

APPENDIX G ADDITIONAL INSURANCE REQUIREMENTS

Prior to the start of work the **Contractor** shall procure at its sole cost and expense, and shall maintain in force at all times **during the term of this Agreement**, policies of insurance as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York with an A.M. Best Company rating of —A-II or better. The OMH may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the OMH to accept insurance placed with a non-authorized carrier under any circumstances.

The **Contractor** shall deliver to OMH evidence of such policies in a form acceptable to the OMH. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

General Conditions

A. Conditions Applicable to Insurance. All policies of insurance required by this agreement must meet the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the **Contractor** are specified herein.
2. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed in writing by OMH, policies must be written on an **occurrence** basis. Under certain circumstances, the OMH may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the Contract. Written proof of this extended reporting period must be provided to the OMH prior to the policy's expiration or cancellation.
3. **Certificates of Insurance/Notices.** **Contractor** shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the OMH, before commencing any work under this contract. Certificates shall reference the Contract Number. Certificates shall be mailed to the:

**Contract and Procurement Services
NYS Office of Mental Health
Consolidated Business Office
Contract & Procurement Services – Unit N Upper
75 New Scotland Avenue
Albany, NY 12208**

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to the OMH, Attn: NYS Office of Mental Health, 75 New Scotland Avenue, Albany, NY 12208. In addition, if required by the OMH, the **Contractor** shall deliver to the OMH within forty-five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

Certificates of Insurance shall:

- a. Be in the form approved by OMH.
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract.
- c. Specify the Additional Insureds and Named Insureds as required herein.
- d. Refer to this Contract by number, the Supplemental Certificate, and any other attachments on the face of the certificate,
- e. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and

APPENDIX G ADDITIONAL INSURANCE REQUIREMENTS

f. Be signed by an authorized representative of the insurance carrier or producer.

Originals, copies, faxed, and electronic documents (Certificates of Insurance, Supplemental Insurance Certificates and other attachments) will be accepted.

4. **Primary Coverage:** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the OMH for any claim arising from the **Contractor's** Work under this contract, or as a result of the **Contractor's** activities. Any other insurance maintained by the OMH shall be excess of and shall not contribute with the **Contractor's** insurance regardless of the —other insurance clause contained in the OMH's own policy of insurance.
5. **Policy Renewal/Expiration:** At least two (2) weeks prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the OMH than the expiring policies shall be delivered to the OMH in the manner required for service of notice in Paragraph A.3. *Certificates of Insurance/Notices* above. 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 the Contract or proof thereof is not provided to the OMH, the **Contractor** shall immediately cease Work on the Project. The **Contractor** shall not resume Work on the Project until authorized to do so by the OMH. Any delay, time lost, or additional cost incurred as a result of the **Contractor** not having insurance required by the Contract or not providing proof of same in a form acceptable to the OMH, shall not give rise to a delay claim or any other claim against the OMH. Should the **Contractor** fail to provide or maintain any insurance required by this contract, or proof thereof is not provided to the OMH, the OMH may withhold further contract payments, treat such failure as a breach or default of the contract, and/or, after providing written notice to the **Contractor**, require the Surety, if any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the **Contractor**.
6. **Self-Insured Retention/Deductibles:** Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. For Construction contracts – General, Environmental, and/or Builders' Risk deductibles or self-insured retentions above \$100,000 are subject to approval from the OMH. Additional surety/security may be required in certain circumstances. The **Contractor** shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
7. **Subcontractors:** Should the **Contractor** engage a Subcontractor, the **Contractor** shall endeavor to impose the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to the OMH.
1. **General Liability** Commercial General Liability Insurance, (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract. The limits under such policy shall not be less than the following:
 - Each Occurrence limit - as specified in Column C of the matrices (See Chapter 4)
 - General Aggregate – as specified in Column D of the matrices (See Chapter 4)
 - Products/Completed Operations - should equal the General Aggregate limit
 - 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,

APPENDIX G ADDITIONAL INSURANCE REQUIREMENTS

- defense and/or indemnification obligations, including obligations assumed under this contract,
- cross liability for additional insured's,
- products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract,
- explosion, collapse, and underground hazards,
- contractor means and methods,
- liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the policy:

- a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- b. CG 20 10 11 85, or, an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B)
- c. CG 25 03 11 85 or, an equivalent - Designated Construction Project(s) general aggregate limit (only required for construction contracts).

