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10/28/2025

The following Q&A and the addition of Appendix B1 will serve as Amendment #1 to NYSIF's Request for Proposals (RFP) for Online Safety Resources, bid number 2025-08-INS. Material in this Amendment supersedes any contradictory material in the RFP.

RFP Section 4.2.7 is hereby amended to include Appendix B1, Additional Specifications for Technology Contracts.

Please note that the due date for the submission of bids **remains unchanged.**

All bids are due 11/12/2025, by 2:00 p.m.(eastern).

Sincerely,

Angela Sgambelluri

Angela Sgambelluri
Contract Management Specialist 1

Online Safety Resources
RFP # 2025-08-INS
Amendment 1

Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
1	18	2.4 - ANTICIPATED LENGTH OF PROJECT IMPLEMENTATION	For Category A - Can you provide additional information on the implementation time specific to the Safety Library completed within 120 days. Does this milestone indicate that the interface where policy holders will access the information has been created within this time period or does this mean that the Safety Library is available and fully stocked with safety related resources within 120 days.	The interface is up and running within 120 days and available for customers to use by the end of that period.
2	18	2.4 - ANTICIPATED LENGTH OF PROJECT IMPLEMENTATION	For Category B - Can you provide additional information on the implementation time specific to the LMS completed within 150 days. Does this milestone indicate that the LMS where policy holders will access the safety training has been created within this time period or does this mean that LMS is available and fully stocked with safety training courses within 150 days	The interface is up and running within 150 days and available for customers to use by the end of that period.
3	15	Section 2.2 – Technical Requirements (Applications must be scalable to accommodate various user levels, traffic and transactions)	What is the expected user volume (licenses, concurrent users, scaling needs)?	Up to 125,000 licenses for NYSIF customers and employees with the potential for all of them to use the system simultaneously. Typical usage is around 100-200 customers a day but would need to scale up to the maximum.
4	15	Section 2.2 – Technical Requirements	Are there mandatory integrations with existing systems (e.g., SCADA, HR, procurement)?	From an ITS perspective, there is only Single Sign on Integration required at this time. However, future integration may be required over the course of the contract for other services.
5	141	Appendix – Right to Audit / Compliance	Is FedRAMP Moderate authorization required at go-live, or can it be a roadmap milestone?	Fedramp compliance is not required.
6	18	Section 2.3 – Handling of NYSIF Data	What is the expected data migration scope (existing LMS or project records)?	Course completion records for 191,273 courses assignments for 2,600 employers. Policy/account information from up to 150,000 policyholders, brokers and state agencies.
7	19	Section 2.6 – Reports	Are there specific reporting formats (e.g., DOT, FTA, FHWA templates) required?	Refer to RFP Section 2.6. Additional details will be provided to the awarded bidder.
8	135	Mandatory Requirements Certification – Hosting	What is the agency's preferred hosting model (GovCloud, private cloud, hybrid)?	Details will be provided to the awarded bidder.
9	15-16	Section 2.2 – Maintenance and Support (Disaster Recovery Plan, RPO/RTO)	Is there a requirement for disaster recovery RPO/RTO targets?	Please refer to Appendix B1, Section 1.g as referenced in the RFP Section 2.2, bullet point 11 and NYSIF Exhibit C, Section 7.
10	12	Section 1.9 & 1.10 – MWBE and SDVOB Participation	Will MWBE/SDVOB participation percentages be strict minimums or weighted scoring criteria?	For the purpose of this procurement a 0% MWBE and SDVOB goal has been set. However, 5% of the overall evaluation scale will be awarded to any responsive bidder who meets this criteria as outlined in Sections 3.1 and 3.1.3 of the RFP.
11	13	1.11 -USE OF GENERATIVE ARTIFICIAL INTELLIGENCE (GenAI) BY BIDDERS/CONTRACTORS	Our software, proposal writing software, AI models and agents uses Genai- shall we bid or not bid	If a Bidder/Contractor will be using GenAI technology, tool or solution, either directly or indirectly, to provide any part of the services under this solicitation, the Bidder/Contractor must disclose this within their proposal submission. Failure to disclose the use of GenAI in your proposal may result in the disqualification of your proposal. Bidder should provide as much detail as possible in their proposal.
