



**Division of Criminal
Justice Services**

**REQUEST FOR APPLICATIONS (RFA)
CJS 2017-02
Provision of Ignition Interlock Services
In New York State**

Issued: April 28, 2017

CONTRACTING ENTITY	DCJS SOLE DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS
<p>State of New York acting by and through the Division of Criminal Justice Services (DCJS) Michael C. Green, Executive Deputy Commissioner, On behalf of: the State of New York, Division of Criminal Justice Services</p>	<p>Mr. Sandy Fader Assistant Director/Procurement Officer</p> <p>New York State Division of Criminal Justice Services 80 South Swan Street – 10th Floor Albany, New York 12210-8001</p> <p>All questions regarding this RFA must be submitted via electronic mail to the designated contact for this RFA DCJSProcurement@dcjs.ny.gov Neither phone nor fax inquires will be accepted</p>

Calendar of Events	
Event	Date
1. RFA release date	April 28, 2017
2. Deadline for Submission of Bidder's Questions	May 8, 2017
3. Issuance of DCJS Response to Submitted Questions	On or about May 15, 2017
4. APPLICATION DUE DATE	May 26, 2017 @ 12:00 P.M.
5. Anticipated Notification of Award	On or about June 9, 2017
6. Services Start Date	On or about October 1, 2017

Request for Applications
CJS2017-02 Provision of Ignition Interlock Services
In New York State

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ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS RFA AND ALL QUESTIONS, COMMUNICATIONS AND SUBMISSIONS TO DCJS MUST BE WRITTEN IN THE ENGLISH LANGUAGE WITH QUANTITIES EXPRESSED USING ARABIC NUMERALS. ALL PRICES SHALL BE EXPRESSED, AND ALL PAYMENTS SHALL BE MADE, IN UNITED STATES DOLLARS (\$ USD). ANY PROPOSAL RECEIVED THAT DOES NOT MEET THE ABOVE CRITERIA MAY BE REJECTED AT THE SOLE OPTION OF DCJS.

NOTICE OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING AND CONTACTS

State Finance Law §139-j(6) requires that a governmental entity incorporate a summary of its policy and prohibitions regarding permissible contacts during a covered procurement. Pursuant to State Finance Law §§139-j and 139-k, this Request for Applications (RFA) includes and imposes certain restrictions on communications between the Division of Criminal Justice Services (DCJS), a governmental entity and a vendor during the procurement process.

A vendor is restricted from making contacts from the earliest notice of intent to solicit offers including this Request for Application through final award and approval of the procurement Contract by DCJS and the Office of the State Comptroller (“Restricted Period”). Contact is prohibited to other than the DCJS staff member who has been designated by DCJS as the sole procurement contact and who has been identified on the cover page of this RFA. There are certain statutory exceptions set forth in State Finance Law §139-j(3)(a).

State Finance Law §139-k(4) obligates every governmental entity during the restricted period of a procurement Contract to make a written record of any contacts made. The term “contact” is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the governmental procurement. DCJS shall make a determination of the responsibility of the vendor pursuant to State Finance Law §§139-j and 139-k. Certain findings of non-responsibility can result in rejection of a Contract award and in the event of two findings within a four (4) year period, the vendor is debarred from obtaining governmental procurement Contracts.

Additional information and guidance on the “Restricted Period” and permissible contacts can be found in the guidelines issued by the New York State Advisory Council on Procurement Lobbying, which can be found on the OGS website at:

<http://www.ogs.ny.gov/ACPL/>

Applicants must provide DCJS with an affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding contacts in the restricted period for a procurement Contract in accordance with State Finance Law §§139-j and 139-k. The vendor must agree to the certification and complete the affirmation of such agreement by completing the Offerer’s Affirmation of Understanding of an Agreement pursuant to State Finance Law §139-j(3) and §139-j(6)(b), and Offerer’s Certification of Compliance with State Finance Law §139-k(5) found in APPENDIX:PLG .

Sole Designated Procurement and Solicitation Contact

All Applicants shall comply with Chapter 1 of the Laws of 2005, the Procurement Lobbying Act, as amended by Chapter 4 of the Laws of 2010. All questions regarding this RFA must be submitted via electronic mail to the DCJS Sole Designated Contact for this procurement specified on the cover page of this RFA. Pursuant to the Procurement Lobbying Law the DCJS Sole Designated Contact for this procurement specified on the cover page of this RFA is designated as the DCJS Solicitation Contact for this procurement. All inquiries, questions, filings and submission of proposals that are submitted to any other individual or physical address shall not be considered as official, binding, or as having been received by the State.

