

APPENDIX F

TECHNOLOGY TERMS AND CONDITIONS

DEFINITIONS

“Analytic Derivatives” shall mean the outcome from Data Mining or other aggregated Data analysis techniques.

“Data” shall mean any information, Analytic Derivatives, formula, algorithms, or other content that the DEPARTMENT may provide to the CONTRACTOR pursuant to this Contract. Data includes, but is not limited to, any of the foregoing that the DEPARTMENT and/or Contractor (i) uploads to the Cloud Service, and/or (ii) creates and/or modifies using the Cloud Solution.

“Cloud Solution” shall mean any Product or Service sold as an “as a service” offering and has one or more of the following characteristics:

- a. DEPARTMENT Data is transmitted, acted upon, or stored on equipment not owned by the DEPARTMENT;
- b. Allows a Contractor access to DEPARTMENT Data from a location other than the DEPARTMENT’S premises;
- c. Allows the DEPARTMENT access to data not owned by the DEPARTMENT which access may or may not result in the collection of DEPARTMENT Data.

“Commercial Off-The-Shelf” (COTS) shall mean products available in the commercial marketplace that can be purchased and used under government Contract. Does not include Custom Software.

“Custom Product” shall mean products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for the DEPARTMENT under the Contract.

“Documentation” shall mean the complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, that are necessary to enable the DEPARTMENT to properly test, install, operate and enjoy full use of the Product.

“Licensed Software” shall mean Software transferred upon the terms and conditions set forth in the Contract. “Licensed Software” includes Error Corrections, upgrades, enhancements or New Licensed Software Releases, and any deliverables due under a technical support/maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

“New Licensed Software Releases” (Licensed Software Revisions) shall mean any commercially released revisions to the licensed version of Licensed Software as may be generally offered and available to the DEPARTMENT on technical support/maintenance. New Licensed Software Releases involve a substantial revision of functionality from a previously released version of the Licensed Software. Updates are provided when available, and Contractor is under no obligation to develop any future Product or functionality.

“Product” shall mean Deliverables furnished under this Contract by or through Contractor, including Cloud Solution, existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

“Service” shall mean the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange.

“System” shall mean the complete collection of Hardware, Software and Services as described in the resulting Contract, integrated and functioning together, and performing in accordance with the Contract.

“Virus” shall mean any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

A. General Requirements.

CONTRACTOR agrees that it shall provide technology and/or services, including Cloud Solution, Commercial Off-the Shelf (COTS), and Custom Product or Service, in a manner consistent with the following requirements:

1. Host all DEPARTMENT Data and maintain and implement procedures to physically and logically segregate DEPARTMENT’S Data from CONTRACTOR’S data and data belonging to CONTRACTOR’S other customers.
2. Establish and maintain appropriate environmental, safety and facility procedures, data security procedures and other safeguards against the destruction, corruption, loss or alteration of the hosting Services and any DEPARTMENT Data, and to prevent unauthorized access, alteration or interference by third parties of the same.
3. Utilize industry best practices and technology (including appropriate firewall protection, intrusion prevention tools, and intrusion detection tools) to protect, safeguard, and secure the System and DEPARTMENT Data against unauthorized access, use, and disclosure. CONTRACTOR shall constantly monitor for any attempted unauthorized access to, or use or disclosure of, any of such materials and shall immediately take all necessary and appropriate action in the event any such attempt is discovered, promptly notifying the Office of Information Technology Service’s Enterprise Information Security Officer (ITS EISO) of any material or significant breach of security with respect to any such materials.
4. When software vulnerabilities are revealed and addressed by a vendor patch, CONTRACTOR will obtain the patch from the applicable vendor and categorize the urgency of application as either “critical” or “non-critical” in nature. The determination of the critical versus non-critical nature of patches is solely at the reasonable discretion of CONTRACTOR in consultation with ITS EISO. CONTRACTOR will apply all critical security patches, hot fixes, or service packs as they are tested and determined safe for installation.

B. Data Location and Related Restrictions

All Data shall remain in the Continental United States (CONUS). Any Data stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within CONUS.

C. Support Services

All helpdesk, online, and support services which access any Data must be performed from within

CONUS.

D. CONTRACTOR Portable Devices

CONTRACTOR shall not place Data on any portable Device unless Device is located and remains within CONTRACTOR'S CONUS Data Center.

E. Data Breach - Required CONTRACTOR Actions

Unless otherwise provided by law, in the event of a Data Breach, the CONTRACTOR shall:

1. Notify the ITS EISO and any potentially affected DEPARTMENT or their designated contact person(s), by telephone as soon as possible.
2. Consult with and receive authorization from the DEPARTMENT as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by the DEPARTMENT;
3. Coordinate all communication regarding the Data Breach with the ITS EISO and DEPARTMENT;
4. Cooperate with the DEPARTMENT and ITS EISO in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
5. Take corrective action in the timeframe required by the DEPARTMENT. If CONTRACTOR is unable complete the corrective action within the required timeframe the DEPARTMENT may Contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the DEPARTMENT, or until the DEPARTMENT has completed a new procurement for a replacement service system. The CONTRACTOR will be responsible for the cost of these services during this period. Nothing herein shall in any way (a) impair the authority of the Office of the Attorney General to bring an action against CONTRACTOR to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit CONTRACTOR'S liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

F. Data Ownership

The DEPARTMENT shall own all right, title and interest in Data.