12	7	Section 1.4 - Purpose of this RFP	Does NYSIF currently have an incumbent vendor providing their online safety or e-learning resources? If so, what have been the primary challenges or improvement goals driving this solicitation?	Not material to the RFP.
13	7 12 13-14	Section 1.4 - Purpose of this RFP Section 2.2 Technical Specifications Section 2.2.1 - Category B: eLearning Management System	Regarding the eLearning Management Package (Learning Management System), please clarify: Does NYSIF currently have an incumbent LMS vendor? If so, what have been the primary challenges or improvement goals driving this solicitation? Approximately how many learners or policyholders are expected to access the LMS annually, and what training volume should be assumed for sizing and hosting? What programs or tools (e.g., communication platforms, CRM, eCommerce, or other internal systems) need to be integrated with the LMS? Please specify if they are required or desired.	1. Not material to the RFP. 2. Approximate 60,000 course assignments are made to 15,600 learners annually. 3. Refer to RFP Section 2.2.1 and Section 2.2.2 for details. Any additional details will be provided to the awarded bidder.
14	14 18	Section 2.2 - Technical Requirements Section 2.5 - Term	Please confirm that NYSIF expects ongoing maintenance, updates, and user support for the full seven-year contract term following initial implementation, and that these costs should be reflected as annual recurring fees in Appendix Z.	Yes, this is NYSIF's expectation.
15	14	Section 2.2 - Technical Requirements for Category A & B	Please confirm what form of documentation NYSIF requires to demonstrate accessibility compliance with applicable standards at acceptance.	Please refer to NYS P08-005 Accessibility of Web Based Information and Applications ; Additional NYSIF accessibility guidelines will be provided to the awarded bidder.
16	17	Section 2.2.1 - Category A: Safety Library	Please clarify what NYSIF means by 'online OSHA log' within this section.	OSHA's log for recordable incidents (OSHA 300) and the summary employers must post (OSHA 300a), The OSHA 301 injury and illness incident report.
17	17	Section 2.2.1 - Category A: Safety Library	Please clarify whether NYSIF expects the Safety Library and Learning Management System solutions to operate independently or to be integrated for end-user access.	NYSIF does not expect the the Safety Library and LMS to work independently. Independent or integrated operation would be acceptable. Integrated would be preferred.
18	18	Section 2.2.2 - Category B: LMS Specific Technical Requirements	Please clarify whether the LMS is expected to accommodate multiple content sources, including NYSIF-created materials and external safety content libraries.	Yes, the LMS should be able to integrate customer courses provided by NYSIF or NYSIF customers.
19	18	Section 2.2.2 - Category B: LMS Specific Technical Requirements	The RFP references exporting tracking data "for use in customer HR systems." Please specify whether integration with particular HRIS or payroll systems is anticipated, or if a generic export (CSV/XLSX) is sufficient.	Generic CSV/XLSX files that could be uploaded into customer HR systems.
20	18	Section 2.5 - Term	Will NYSIF allow pricing structures that include annual subscription or renewal options within the seven-year term, or should proposers price the full term as a single extended contract?	Bidders prices shall be all inclusive for a full seven (7) year term.
21	16	SECTION 2 – TECHNICAL SPECIFICATIONS 2.2 TECHNICAL REQUIREMENTS FOR CATEGORY A AND CATEGORY B Line Item #18	When submitting references, would they be required of all parties involved in the RFP?	No, assuming the bidder is providing all services outlined in the RFP as the prime vendor. However, if a reference for a party involved in the RFP such as a contractor or reseller provides a significant portion of the service to be provided and would assist with evaluation of the services to be provided, it is welcome.
22	17	SECTION 2 – TECHNICAL SPECIFICATIONS 2.2.2 CATEGORY B - Learning Management System Specific Technical Requirements	Within the group of insureds, what is the preferred method of training- Individual training (online courses) or classroom trainings?	Both should be available, individual assignments and the ability to use in a classroom.