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall name NYS Office of Mental Health as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any umbrella/excess policies used to meet the — Each Occurrence limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such polic(ies) shall be primary to, and non-contributing with, any other insurance maintained by the OMH. Any other insurance maintained by the OMH shall be excess of and shall not contribute with the Contractor's or Subcontractor's insurance, regardless of the other insurance clause contained in either party's policy of insurance.

When the Work involves construction or demolition within 50 feet of rail stations, yards, tracks, or other railroad property, the exclusion for work done within 50 feet of railroad property (the Railroad exclusion) must be deleted. Also see requirements for Railroad Protective Liability insurance.

2. **Workers' Compensation** For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Workers' Compensation Law.

If the Agreement involves work on or near a shoreline, a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Acts policy as applicable must be provided. Any waiver of this requirement must be approved by the OMH and will only be granted in unique or unusual circumstances.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

- (1) C-105.2– Certificate of Workers' Compensation Insurance (September 2007, or most current version)
- (2) U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund
- (3) GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

3. **Disability Benefits** For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Disability Benefits Law. Any waiver of this requirement must be approved by the OMH and will only be granted in unique or unusual circumstances.

APPENDIX G ADDITIONAL INSURANCE REQUIREMENTS

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:

- (1) DB-120.1 (May 2006 or most current version) – Certificate of Insurance Coverage under the NYS Disability Benefits Law.
- (2) DB-155 – Certificate of Disability Self Insurance.
- (3) CE-200 – Certificate of Attestation of Exemption. **[Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by Law. The Agency will not accept this as an exemption from providing Workers' Compensation Insurance].**

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier

4. Business Automobile Liability (delete if not applicable) Commercial Auto Liability insurance covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least one million dollars and shall name NYS Office of Mental Health as additional insured. The limits may be provided through a combination of primary and umbrella/excess liability policies. If the contract involves the removal of hazardous waste from the project site or otherwise transporting hazardous materials, pollution liability coverage for covered autos shall be provided by form CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached.

5. Railroad Protective Liability (delete if not applicable) In the event that any work under the contract is to be performed on or within 50 ft. of railroad property or railroad right-of-way, the Contractor shall provide and maintain a Railroad Protective Liability (RRP) Policy in the amounts required by the respective railroad.

The policy must name the Railroad as the Named Insured. No Additional Insureds can be listed on the policy (see requirements for the deletion of the 50' Railroad Exclusion on the General Liability policy), and the definition of —physical damage to propertyll must be amended to mean direct and accidental loss of or damage to —all property of any Named Insured and all property in any Named Insured's care, custody or controlll.

Evidence of Railroad Protective Liability Insurance must be provided on the Certificate of Insurance, and a detailed Binder pending issuance of the policy, or on an ISO-RIMA or equivalent form approved by the Railroad, and meet any other requirements as specified by the Railroad and or the OMH.

6. Environmental Liability (delete if not applicable) If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any pollutants, which includes but are not limited to, petroleum, petroleum product, hazardous material or substance including asbestos, lead, fungus and those as defined by applicable State and federal laws and regulations, the Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the contract, and for two years after completion hereof, pollution legal liability insurance with limits of not less than (as specified by the applicable matrix), providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the OMH arising from Contractor's work.

The State of New York and the NYS Office of Mental Health shall be named as additional insured and coverage shall be primary.

APPENDIX G ADDITIONAL INSURANCE REQUIREMENTS

This requirement applies to mold as well, if excluded in the commercial general liability policy.

If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48 03 06 or CA 00 12 03 06) as well as proof of MCS 90.

7. Builder's Risk (delete if not applicable)

[The following contract language is to be used when the Contractor will provide Builders' Risk coverage]

Builders Risk- Contractor: The Contractor shall provide a Builders' Risk Insurance policy covering all risks in completed value form. Such policy shall cover the total value of the Work performed in accordance with this Contract, as well as the value of any equipment, supplies and/or material to be installed in the Project that may be in storage (on or off the Site) or in transit. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, and property of the State held in their care, custody and/or control. Such policy shall name as insureds the State, the Contractor, and the The NYS Office of Mental Health. The Builders' Risk policy shall contain endorsements that provide for the following:

- The State and the Contractor shall be named as loss payee for the Work in order of precedence, as their interest may appear; and
- In the event the loss occurs at an occupied facility, the policy shall permit occupancy without the consent of the Insurance Company; and
- In the event that the insurance policy has been issued by a mutual insurance company, the following language shall be included: the OMH is not liable for any premium or assessment under this policy of insurance. The First Named Insured is solely liable therefore.