G. DEPARTMENT Access to Data

The DEPARTMENT shall have access to its Data at all times, through the term of this Contract. The DEPARTMENT shall have the ability to import or export Data in piecemeal or in its entirety at the DEPARTMENT'S discretion, without interference from the CONTRACTOR. This includes the ability for the DEPARTMENT to import or export Data to/from other CONTRACTORS.

H. CONTRACTOR Access to Data

The CONTRACTOR shall not copy or transfer Data unless authorized by the DEPARTMENT. In such an event the Data shall be copied and/or transferred in accordance

with the provisions of this Section. CONTRACTOR shall not access any Data for any purpose other than fulfilling the service. CONTRACTOR is prohibited from Data Mining, cross tabulating, monitoring DEPARTMENT'S Data usage and/or access, or performing any other Data Analytics other than those required under this Contract. At no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the DEPARTMENT be copied, disclosed, or retained by the CONTRACTOR or any party related to the CONTRACTOR. CONTRACTORS must perform industry standard back-ups of Data. Documentation of back-up must be provided to the DEPARTMENT upon request.

I. Suspension of Services

During any period of suspension of service, the DEPARTMENT shall have full access to all Data at no charge. The CONTRACTOR shall not take any action to erase and/or withhold any DEPARTMENT Data, except as directed by the DEPARTMENT.

J. Transferring of Data

The CONTRACTOR will not transfer Data unless directed to do so in writing by the DEPARTMENT. At the request of the DEPARTMENT, the CONTRACTOR will provide the services required to transfer Data from existing Databases to physical storage devices, to facilitate movement of large volumes of Data.

K. Requests for Data by Third Parties

Unless prohibited by law, CONTRACTOR shall notify the DEPARTMENT in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than the DEPARTMENT, and the CONTRACTOR shall secure written acknowledgement of such notification from the DEPARTMENT before responding to the request for Data. Unless compelled by law, the CONTRACTOR shall not release Data without the DEPARTMENT'S prior written approval.

L. Transfer of Data at End of Contract

At the end of the Contract, CONTRACTOR may be required to transfer Data to a new CONTRACTOR and/or to the DEPARTMENT. This transfer must be carried out as specified by the DEPARTMENT. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats.

M. Transfer of Data; Contract Breach or Termination

In the case of Contract breach or termination for cause of this Contract, all expenses for the transfer of Data shall be the responsibility of the CONTRACTOR.

N. Expiration or Termination of Services

Upon expiration or termination of this Contract, the DEPARTMENT shall have full access to all Data for a period of 90 calendar days at no charge. During this period, the CONTRACTOR shall not take any action to erase and/or withhold any Data, except as directed by the DEPARTMENT.

O. Return of Data

Upon expiration or termination of this Contract, the CONTRACTOR shall return Data in a format required by the DEPARTMENT. When requested by the DEPARTMENT, the CONTRACTOR must certify that all Data has been removed from its system and removed from backups.

P. Secure Data Disposal

If requested by the DEPARTMENT, the CONTRACTOR shall destroy Data in all of its forms, including all backups. Data shall be permanently deleted and shall not be recoverable, according to ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor. Certificates of destruction, in a form acceptable to the DEPARTMENT, shall be provided by the CONTRACTOR to the DEPARTMENT.

Q. Destruction of Data

The Data, and/or the storage medium containing the Data, shall be destroyed in accordance with applicable ITS destruction policies (ITS Policy S13-003 Sanitization/Secure Disposal and S14-003 Information Security Controls or successor) when the CONTRACTOR is no longer Contractually required to store the Data.

R. Background Checks

The DEPARTMENT may require the CONTRACTOR to conduct background checks on certain CONTRACTOR staff at no charge to the DEPARTMENT.

S. Separation of Duties

The DEPARTMENT may require the separation of job duties, and limit staff knowledge of Data to that which is absolutely needed to perform job duties.

T. Business Continuity/Disaster Recovery Operations

The CONTRACTOR shall provide and implement a business continuity and disaster recovery plan in accordance with the requirements of the RFP and approved by the New York State Office for Information Technology Services.

U. Compliance with Federal, State and Local Regulations

The DEPARTMENT may require the CONTRACTOR to provide verification of compliance with specific federal, state and local regulations, laws and information technology standards with which the DEPARTMENT is required to comply.

V. Warranties

1. Product Performance. CONTRACTOR hereby warrants and represents that the Product acquired by the DEPARTMENT under this Contract conform to CONTRACTOR'S specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products
2. Title and Ownership. CONTRACTOR warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights from a third party, to any Products or Services acquired by the DEPARTMENT under this Contract. CONTRACTOR shall be solely liable for any costs of acquisition associated therewith. CONTRACTOR shall indemnify the

DEPARTMENT and hold the DEPARTMENT harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of CONTRACTOR's warranties as set forth herein.