Online Safety Resources
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Question #	RFP Page #	RFP Section and Sub-Section Reference #/Heading	Question	NYSIF Response
23	18	SECTION 2 – TECHNICAL SPECIFICATIONS 2.2.2 CATEGORY B - Learning Management System Specific Technical Requirements 2.4 ANTICIPATED LENGTH OF PROJECT IMPLEMENTATION	Please elaborate on the meaning of the estimated timeline regarding the safety library and the LMS being with the 120-150 days.	See the answers to questions 1 & 2.
24	19	SUBCONTRACTING	If the bidder has been a reseller with an agreement in place for many years with a company that provides the services involved with this RFP, would they be considered a subcontractor? If they would not be considered a subcontractor, what documents would be required of that company?	No, assuming the bidder is providing all services outlined in the RFP as the prime vendor. NYSIF will be entering into a contract with the selected prime vendor. Bidder would be required to provide all requested information/forms as outlined in the RFP.
25	20	SECTION 2 – TECHNICAL SPECIFICATIONS 2.10 LOCATION AND TRAVEL	Is there anticipated travel required under this RFP, and if so, please explain the extent and purpose if not for the purpose of an interview?	No
26	52	NYSIF EXHIBIT B—GENERAL SPECIFICATIONS 24. PRICING g- Best and Final Prices	Is a separate appendix or quantification of bid able to be submitted for additional pricing contingencies?	No, per Appendix Z "Bidders are not to change, delete, or make any additions to this form, and are to supply only the bid information that is required. If any changes, deletions, or additions are made by the bidder, or if all of the required bid information is not provided, then at NYSIF's discretion, the bid may be disqualified."
27	15	2.2.11	References Appendix B1, Section 1.g. But there is not an Appendix B. There is an Exhibit B, but it doesn't seem related to the RFP section where it's referenced	Appendix B1 is attached to this Amendment.



APPENDIX B1

ADDITIONAL SPECIFICATIONS FOR TECHNOLOGY CONTRACTS

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE

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1. SOFTWARE LICENSE GRANT

Where Product is acquired on a licensed basis the following shall constitute the license grant:

- a. **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.
- b. **License Term** The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.
- c. **Licensed Documentation** If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) based on hard copy instructions for access by downloading from the Internet (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:
 - Individual/Named User License - one (1) copy per License
 - Concurrent Users - 10 copies per site
 - Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

- d. **Product Technical Support & Maintenance** Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor.

In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

- e. **Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.
- f. **Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties** Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.
- g. **Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with: i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii)

reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

- h. **Confidentiality Restrictions** The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.
- i. **Restricted Use by Licensee** Except as expressly authorized by the terms of license, Licensee shall not:
 - i. Copy the Product;
 - ii. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
 - iii. Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

2. PRODUCT ACCEPTANCE

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless NYSIF or Authorized User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor.

3. AUDIT OF LICENSED PRODUCT USAGE

Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

4. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

- i. For purposes of this paragraph, "Products." A deliverable furnished under this Contract by or through Contractor, including 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).
- ii. For purposes of this paragraph, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

- iii. For purposes of this paragraph, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.
- b. **Title to Project Deliverables** Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:
 - i. **Existing Products:**
 - 1. **Hardware** - Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.
 - 2. **Software** - Title and ownership to Existing Software Product(s) 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 ("Existing Licensed 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 Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.
 - ii. **Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive

perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

- c. **Transfers or Assignments to a Third Party Financing Agent** It is understood and agreed by the parties that a condition precedent to the consummation of the purchase (s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.
- d. **Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS)** The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this paragraph.
- e. **Contractor's Obligation with Regard to ISV (Third Party) Product** Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

5. PROOF OF LICENSE

The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

6. PRODUCT VERSION

Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

7. CHANGES TO PRODUCT OR SERVICE OFFERINGS

- a. **Product or Service Discontinuance** Where Contractor is the Product

Manufacturer/Developer, and Contractor publicly announces to all U.S. customers (“date of notice”) that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor (“withdrawn support”) is no longer going to be offered, Contractor shall be required to: (i) notify NYSIF, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User’s option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor’s obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to state approval, to an alternate Subcontractor.

- b. **Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers (“date of notice”) that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to NYSIF for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

8. NO HARDSTOP/PASSIVE LICENSE MONITORING

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a “trap door” device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

9. SOURCE CODE ESCROW FOR LICENSED PRODUCT

If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, 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 State in writing. 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.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.