DCJS may at its sole option change the sole designated contact and will make notification of such a change by electronic mail to vendors who have voluntarily filed a Notice of Intent to Bid and through its website. The webpage Uniform Resource Locator (URL) is provided on the beginning pages of this RFP.

**NYS Division of Criminal Justice Services
Provision of Ignition Interlock Services
In New York State
REQUEST FOR APPLICATIONS**

APPLICATION HIGHLIGHTS

1. This Request for Applications (RFA) is a new RFA to allow the opportunity for interested manufacturers, and/or distributors (not already approved as qualified manufacturers who have contracts with DCJS resulting from DCJS RFA, CJS 2016-01) seeking to provide ignition interlock services in New York State the opportunity to apply. Interested manufacturers, and/or distributors, shall submit a complete response to this new RFA that conforms to the format and content requirements as set forth in this RFA and the attached application. No company whose services have been suspended, terminated, revoked, or cancelled, in whole or in part, by any state, territory, the District of Columbia, or any other country, within twelve (12) months of the RFA's submission deadline is eligible to apply under this RFA. **NOTE: All applicants must ensure their application and all documents reflect their exact business name as reflected in their Tax Identification number with the IRS. Further, information submitted to the NYS Department of Health for purposes of IID certification should reflect the exact business name of the manufacturer and any distributor.** The applicant must furnish three (3) completed original signed applications, and five (5) additional hard copies. Your response should be enclosed in one mailing envelope or box with the notation "CJS2017-02Ignition Interlock Program Application" clearly visible on the front. Fax or e-mail transmittals will not be accepted.

Send Applications to:

Mr. Sandy Fader

**Assistant Director/Procurement Officer, Office of Financial Administration
NYS Division of Criminal Justice Services (DCJS)
Alfred E. Smith Office Building, 10th Floor
80 South Swan Street
Albany, New York 122010**

All inquiries concerning this RFA must be directed, via e-mail to the aforementioned DCJS Procurement Officer at: DCJSprocurement@DCJS.ny.gov by Monday May 8, 2017. Neither phone nor fax inquiries will be accepted. Responses to inquiries will be posted on the DCJS public website at:

<http://www.criminaljustice.ny.gov/pio/vendor/business.html#solicitations> on or about [Monday May 15, 2017. If you want to confirm that DCJS received your questions, please call (518) 457-6105. Please note that DCJS cannot answer substantive questions concerning this RFA in any manner other than the email method.

Applications must be received by DCJS by: Friday May 26, 2017 @ 12:00 P.M.

DCJS reserves the right in its sole discretion to alter the schedule shown above.

This is an evaluative process. All manufacturers, and/or distributors, evaluated as meeting the minimum stated criteria herein will be selected to join the already qualified manufacturers in providing ignition interlock services in New York State and be deemed “qualified” to do business in New York State. Notification of approved applications is expected on or about Friday, June 9, 2017

**Request for Applications
Ignition Interlock Program
In New York State**

I. INTRODUCTION

The New York State (NYS) Division of Criminal Justice Services (DCJS), specifically its Office of Probation and Correctional Alternatives (OPCA), has responsibility to exercise general supervision over the administration of probation and alternative to incarceration services throughout New York State. OPCA promotes public safety and offender accountability in probation and other community corrections programming services through funding and oversight. OPCA is also statutorily authorized to collect statistical and other information in order to promote coordination between, and the most effective use of correctional alternative programs and probation services and DCJS has broad rulemaking authority with respect to such service delivery.

