” a “legislative leadership committee,” or an “independent expenditure committee,” as defined in N.J.S.A. 19:44A-3.

Prior to entering into any contract to any business entity pursuant to a non-fair and open process, the business entity proposed as the intended awardee of the contract shall submit the Two-Year Chapter 51/Executive Order 333 Vendor Certification and Disclosure of Political Contributions for Non-Fair and Open Contracts, certifying that no contributions to a Continuing Political Committee or to a candidate committee or election fund of a gubernatorial candidate have been made by the business entity and reporting all qualifying contributions made by the business entity or any person or entity whose contributions are attributable to the business entity. The required form and instructions, available for review on the Division of Purchase and Property’s website at <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>.

Bidders selected for award of a contract shall be required to maintain compliance with Chapter 51 and EO 333 during the term of the engagement.

- K. Certification of Non-Involvement in Prohibited Activities in Iran:** Pursuant to N.J.S.A. 52:32-58, the Bidder must file the Disclosure of Investment Activities in Iran form to certify that neither the Bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the New Jersey Department of the Treasury’s List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Bidder, nor one of its parents, subsidiaries, and/or affiliates is involved in any of the investment activities set forth in N.J.S.A 52:32-56(f). If the Bidder is unable to so certify, the Bidder shall provide a detailed and precise description of such activities as directed on the form. The Bidder’s failure to submit the completed and signed form will preclude the award of a contract to the Bidder. The required Disclosure of Investment Activities in Iran form (Full Version) can be found on the State’s Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.shtml>.
- L. New Jersey Business Registration:** Pursuant to N.J.S.A. 52:32-44, the Authority is prohibited from entering into a contract with an entity unless the Bidder and any subcontractors named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services, and has provided a copy of its business registration certification (or interim registration) as part of its response. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the Bidder who shall provide it to the Authority. Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of business registration copy not properly

provided under a contract with a contracting agency. The Bidder and any subcontractor providing goods or performing services under the Contract, and each of their affiliates, shall, during the term of the Contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the “Sales and Use Tax Act,” P.L.1966, c.30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the state. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

- M. Disclosure of Prohibited Activities with Russia and Belarus:** Pursuant to N.J.S.A. 52:32-60.1 et seq. (P.L. 2022, c.3), a person or entity seeking to enter into or renew a contract for the provision of goods or services shall certify that it is not identified on the list of persons or entities engaging in prohibited activities in Russia or Belarus. Consistent with the federal law, the list of persons and entities engaging in prohibited activities in Russia or Belarus shall consist of all persons and entities appearing on the list of Specially Designated Nationals and Blocked Persons promulgated by the Office of Foreign Assets Control (OFAC) on account of activity relating to Russia or Belarus. The form of certification to be delivered is available at: <https://www.nj.gov/treasury/administration/pdf/DisclosureofProhibitedActivitesinRussiaBelarus.pdf>
- N. Political Contribution Disclosure:** Pursuant to P.L. 2005, c. 271 (“Chapter 271”), at least ten (10) days prior to entering into any agreement or contract with a value over \$17,500 with the Authority, business entities are required to submit a disclosure of certain political contributions. The Bidder is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (“ELEC”) pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, rev. P.L. 2023, c. 30) if in a calendar year the Bidder receives one or more contracts valued at \$50,000 or more. It is Bidder’s responsibility to determine if filing is necessary. Failure to so file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us)
- O. Ownership Disclosure:** Pursuant to N.J.S.A. 52:25-24.2, in the event the Bidder is a corporation, partnership or limited liability company, the Bidder must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Proposal. A Bidder’s failure to submit the completed and signed form prior to or with its Proposal will result in the Bidder being ineligible for a contract award, unless the Division of Purchase and Property has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Proposal submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Proposal.

In the alternative, a Bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. (See N.J.S.A. 52:25-24.2.)

- P. Cybersecurity Incident Reporting Requirement:** Pursuant to N.J.S.A. 52:17B-193.2 et seq. (P.L.2023, c.19), Bidders that have access to, or host the Authority's network(s), system(s), application(s), or information shall report Cybersecurity Incidents to the New Jersey Office of Homeland Security and Preparedness (NJ OHSP) at <https://www.cyber.nj.gov/report/> within 72 hours of when the Bidder reasonably believes that a Cybersecurity Incident has occurred.

Consistent with N.J.S.A. 52:17B-193.2, "Cybersecurity Incident" means a malicious or suspicious event occurring on or conducted through a computer network that jeopardizes the integrity, confidentiality, or availability of an information system or the information the system processes, stores, or transmits.

