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## ATTACHMENT 2

### Insurance Requirements

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

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

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of this Contract.

**A. General Conditions Applicable to Insurance.** All policies of insurance required by this Contract shall comply with the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from Contractor are specified in Paragraph B *Insurance Requirements* below.
- 2. Policy Forms.** Except as otherwise specifically provided herein, or agreed to in this Contract, all policies of insurance required by this Attachment shall be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three years with respect to events that occurred but were not reported during the term of the policy. ***Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) or that remove or modify the “insured contract” exception to the employers liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors, are not acceptable.***
- 3. Certificates of Insurance/Notices.** Contractor shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the award number and shall name The New York State Office of General Services, Bureau of Risk and Insurance Management (BRIM), 32<sup>nd</sup> Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Contract;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

**4. Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

**5. Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Attachment at any time during the term of this Contract shall be considered a breach of the terms of this Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees to avail themselves of all remedies available under this Contract, at law or in equity.

**6. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Contractor shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

7. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable, and shall be provided to OGS upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

8. **Waiver of Subrogation.** For all liability policies and the workers' compensation insurance required below, the Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. **Additional Insured.** The Contractor shall cause to be included in each of the liability policies required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 and CG 20 37 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section 13 below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. If Contractor is self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

10. **Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

11. **Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received

from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Contract.

**12. Policy Renewal/Expiration** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Contract shall be delivered to OGS. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.

**13. Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the OGS BRIM contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For other requested documentation evidencing coverage: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days

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

## **B. Insurance Requirements**

Contractor shall obtain and maintain in full force and effect, throughout the term of this Contract, at its own expense, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater:

<b>Insurance Type</b>		<b>Proof of Coverage is Due</b>
<b>Commercial General Liability</b>	Not less than \$2,000,000 each occurrence	After renewal or upon request
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
<b>Business Automobile Liability Insurance</b>	Not less than \$2,000,000 each occurrence	
<b>Umbrella or Excess Liability</b>	Not less than \$5,000,000 per occurrence and in the aggregate	

Insurance Type		Proof of Coverage is Due
Professional Errors & Omissions	\$2,000,000	
Workers' Compensation		
Disability Benefits		

**1. Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract).

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

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

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this Contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than three years, commencing upon acceptance of the work, as required by this Contract;
- Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.
- Contractor means and methods.

**2. Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of any automobile used in connection with performance under this Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under this Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under this Contract on a form provided by OGS. If, however, during the term of this Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under this Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this

section and provide proof of such coverage to OGS in accordance with the insurance requirements of this Contract.

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

**3. Umbrella or Excess Liability Insurance (over the Commercial General Liability)** Such liability shall be written on the current edition of ISO occurrence form CU 00 01 12 07, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract). In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted.

**4. Professional Errors and Omissions:** If providing professional occupation job titles, the Contractor shall maintain Professional Liability insurance.

- Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services.
- If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OGS upon request.
- The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Contract.

**5. Workers' Compensation Insurance and Disability Benefits Requirements**

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of any contract renewal.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

The failure to comply with the requirements of this Attachment at any time during the term of this Contract shall be considered a breach of the terms of this Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by

law or regulation to use this Contract and their officers, agents, and employees to avail themselves of all remedies available under this Contract, at law or in equity.

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.