On November 18, 2009, Chapter 496 of the Laws of 2009, commonly referred to as “Leandra’s Law”, was signed into law. In general, the law was groundbreaking in that it strengthened for prosecution purposes various laws relative to driving while intoxicated (DWI) or while impaired by drugs to achieve greater offender accountability, promote public, especially child safety, and deter unsafe driving. It increased criminal sanctions for individuals convicted of DWI or under the influence of drugs with children (under the age of 16) in a motor vehicle, while also increasing penalties associated with other DWI related crimes. Among key provisions relevant to this RFA was the requirement that the court, in addition to any other criminal disposition (including a fine, local or state imprisonment), must also impose upon a defendant convicted of a Vehicle and Traffic Law (VTL) §1192(2), (2-a), and/or (3) crime or any Penal Law or VTL crime in which any aforementioned alcohol-related provision of VTL §1192 is an essential element, a sentence of probation or conditional discharge AND order as a condition that he/she install and maintain a functioning ignition interlock device in any motor vehicle owned or operated by such person during the term of probation or conditional discharge for a period of no less than six (6) months. Monitoring of the IID condition by either the local probation department or another County monitoring entity was further required and DCJS was empowered with certain rulemaking authority in this area. With respect to the cost of an IID, the law established it was to be borne by the operator subject to such condition, unless the court has determined that he/she is financially unable to afford such cost, whereupon the court may impose a payment plan (reduced payment) or waive the cost in its entirety. In the event of any court waiver of the IID cost, the law established the cost shall be borne in accordance with regulations issued by DCJS pursuant to such other agreement as may be entered into for provision of the IID.

Subsequently, on November 1, 2013, “Leandra’s Law” was amended through Chapter 169 of the Laws of 2013, to expand the minimum period of installation of an IID imposed from six months to one year and allowing the operator upon a showing to the court that he/she successfully maintained the device in the vehicle for a minimum of 6 months

to request of the court, that the IID be de-installed. This 2013 Chapter also clarified the law's applicability to Youthful Offenders and recognized the authority for courts to order the installation of IIDs in advance of sentencing.

Pursuant to its statutory authority, DCJS promulgated regulations governing the monitoring of compliance by persons ordered to install and maintain ignition interlock devices in vehicles they own or operate. DCJS Rule 9 NYCRR Part 358, entitled "Handling of Ignition Interlock Cases Involving Certain Criminal Offenders" sets forth minimum standards for the usage and monitoring of IID devices imposed as a result of "Leandra's Law" and among its provisions establishes specific responsibilities of IID manufacturers, and their installation/service providers, which includes, but is not limited to, clarifying the need of manufacturers to have their IIDs certified by the NYS Department of Health (DOH), entering into contracts with DCJS for a specified period, specific administrative, operational performance, and reporting requirements. For full detail of this Rule, see APPENDIX B.

The NYS Department of Motor Vehicles (DMV) has since adopted regulations to review the driving records of operators it identifies as a "problem driver" and to require them to install an IID. This is done administratively by DMV, and the condition is not monitored by a probation officer or conditional discharge monitor. The DMV administrative process is implemented through DMV regulations and is not associated with DCJS regulations. For convenience and consistency, DMV does utilize the same list of qualified manufacturers as DCJS, ensuring that IID manufacturers can serve operators statewide and that their IIDs are similarly approved by the NYS DOH. As a result of DMV regulations, there are additional operators subject to IID installation, for further information, please contact DMV directly.

DCJS is requesting submission of applications from interested eligible applicants who desire to commence providing ignition interlock services, in New York State in accordance with statutory and regulatory requirements. **Qualified Manufacturers which have existing contracts with DCJS resulting from DCJS' RFA CJS 2016-01 are not eligible to apply.**

II. DEFINITIONS

DCJS' above-referenced Ignition Interlock Regulation contains and defines numerous terms. Contracts resulting from this RFA will require adherence to them and where applicable other contractual definitional terms or modifications. These definitional terms, are attached hereto as Attachment A and are subject to further regulatory change by DCJS.

III. SCOPE OF WORK

The purpose of NYS' ignition interlock program is to hold offenders accountable subject to "Leandra's Law" and its statutory amendments, and to change their driving behavior, thereby increasing public safety. An ignition interlock program is currently in place in New York State with qualified manufacturers providing approximately 29,000 IID's between August 2010 and September 2016. Qualified manufacturers must be able to provide service within the parameters specified within this RFA, as well as in DCJS regulations 9 NYCRR Part 358 and the NYS DOH regulations 10 NYCRR Part 59 in order to be certified and eligible to participate in NYS' ignition interlock program. Appendix B contains the current DCJS Part 358 rule and DCJS has submitted to the New York State Register revised proposed Ignition Interlock rule amendments which can be found at the following link:

<http://www.criminaljustice.ny.gov/opca/pdfs/RevisedProposed-DCJS-Amendments-to-Part-358-March-2017.pdf> .Applicants who are newly approved by DCJS as Qualified manufacturers resulting from this RFP will be required to enter into DCJS contractual agreements for a period commencing on or about October 1, 2017 and continuing through August 14, 2019 with a DCJS option of up to 2 one year extensions, setting forth the requirements of the qualified manufacturer and all of its installation/service providers consistent with DCJS' existing IID rule and any amendments to its regulatory provisions and the approved application submission.