Consistent with N.J.S.A. 52:17B-193.3(f), any Cybersecurity Incident notification submitted to the NJ OHSP shall be deemed confidential, non- public, and not subject to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the New Jersey Open Public Records Act, as amended and supplemented, and may not be discoverable in any civil or criminal action or subject to subpoena, unless the subpoena is issued by the New Jersey State Legislature and deemed necessary for the purposes of legislative oversight.

This reporting required by N.J.S.A. 52:17B-193.2 et seq. (P.L.2023, c.19) to NJ OHSP is in addition to the Bidder's responsibility to report Security Incidents as may be set forth in the Contract scope of work or the Waivered Contracts Supplement to the State of New Jersey Terms and Conditions. If the Waivered Contracts Supplement is not made part of the Contract and a notification period is not specified in the Contract scope of work, the Bidder shall give notice of the Cybersecurity Incident to the Authority as soon as practicable, but no more than one business day, after the Bidder reasonably believes that a Cyber Security Incident has occurred.

- Q. Prevailing Wage Act Notice:** The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. ("Prevailing Wage Act") is hereby made part of every contract entered into by or on behalf of the Authority, except those contracts which are not within the contemplation of the Prevailing Wage Act. The Bidder's signature on the Proposal is its guarantee that neither the Bidder nor any subcontractors the Bidder might employ to perform the work covered by the Proposal has been suspended or debarred by the Commissioner of the Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the Bidder's signature on the Proposal is also its guarantee that the Bidder and any subcontractors the Bidder might employ to perform the work covered by the Proposal shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.
- R. Public Works Contractor Registration Act:** The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance.
- S. The Worker and Community Right to Know Act:** The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to the Contract. Therefore, all goods offered for purchase to the Authority must be labeled by the Bidder in compliance with the provisions of the statute.

- T. **Buy American:** Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under the Contract, they shall be manufactured or produced in the United States, whenever available, and the Bidder shall be required to so certify.
- U. **Employee Misclassification:** In accordance with Executive Order No. 25 (Murphy 2018) and the July 2019 Report of Governor Murphy's Task Force on Employee Misclassification ([Misclassification Report 2019.pdf \(nj.gov\)](#)), employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the "ABC Test" below:
1. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
  2. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
  3. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

## **VI. Changes to Contract and Suspension of Work:**

- A. **Authority's Option to Reduce Scope of Work:** The Authority has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under the Contract. In such an event, an Authorized Officer of the Authority shall provide to the Bidder advance written notice of the change in scope of work and what the Authorized Officer of the Authority believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:
1. If the Bidder does not agree with the Authorized Officer of the Authority's proposed adjusted contract price, the Bidder shall submit to the Authority any additional information that the Bidder believes impacts the adjusted contract price with a request that the Authority reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Authority shall make a prompt decision taking all such information into account, and shall notify the Bidder of the final adjusted contract price; and
  2. If the Bidder has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Bidder shall be compensated for such work effort according to the applicable portions of its price schedule and the Bidder shall submit to the Authority an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information an Authorized Officer of the Authority may request. The Authority shall make a



prompt decision taking all such information into account, and shall notify the Bidder of the compensation to be paid for such work effort.

Any changes or modifications to the terms of the Contract shall be valid only when they have been reduced in writing and signed by the Bidder and Authorized Officer of the Authority.

- B. **Change in Law:** If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, whether including new work required by the change in law or to eliminate work no longer required by the change in law along with a commensurate price change. The parties shall negotiate the terms of the change in good faith, however if agreement is not possible after reasonable efforts, the Authority shall make a prompt decision taking all relevant information into account, and shall notify the Bidder of the final adjusted scope of work and contract price.
- C. **Suspension of Work:** The Authority may, for valid reason, issue a stop order directing the Bidder to suspend work under the Contract for a specific time. The Bidder shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Bidder shall resume work upon the date specified in the stop order, or upon such other date as the Authority contract manager may thereafter direct in writing. The period of suspension shall be deemed added to the Bidder's approved schedule of performance.
- D. **Contract Amendment:** Except as provided herein, the Contract may only be amended by written agreement of the Authority and the Bidder.

