



**STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
Office of Budget & Management Analysis
Bureau of Fiscal Services
Building 9, Room 234
W.A. Harriman Campus
Albany, NY 12227**

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Budget & Accounting Services

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July 29, 2013

**Amendment #3
For Request for Proposals (RFP) 13-03 ELECTRONIC PAYMENTS SERVICES**

To All Potential Bidders:

The Department is issuing Amendment #3 to:

- Amend Technical Requirement III.F. Insurance Requirements; and
- Amend the Insurance Language in the Preliminary Contract.

All deletions are shown as shaded, strike-through text, all additions are made in red text.

All other requirements and conditions remain as indicated in the RFP.

F. Insurance Requirements

Prior to the commencement of services, the Contractor shall file with The State of New York, Department of Tax and Finance (hereinafter referred to as "DTF"), Certificates of Insurance evidencing compliance with all requirements contained in this Contract. These policies must be written in accordance with the requirements of the paragraphs below. Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Department may, at its sole discretion, accept policies of insurance written by a non-authorized carrier(s) when Certificates and/or other policy documentation are accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit. Nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. Acceptance and/or approval by DTF does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

All insurance required by the Contract shall: i) be obtained at the sole cost and expense of the Contractor, ii) be maintained with insurance carriers licensed to do business in New York State, and acceptable to DTF, iii) be primary and non-contributing to any insurance or self-insurance maintained by DTF, iv) be endorsed to provide DTF with written notice at least thirty (30) days prior to the cancellation of such policies, and v) name The People of the State of New York, its officers, agents, and employees as additional insureds thereunder. The additional insured requirement does not apply to Workers Compensation, or Disability or Technology Professional Liability coverage.

The Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject.

The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by 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 period of time such coverages are required to be in effect.

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As soon as reasonably practicable prior to the expiration date or renewal date, the Contractor shall supply DTF updated/replacement Certificates of Insurance, and amendatory endorsements.

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

A. Specific Coverage and Limits. The types of insurance and the minimum policy limits shall be as follows:

1. General Liability. Commercial General Liability Insurance (CGL) covering the liability of Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages. The limits under such policy shall not be less than the following:

- Each Occurrence limit - \$1,000,000
- General Aggregate - \$2,000,000
- Products/Completed Operations - \$2,000,000
- Personal Advertising Injury - \$1,000,000
- Damage to Rented Premises - \$50,000
- Medical Expense - \$5,000

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
- Cross liability for additional insured's

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- Products/completed operations
2. **Additional Insured.** The Department shall be named as additional insureds thereunder where applicable. Such liability must be written on the ISO occurrence form CG 20 10 11 85, or a substitute form providing equivalent coverages.
 3. **Cyber (Internet) liability.** The Contractor shall maintain Cyber Internet Liability insurance with a limit of not less than \$1,000,000.00 for damages arising from theft, destruction or unauthorized use of electronic data, and/or failing to safeguard another party's electronic data, including unauthorized access, viruses, attacks on covered systems, theft, extortion, loss of income due to online business interruption, and the cost of investigating the reason for the interruption. This coverage is made on a claims-made policy form, so the Contractor shall purchase, at its sole expense, an Extended Discovery Clause for up to three (3) years after the work is completed if the coverage is cancelled or not renewed.
 4. **Technology Professional Liability.** The Contractor shall maintain Technology Professional Liability (Errors and Omissions) insurance with a limit of not less than \$1,000,000.00 for damages arising from computer-related services including, but not limited to, the following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer hardware or software developed, manufactured, distributed, licensed, marketed or sold. This errors and omissions insurance shall include coverage for third party claims and losses including with respect to network risks (such as data breaches, transmission of virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information, direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties. This coverage is made on a claims-made policy form, so the Contractor shall purchase, at its sole expense, an Extended Discovery Clause for up to three (3) years after the work is completed if the coverage is cancelled or not renewed.
 5. **Workers Compensation.** For work to be performed in NYS, Contractor shall provide and maintain coverage during the life of the Contract for the benefit of such employees of Contractor that are required to be covered by the NYS Workers Compensation Law.
 6. **Disability Benefits.** For work to be performed in NYS, Contractor shall provide and maintain coverage during the life of the Contract for the benefit of such employees

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of Contractor that are required to be covered by the NYS Disability Benefits Law. Any waiver of this requirement must be approved by the Department and will only be granted in unique or unusual circumstances.