IV. QUALIFICATION OF MANUFACTURERS AND INSTALLATION/SERVICE PROVIDERS

The goal of NYS in continuing its ignition interlock program is to provide the best products and services at competitive prices. Each manufacturer and/or distributor seeking to join existing DCJS approved qualified manufacturers in delivering IID services in NYS shall provide the following information in its application:

1. A narrative demonstrating a record of providing IID services in New York State and/or other states. The manufacturer must be well-versed in the installation and maintenance of IID's and must supply and train all installers/service providers to ensure quality customer service and compliance with all contract requirements. No company whose services have been suspended, terminated, revoked, or cancelled, in whole or in part, by any state, territory, the District of Columbia, or any other country, within twelve (12) months of the RFA's submission deadline is eligible to apply under this RFA. Further, upon resumption of the open and continuous application, a company is ineligible to apply where its services have been suspended, terminated, revoked, or cancelled, in whole or in part, by any state, territory, the District of Columbia, or any other country, within the preceding twelve (12) months of your application.

2. a certification that it will establish, maintain and distribute to OPCA, probation departments and other monitoring agencies in any county where it does business, a current list of all installation/service providers in the county, including business name, address and telephone number and maintain a toll-free 24 hour telephone number to be called from anywhere in the continental United States for an up-to-date listing of installation/service providers in the continental United States and for emergency assistance, prior to doing business in the state. Provide an up-to-date listing of NYS installation/service providers to OPCA, and necessary updates to such list in a timely manner.

3. a certification that it will provide immediate notice to DCJS and the applicable county monitor(s) of any removal of any installation/service provider and the reasons for such;

4. a certification that it will provide proof of compliance with the NYS Department of Health (DOH) Regulations set forth in 10 NYCRR PART 59-Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content

5. a certification that it will provide immediate notice to DCJS and DOH upon receipt of verbal and/or written notification or communication of disapproval, suspension in whole or in part, revocation, or cancellation of a manufacturer's device, services, and/or operations by another state or jurisdiction;

6. a certification that prior to commencing business in NYS it will provide written certification to DCJS in a format prescribed by OPCA that all installation/service providers:

- i. have been trained in advance as to installation, maintenance, troubleshooting, set point requirement of .025 percent BAC , and recalibration of such manufacturer's devices;
- ii. have instructions as to installation and usage and agreed to comply with applicable provisions of DCJS' regulation 9 NYCRR Part 358, including where approved by the court, the need for IIDs to be set for a reduced air capacity;
- iii. have agreed to comply with their manufacturer's service agreements;
- iv. have agreed to provide hands-on training to the operator, any member of the same family or household, or any owner of a motor vehicle in which an IID is being installed, with a valid driver's license who appears with the operator at installation to receive training as to the operation of an installed device on the vehicle, and to provide written or video instructional material to the operator;
- v. have been informed of NYS law governing circumvention of IIDs and penalties associated therewith;
- vi. have agreed to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or by court order; and
- vii. have been made aware that non-compliance will result in immediate removal and updating the listing of installation/service providers identified). An installation/service provider may be reinstated by DCJS upon satisfactory proof from the qualified manufacturer of corrective action.

7. a certification that it will conduct annual quality assurance audits or reviews of installation/service providers to ensure compliance with applicable laws, regulations and any contractual agreements and provide OPCA with yearly sworn statements that such audits have been conducted. Failure to conduct quality assurance audits may result in removal of the qualified manufacturer from doing business in the State of New York. Nothing shall preclude OPCA and/or its representative from conducting random audits and quality assurance audits or reviews.