3. Product Warranty. CONTRACTOR further warrants and represents that Products or Services shall be free from defects in material and workmanship and will conform to all requirements of this Contract for the CONTRACTOR'S standard commercial warranty period, if applicable, or for the term of this Contract from the date of acceptance, whichever is longer (the "Product warranty period").
4. Virus Warranty. The CONTRACTOR represents and warrants that any Licensed Software acquired under the Contract by the DEPARTMENT does not contain any known Viruses. CONTRACTOR is not responsible for Viruses introduced at the DEPARTMENT's Site
5. Workmanship Warranty. CONTRACTOR warrants that the Services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The DEPARTMENT must notify CONTRACTOR of any Services warranty deficiencies within ninety calendar days from performance of the Services that gave rise to the warranty claim.
6. Survival of Warranties. All warranties contained in this Contract shall survive the termination of this Contract.
7. Prompt Notice of Breach. The CONTRACTOR shall promptly notify the DEPARTMENT in writing of any claim of breach of any warranty provided herein.
8. Additional Warranties. Where CONTRACTOR, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, CONTRACTOR shall offer or pass through any such warranties to the DEPARTMENT.
9. No Limitation of Rights. The rights and remedies of the DEPARTMENT provided in this clause are in addition to and do not limit any rights afforded to the DEPARTMENT by any other clause of this Contract.

W. Ownership/Title to Project Deliverables

Title and ownership to software delivered by CONTRACTOR under the Contract that is normally commercially distributed on a license basis by the CONTRACTOR or other independent software vendor proprietary owner Product, whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with CONTRACTOR or the proprietary owner of other independent software vendor(s) ("ISV"). Effective upon acceptance, such Product shall be licensed to the DEPARTMENT in accordance with the CONTRACTOR or ISV owner's standard license CONTRACT, provided, however, that such standard license, must during the term of this Contract, at a minimum, grant the DEPARTMENT a non-exclusive license to use, execute, reproduce, display, perform, adapt (unless CONTRACTOR advises the DEPARTMENT as part of CONTRACTOR'S proposal that adaptation will violate existing contracts or statutes and CONTRACTOR demonstrates such to the DEPARTMENT'S satisfaction).

X. CONTRACTOR'S Obligation with Regard to ISV (Third Party) Product

CONTRACTOR shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the DEPARTMENT at CONTRACTOR'S sole cost and expense.

Y. Escrow of Source Code

1. The CONTRACTOR shall either:
 - a. Provide the DEPARTMENT with the source code for the Product at the expense of the CONTRACTOR, place the source code in a third-party escrow arrangement with a designated escrow agent, who shall be named and identified to, and acceptable to, the DEPARTMENT, and who shall be directed to release the deposited source code in accordance with a standard Escrow Agreement acceptable and approved by the DEPARTMENT. The Escrow Agreement must, at minimum, provide for release of the source code to the DEPARTMENT if (i) CONTRACTOR files for bankruptcy or becomes insolvent (ii) CONTRACTOR misrepresents its Products or services (iii) CONTRACTOR fails to perform work as agreed upon in this Contract and subsequent Contract (iv) CONTRACTOR ceases business operations generally or fails to make available maintenance or support services for the then-current version of the licensed Product; or
 - b. Certify to the DEPARTMENT that the Product manufacturer/developer has named the DEPARTMENT as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the DEPARTMENT and who shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the DEPARTMENT in writing. The CONTRACTOR shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.
2. Throughout the term of this Contract, the CONTRACTOR will deliver all software, including updates to the software, to the DEPARTMENT or the escrow agent within five (5) business days of implementing the use of such software so that all software in the custody of the DEPARTMENT or the escrow agent will be the then current version reflecting all changes and upgrades, but in any event, no less frequently than every six (6) months.
3. The CONTRACTOR also must place in escrow one (1) paper copy and one (1) electronic copy of maintenance manuals and additional documentation that are required for the proper maintenance of all systems and the software used to develop, test, and implement the system. Revised copies of manuals and documentation must be placed in the escrow account in the event they are changed. Such documentation must consist of logic diagrams, installation instructions, operation and maintenance manuals, and must be the same as that which the CONTRACTOR supplies to its maintenance personnel to maintain its software.
4. Except as otherwise provided in this Contract, the CONTRACTOR will not be obligated to provide source code (the un-compiled operating instructions for the software) for commercial software unless it is readily available from the licensor. When source code is provided, it must be provided in the language in which it was written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code. If the source code of such third-party is not

otherwise provided or freely available, the CONTRACTOR will be obliged to ensure that the source code and associated documentation is subject to an Escrow Agreement meeting the requirements of paragraph 1.a of this subsection. In the event that this Contract expires and is not renewed or extended, the DEPARTMENT has the option to continue the Escrow Agreement until such time that the DEPARTMENT is no longer using the software or documentation covered by this Escrow Agreement.