[The following contract language is to be used when the Owner or OMH will provide Builders' Risk coverage]

Builders' Risk – Owner/OMH: The OMH shall, except as otherwise specified, at all times during the period of construction and until physical completion and acceptance, procure and maintain, at the cost and expense of the Owner, —All Risk Builders' Risk Insurance. The Contractors and Subcontractors will be covered for their Work. Losses up to and including (\$ XXX) shall be borne by the Contractor. Reimbursement of loss, if any, is to be made payable to the Owner. The OMH shall, at the Owner's sole discretion, have power to adjust and to settle with the insurer any loss or claim under said insurance. Coverage shall include sub-limits for property in transit and for property in storage on and off the job site. Contractor's Equipment

The Contractor shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the Contractor. The requirement to secure and maintain such insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.

8. Owners and Contractors Protective (delete if not applicable) The Contractor shall obtain a separate Owners/Contractors Protective Liability (OCP) Policy as follows:

- For work related to street, road, highway, and/or bridge work – Form CG 00 14, Special Protective and Highway Liability Policy – New York Department of Transportation
- For projects not related to street, road, highway, and/or bridge work – Form CG 00 09, Owners and Contractors Protective Liability Coverage form – Coverage for Operations of the Designated Contractor

The policy shall be written on a project basis for the benefit of the OMH, its officers, agents, and employees, and the People of the State of New York, with respect to all operations under this Agreement by the Contractor or its subcontractors, including in such coverage any omissions and supervisory acts of the OMH, its officers, agents, and employees.

APPENDIX G ADDITIONAL INSURANCE REQUIREMENTS

The OMH shall be the named insured in the OCP Policy, which shall be promptly furnished to the OMH. OCP policy limits shall be no less than: (as specified in the applicable matrix).

- 9. Professional Liability (delete if not applicable)** The Professional and any professional sub-consultant retained by the Professional to work on the Contract shall procure and maintain during and for a period of three (3) years after completion of this Contract, Professional Liability Insurance in the amount of (refer to the applicable matrix) issued to and covering damage for liability imposed on the Professional by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract. The professional liability insurance may be issued on a claims-made policy form, in which case the Professional shall purchase at its sole expense, with extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

If applicable, the Professional shall provide coverage of the Professional's negligent act, error or omission in rendering or failing to render professional services required by this Contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants.

- 10. Crime (delete if not applicable)** CRIME INSURANCE, on loss sustained form in an amount not less than [\$ XXX], including coverage for:

- Employee Theft
- Forgery or Alteration
- Inside the Premises - Theft of Money and Securities
- Inside the Premises- Robbery or Safe Burglary of Other Property
- Outside the Premises
- Computer Fraud
- Money Orders and Counterfeit Paper Currency

Policy must allow for reporting of circumstances or incidents that might give rise to future claims. The policy must include an extended reporting period of no less than three years with respect to events which occurred but were not reported during the term of the policy.

The OMH, including its affiliates and subsidiaries, must be included as Loss Payees as respects this specific amount as their interests may appear.

Any warranties required by the insurer must be disclosed and complied with. Said insurance shall extend coverage to include the principals.

- 11. Marine Protection & Indemnity (delete if not applicable)** Anytime the activity involves work on navigable water or the work is connected to water related activities, Marine Protection & Indemnity and Hull and Machinery coverage is required. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment.

The Contractor shall obtain Protective and Indemnity Liability insurance for all marine operations under the agreement, with a minimum (\$ XXXX) limit. The OMH shall be endorsed as an Additional Insured.

- 12. Garage Liability (delete if not applicable)** Garage Liability, including garage keepers' coverage, is required anytime:

- a third party is towing, repairing or garaging an OMH vehicle,
- a third party is leasing an OMH owned parking facility, or
- the Contractor is involved in the garaging business, such as gas stations, repair shops, vehicle storage facilities, and parking lots.