7. Comprehensive Business Automobile Liability. Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired, and non-owned automobiles.

B. Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty, ~~excluding Cyber Liability,~~ a waiver of the insurer's right of subrogation against DTF, or, if such waiver is unobtainable, (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against DTF, or (ii) any other form of permission for the release of DTF.

~~C. Liquidated Damages~~

~~The Contractor will be liable for liquidated damages as a result of any virus or information security breach without limitation for the cost of any forensic investigation, replacement or restoration required due to any virus, information security breach or any other incident compromising the availability, privacy, security, integrity or usability of any Department and/or taxpayer data including, but not limited to, costs to: remediate the breach, offer credit monitoring services and/or handle public communications concerning the incident and response.~~

~~Note: The Department will negotiate the Liquidated Damages section of the Insurance Requirements.~~

Response Requirement

The Bidder must affirm understanding of, and agreement to comply with, the Insurance Requirements.

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settle or defend such action, claim or suit at the Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of the Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the Department may require the Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Department shall require.

If any claim is brought against the Department for the unauthorized use of such product, information, service or thing, the Contractor will indemnify the Department for any expense due to such claim and will cooperate with the Department and the Attorney General in the defense of that claim.

C. Liquidated Damages

Contractor is liable for Liquidated Damages as set forth in Attachment ____ of this Agreement. In addition to the Liquidated Damages set forth in Attachment ___ and notwithstanding any amount or limitation established, Contractor shall be liable, without limitation for the following:

1. Prompt reimbursement of taxpayers by Contractor for any substantiated bank-related expenses due to the Contractor's failure to meet a Performance Standard or other Requirement under the Agreement.
2. If requested by the Department, the Contractor shall correct, at Contractor's sole expense, reports and/or data that fail to meet a Performance Standard or other Requirement under the Agreement.

~~3. The cost of any forensic investigation, replacement or restoration required due to any virus, information security breach or any other incident compromising the availability, privacy, security, integrity or usability of any Department and/or taxpayer data including, but not limited to, costs to: remediate the breach, offer credit monitoring services and/or handle public communications concerning the incident and response.~~

D. Actual and/or Direct Damages

Contractor will be liable to DTF for all actual damages incurred as a direct result of Contractor's failures in providing the Services and performing its obligations under this Agreement and for all direct damages for personal injury, death or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of Contractor, its officers, employees or agents.

Without limiting the foregoing, Contractor shall be liable , without limitation for the cost of any forensic investigation, replacement or restoration required due to any virus, information security breach or any other incident compromising the availability, privacy, security, integrity

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or usability of any Department and/or taxpayer data including, but not limited to, costs to: remediate the breach, offer credit monitoring services and/or handle public communications concerning the incident and response.

E. Breach of Confidentiality

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individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Article XXIV. Insurance Requirements

General Insurance. Prior to the commencement of services, the Contractor shall file with The State of New York, Department of Tax and Finance (hereinafter referred to as "DTF"), Certificates of Insurance evidencing compliance with all requirements contained in this Contract. These policies must be written in accordance with the requirements of the paragraphs below. Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the Department and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

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The Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by 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 period of time such coverages are required to be in effect.

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1. systems, theft, extortion, loss of income due to online business interruption, and the cost of investigating the reason for the interruption. This coverage is made on a claims-made policy form, so the Contractor shall purchase, at its sole expense, an Extended Discovery Clause for up to three (3) years after the work is completed if the coverage is cancelled or not renewed.
2. **Technology Professional Liability.** The Contractor shall maintain Technology Professional Liability (Errors and Omissions) insurance with a limit of not less than \$1,000,000.00 for damages arising from computer-related services including, but not limited to, the following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer hardware or software developed, manufactured, distributed, licensed, marketed or sold. This errors and omissions insurance shall include coverage for third party claims and losses including with respect to network risks (such as data breaches, transmission of virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information, direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties. This coverage is made on a claims-made policy form, so the Contractor shall purchase, at its sole expense, an Extended Discovery Clause for up to three (3) years after the work is completed if the coverage is cancelled or not renewed.
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5. **Comprehensive Business Automobile Liability.** Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired, and non-owned automobiles.

Waiver of Subrogation. Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty, ~~excluding Cyber Liability, a~~