## **VII. Termination of Contract:**

- A. **For Convenience:** Notwithstanding and provision or language to the contrary, the Authority may terminate the Contract at any time, in whole or in part, for the convenience of the Authority, upon no less than thirty (30) days' notice to the Bidder.
- B. **For Cause:**
  - 1. Where a Bidder fails to perform or comply with the Contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Authority may terminate the contract, in whole or in part, upon ten (10) days' notice to the Bidder with an opportunity to respond; and
  - 2. Where in the reasonable opinion of the Authority, a Bidder continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Authority is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Bidder to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Authority may terminate the contract, in whole or in part, upon ten (10) days' notice to the Bidder with an opportunity to respond.
  - 3. The Authority's right to terminate the contract award for cause includes violation of state and federal law (as demonstrated by the Bidder's admissions of same or a final decision of an appropriate decision-making body), or any reason related to the ability of the Bidder to fulfill its contractual obligations. The Authority may also terminate any contract with a



federally debarred Bidder or a Bidder that is presently identified on the list of parties excluded from federal procurement and nonprocurement contracts.

- C. In cases of emergency the Authority may shorten the time periods of notification and may dispense with an opportunity to respond.
- D. Upon a termination of the contract award under this or any other paragraph herein, the Bidder shall be entitled to receive as full compensation for work performed in accordance with the Contract, up to the date of termination. Such compensation may be subject to adjustments.
- E. Upon termination of the contract award, the Authority may acquire the services which are the subject of the Contract from another source and may charge the Bidder whose contract award has been terminated the difference in price, and the Bidder shall be liable for same.

## **VIII. Price and Payment**

### **A. Payments to Bidder:**

- 1. The Authority is authorized to order and the Bidder is authorized to ship only those items covered by the Contract. If a review of orders place by the Authority reveals that good and/or services other than that covered by the Contract have been ordered and delivered, such delivery shall be a violation of the terms of the Contract and may be considered by the Authority as a basis to terminate the Contract and/or not award the Bidder a subsequent contract. The Authority may take such steps as are necessary to have the items returned, regardless of the time between the date of delivery and discovery of the violation. In such event, the Bidder shall reimburse the Authority for the full purchase price;
- 2. The Bidder must submit invoices to the Authority with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the Authority prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work and must be in strict accordance with the firm, fixed prices submitted for each task or subtask. When applicable, invoices should reference the appropriate task or subtask or price line number from the Bidder's proposal. All invoices must be approved by an Authorized Officer of the Authority before payment will be authorized;
- 3. In all time and materials contracts, the Authority shall monitor and approve the hours of work and the work accomplished by Bidder and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at;
- 4. The Bidder shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Office of Diversity and Inclusion;
- 5. The Bidder shall have sole responsibility for all payments due any subcontractor; and

6. If the Bidder offers a cash discounts based on expedited payment by the Authority. The Authority will make efforts to take advantage of discounts. Should the Bidder choose to offer cash discounts the following shall apply:
  - a) Discount periods shall be calculated starting from the next business day after the Authority has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is the latest; and
  - b) The date on the check issued by the Authority in payment of that invoice shall be deemed the date of the Authority's response to that invoice.
- B. **Price Fluctuation During Contract:** Unless otherwise agreed to in writing by the Authority, all prices quoted shall be firm through issuance of the Contract and shall not be subject to increase during the period of the Contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the Authority shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the Contract period. The Authority must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, in accordance with Section VII.B. In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and documentation.
- C. **Tax Charges:** The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.
- D. **New Jersey Prompt Payment Act:** The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires the Authority to pay for goods and services within 60 days of receipt and acceptance of goods and services. Properly executed performance security, when required, must be received by the Authority prior to processing any payments for goods and services accepted by the Authority. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.
- E. **Availability of Funds:** The Authority's obligations to the Bidder under the Contract are contingent upon the availability of funds from which payment for Contract purposes can be made in accordance with the provisions of the New Jersey Health Care Facilities Financing Act, N.J.S.A 26:21-1 et seq., as amended.
- F. **Retainage:** If the Authority has required retainage for the Contract, the Authority will retain the stated percentage or retainage from each invoice. Payment of retainage will be authorized after satisfactory completion and submission of all services, deliverables or work products by the Bidder and acceptance by the Authority of all services, deliverables or work products required by the Contract.

For ongoing Contracts, the Authority will retain the stated percentage of each invoice submitted. At the end of the three (3) month period after payment of each invoice, the Authority will review the Bidder's performance and if performance has been satisfactory, the Authority

will release the retainage for the preceding three (3) month period. Following the expiration of the Contract, retained fees will be released to the Bidder after certification by an Authorized Officer of the Authority, if any, that all services have been satisfactorily performed.