8. a certification that it will take all reasonable steps necessary to prevent tampering or circumvention of the IID and promptly notify OPCA, the applicable county's monitor and district attorney of any reasonable belief that an employee of an installation/service provider has attempted to alter or has altered ignition interlock data or has been otherwise involved in tampering or circumventing an IID of any operator or any attempt thereof. Failure to notify the monitor and the district attorney may result in removal of the qualified manufacturer from doing business in the State of New York;

9. a certification that it will submit reports, as requested and in such format as determined by DCJS, for each model or type of certified device, including, but not limited to:

- (i) operator and other vehicular user operation error;

- (ii) faulty automotive equipment that directly impacts successful implementation and use of the device;
- (iii) apparent misuse or attempts to circumvent or tamper/bypass a device;
- (iv) device malfunctions, including action taken by the manufacturer to correct such malfunctions;
- (v) deficiencies in device calibration stability;
- (vi) operator, vehicular user, and installation/service provider complaints; and
- (vii) any other information determined by DCJS to be relevant to the effectiveness, reliability and value of ignition interlock devices as a sentencing sanction;

10. designation of the region or regions, up to and including all four regions, within NYS in which it will provide ignition interlock services if so authorized. Only a qualified manufacturer may conduct business in New York State with respect to any operator. If a manufacturer is authorized to provide services in a region, it must certify that it will adhere to and comply with all applicable provisions specified in 9 NYCRR Part 358, with respect to service delivery. The manufacturer must certify that installer/service providers will be available to service every county within a region and that there shall be an installation/service provider within 50 miles from the operator's residence or location where the vehicle is parked or garaged, whichever is closest. Any manufacturer shall also certify that repair or replacement of a defective IID shall be made available within the same 50 mile radius by a fixed or mobile installation/service provider, or through a qualified manufacturer sending a replacement, within 48 hours of receipt of a complaint, or within 72 hours where an intervening weekend or holiday. Mobile servicing may be permissible provided that the above facility requirements are met and a specific mobile servicing unit with regular hours is indicated. The four regions of the state by counties for purposes of 9 NYCRR Part 358 are as follows (See ATTACHMENT B for map of regions):

- (i) Region 1: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates;
- (ii) Region 2: Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins;
- (iii) Region 3: Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington; and
- (iv) Region 4: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester;

11. documentation and verification of insurance (to be submitted upon each policy issuance or renewal) covering product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total. The manufacturer shall provide a signed statement holding harmless the State of New York, DCJS, every county, and their employees and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any

act or omission by the manufacturer or their installation/service provider relating to the installation, service, repair, use and/or removal of an IID; and

12. a certification of commitment to obtain, provide documentation and verification of and maintain a requisite Standby Letter of Credit (SLOC) if approved for a RFA award consistent with RFA and contractual requirements. A SLOC is required of all approved Qualified Manufacturers entering into contracts with DCJS. The amount of the SLOC may change throughout the contractual period. DCJS has established a graduated SLOC which is required for all successful applicants and a copy which must be submitted upon execution and return of the contract to DCJS for final contractual processing. A SLOC will be required in the amount of \$100,000 of any Contractor/IID Manufacturer that maintains fewer than 500 IID's in the field at any given time (the IID base); and \$200,000 if the Contractor/IID Manufacturer maintains 500 or more IID's in the field at any given time (the IID base). IID Manufacturers which are newly approved and qualified by DCJS to do business in New York State will be required to provide an initial SLOC in the amount of \$100,000. IID Manufacturers with existing contracts that submit an application pursuant to this RFA, and which is approved by DCJS, will be required to amend/update the SLOC. See APPENDIX SLOC for a copy of the content of the SLOC. Any new or amended SLOC will be required to reflect the new contract number and contractual term. A SLOC in the appropriate amount must be maintained throughout the contractual term, contract extension, and post transition period. For further details, please see Appendix E, Draft Contract

V. FEES

Every applicant seeking approval to provide ignition interlock services in NYS shall provide a thorough description of each IID intended for use in NYS, and the maximum fee structure associated with each specific IID. The proposed fee structure should take into consideration and be based upon an anticipated ten percent (10%) waiver of the fees by sentencing courts due to operator unaffordability. Descriptive information about the device should include, but not be limited to, make and model of device, special features of the device such as camera, reporting capabilities, removable head, Global Positioning Systems capability, Emergency Notification, and real-time or next day reporting. Fee structure information *shall include any and all fees charged to the operator*, including, but not limited to, installation, monthly use, any special service, shipping and de-installation fees. These fees will be maximum fees and manufacturers will only be able to charge fees approved in their contracts. Manufacturers are required to further advise DCJS (OPCA), in writing of any reduction or elimination of fees charged for ignition interlock services.