**G. Performance Security:** If performance security is required, such security must be submitted with the bid in the amount listed in the scope of work. N.J.A.C. 17:12-2.5. Acceptable forms of performance security are as follows:

1. A properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey,
2. A certified or cashier's check drawn to the order of "Treasurer, State of New Jersey," or
3. An irrevocable letter of credit issued by a federally insured financial institution and naming "Treasurer, State of New Jersey," as beneficiary.

The Performance Security must be submitted to the Authority within 30 days of the effective date of the Contract award and cover the period of the Contract and any extensions thereof. Failure to submit performance security may result in cancellation of the Contract for cause and nonpayment for work performed.

Although the performance bond is required for the full term of the Contract, the Authority recognizes that the industry practice of sureties is to issue a one (1) year performance bond for Goods and Services contracts. Thus, the Bidder is permitted to submit a one (1) year performance bond for the amount required under the Contract and, on each succeeding anniversary date of the Contract, provide a continuation or renewal certificate to evidence that the bond is in effect for the next year of the Contract. This procedure will remain in place for each year of the Contract thereafter until the termination of the Contract. Failure to provide such proof on the anniversary date of the Contract may result in suspension of the Contract, and possibly, termination of the Contract.

For performance bonds based on a percentage of the total estimated Contract price. On each anniversary of the effective date of the Contract, the amount of the required performance bond, unless otherwise noted, is calculated by applying the established RFP performance bond percentage to the outstanding balance of the estimated amount of the Contract price to be paid to the Bidder.

In the event that the Contract price is increased by a Contract Amendment, the Bidder may be required to provide, within 30 calendar days of the effective date of the Contract Amendment, performance bond coverage for the increase in Contract price. The required increase in the performance bond amount is calculated by applying the established bond percentage set forth above to the increase in Contract price. Failure to provide such proof to the Authority of this required coverage may result in the suspension of payment to the Bidder until such time the Bidder complies with this requirement.

**IX. Notice to All Bidders Set-Off For State Tax Notice:** Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S Corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of the State government, is entitled to payment for those goods or services at the same time a taxpayer,

partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c. 184 (c. 52:32-32 et seq.), to the taxpayer shall be stayed.

- X. Notices:** All notices required under the Contract shall be in writing and shall be validly and sufficiently served by the Authority upon the Bidder, and vice versa, if addressed and mailed by certified mail to the addressee set forth in the Contract.

Notice to the Authority shall be mailed to the following address:

**Overnight Delivery Address:**

Station Plaza, Building #4, Floor #4  
22 South Clinton Avenue  
Trenton, NJ 08609-1212

**Mailing Address:**

P.O. Box 366  
Trenton, NJ 08625-0366

**XI. Claims and Remedies:**

- A. All claims asserted against the Authority by the Bidder shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. While the New Jersey Contractual Liability Act does not apply to the Authority by its terms, the Bidder by submitting a proposal agrees that it shall apply to any claims under the Contract.
- B. Nothing in the Contract shall be construed to be a waiver by the Authority of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by an Authorized Officer of the Authority.
- C. In the event that the Bidder fails to comply with any material Contract requirements, the Authority may take steps to terminate the Contract in accordance with these Standard Terms and Conditions, authorize the delivery of Contract items by any available means, with the difference between the price paid and the defaulting Bidder's price either being deducted from any monies due the defaulting Bidder or being an obligation owed the Authority by the defaulting Bidder, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

- XII. Anti-Trust Claims:** The Bidder recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing the Contract, the Bidder, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the Authority all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired

by the Authority pursuant to the Contract. In connection with this assignment, the following are the express obligations of the Bidder:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
  - 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
  - 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the Bidder has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the Bidder, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the Authority hereunder.

**XIII. Compliance – Laws:** The Bidder must comply with all local, State and federal laws, rules and regulations applicable to the Contract and to the goods delivered and/or services performed hereunder.

**XIV. Applicable Law and Jurisdiction:** The Contract and any and all litigation arising therefrom or related thereto shall be governed by and the rights and obligations of the parties hereto shall be determined in accordance with the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

**XV. No Arbitration:** Notwithstanding anything to the contrary in the Bidder's Proposal, Standard Form Agreement ("SFA") or Scope of Work ("SOW"), the Authority does not agree to binding arbitration or not binding arbitration.

**XVI. No Auto-Renewal:** Notwithstanding anything to the contrary in the Bidder's Proposal, SFA or SOW, the Authority does not agree to auto-renewal of any services, standard software maintenance, technical support or service fees.

**XVII. Organ Donation:** As required by N.J.S.A. 52:32-33.1, the Authority encourages the Bidder to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.