An operator shall pay the cost of installing and maintaining the IID unless the operator has been determined to be financially unable to afford the cost of the IID by the sentencing court, whereupon such cost may be imposed pursuant to a payment plan (which may include partial payment) or waived. As part of this application, manufacturers must certify that they agree to adhere to a maximum fee/charge schedule with respect to all operator's costs associated with such devices, offer a payment plan for any operator determined to be financially unable to pay the cost of the IID where a payment plan is so ordered, and provide a device free of fee/charge to the operator where all costs and fees, including lockout fees are waived by the sentencing court, or pursuant to such other agreement as may be entered into for provision of the device. Any contractual agreement between the operator and the qualified manufacturer or its installation/service providers shall permit an early termination without penalty to the operator when a certificate of completion has been issued, where the operator's sentence or release has been revoked, and whenever the operator has been transferred to a jurisdiction where the

manufacturer does not do business. Nothing shall prevent a qualified manufacturer from lowering the fee/charge schedule during the course of an operator's contract and/or the contractual agreement with DCJS. OPCA within DCJS must be notified of such. As stated above, manufacturers should base their fee structure on an anticipated ten percent (10%) unaffordability rate. On or about February 15, of each year, DCJS shall review requests by qualified manufacturers for rate adjustments pursuant to the State's unaffordability rate and shall consider information submitted by manufacturers involving unaffordability rates granted by the Courts and at its discretion approve rate adjustments where appropriate.

Also as part of this application, manufacturers and/or distributors must certify that they agree to adhere to the same maximum fee schedule for every operator sanctioned administratively under the DMV regulations. In such cases, manufacturers will not be required to offer a payment plan or offer a waiver of fees to such administratively sanctioned operator.

DCJS will classify all certified IIDs into categories based upon features of the IIDs and provide the list to every county. **The classification system and any subsequent device classification are subject to change by DCJS as new information and technology become available.** Every newly qualified manufacturer shall enter into a contractual agreement commencing on or about October 1, 2017 and continuing through August 14, 2019 with a DCJS option of up to 2 one year extensions setting forth the requirements of the qualified manufacturer and all of its installation/service providers consistent with DCJS regulations 9 NYCRR Part 358 and the application submission approved by DCJS. Currently DCJS classifies IIDs as described in Section VI below.

VI. NEW YORK STATE IGNITION INTERLOCK DEVICE CLASSIFICATION SYSTEM

CLASS I: This CLASS contains the following minimum features:

- Meets all New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards
- Utilizes fuel cell technology
- Reporting capabilities
- Capabilities for storage of data
- Programmable Re-Test Sequences
- Data download, inspection and re-calibration service and
- Anti-tampering and anti-circumvention features
- Camera-Photographic positive identification capability
- Photo of operator will be taken every time operator is prompted to take a test
- Infra-red or other low light camera capability for night use
- Breath sample validity features
- 24/7 Internet access to operator data by monitors
- Voice or Visual Instruction

Optional Features for consideration under Class I:

- Keys enabling service codes to be entered
- Early recall system if a fuel cell fails-uses split cell technology
- Restricted drive time capabilities
- Unlock code to minimize towing due to lockouts

CLASS II: This CLASS has all the minimum, required features of CLASS I and contains the following additional features:

- Global Positioning System location of vehicle
- Real Time data reporting

CLASS III: This CLASS has all the minimum, required features of CLASSES I and II and contains the following additional feature:

- Emergency Notification Program (e.g. for interception of a targeted vehicle during a Rolling Re-Test Failure)

VII. CANCELLATION, SUSPENSION AND REVOCATION OF QUALIFIED MANUFACTURERS, DISTRIBUTORS, INSTALLATION/SERVICE PROVIDERS, AND CERTIFIED IGNITION INTERLOCK DEVICES

The applicant must certify that it understands that any of the following reasons may result in revocation of a certified ignition interlock device or removal of a qualified manufacturer/distributor or installation/service provider:

- (1) When there is a voluntary request by a manufacturer to cancel certification of a device;
- (2) When notified by the department of health that a device no longer meets their regulatory standards;
- (3) When a device is discontinued by the manufacturer;
- (4) When the manufacturer's liability insurance is terminated or cancelled;
- (5) When the manufacturer or installation/service provider conceals or attempts to conceal its true ownership;
- (6) When materially false or inaccurate information is provided relating to a device's performance standards;
- (7) When there are defects in design, materials, or workmanship causing repeated failures of a device;
- (8) When the manufacturer or installation/service provider knowingly permits nonqualified service technicians to perform work;
- (9) When a manufacturer or installation/service provider assists users with circumventing or tampering with a device;
- (10) When service or the submission of required reports is not provided in a timely manner as required in 9 NYCRR Part 358;
- (11) When the manufacturer or installation/service provider refuses to provide an ignition interlock device free of charge to an operator who has received a judicial waiver;
- (12) When there is a pattern of substandard customer service;
- (13) When a manufacturer or installation/service provider interferes with or obstructs a review or investigation by the division or any designee;
- (14) When there are any other violations of the provisions contained in 9 NYCRR Part 358, including DCJS and department of health regulations, or any ignition interlock contractual agreement;
- (15) Upon verbal and/or written notification or communication of disapproval, suspension, revocation, or cancellation of a manufacturer's device services, and/or operations by another state or jurisdiction,
- (16) When a manufacturer or installation/service provider provides gratuities or any other personal incentives to a state or local official or any monitor for purposes of soliciting business,
- (17) When a manufacturer or installation/service provider conducts business in New York State outside of the designated region or regions of operation approved by DCJS;

- (18) When a device fails to function pursuant to the minimum requirements of its class;
- (19) When there is a failure to comply with any manufacturer or installation/service provider requirements indicated in 9 NYCRR Part 358 or this Agreement; and
- (20) where the manufacturer's operation or current financial state including, but not limited to, sufficient free cash flow is insufficient to sustain continuing operations for the duration of this AGREEMENT and any continuing obligations arising out of this AGREEMENT which may continue beyond the termination of this AGREEMENT such that a Vendor Responsibility (Vend Rep) Review conducted by the Comptroller or staff designated for such purpose or by the DIVISION would be less than adequate to secure initial contract approval, provided that nothing herein shall prevent the DIVISION or OSC from allowing the Vendor to implement a plan to restore its Vendor Responsibility status to a satisfactory level within a timeframe solely determined by the DIVISION or by OSC except that approval to implement such a plan is solely at the discretion of OSC or the DIVISION; the Vendor is not entitled thereto and no application of estoppel or laches shall result in such entitlement which is in all events at the sole discretion of OSC or the DIVISION.

VIII. IGNITION INTERLOCK DEVICE SPECIFICATIONS

All ignition interlock devices used in New York State pursuant to "Leandra's Law" and its statutory amendments must meet New York State Department of Health (DOH) regulatory standards contained in 10 NYCRR Part 59. The manufacturer shall provide proof of such certification for each device intended for use in New York State. The manufacturer shall certify that any devices utilized in New York State will be calibrated at a set point of .025 percent BAC and have the capacity to require the operator after passing the start-up test allowing the engine to start, to submit to an initial rolling test within a randomly variable interval ranging from five to fifteen minutes. Subsequent rolling tests shall continue to be required at random intervals not to exceed thirty (30) minutes for the duration of the travel. A start-up re-test shall be required within five (5) to fifteen (15) minutes of a failed start-up test. A rolling re-test shall be required within one (1) to three (3) minutes after a failed or missed rolling test. An ignition interlock device shall enter into a lockout mode upon the following events: one failed start-up re-test, one missed start-up re-test, one failed rolling re-test or one missed rolling re-test within a service period, or one missed service visit.

IX. IGNITION INTERLOCK DEVICE INSTALLATION

Applicants shall certify that its installation/service providers will comply with the following requirements:

- (1) the ignition interlock device shall be installed in any vehicle(s) owned or operated by the operator within seven (7) business days of the operator's request for installation of the device;
- (2) provide to all operators, at the time of device installation a hardcopy statement of fees/charges clearly specifying warranty details, schedule of lease payments where applicable, any additional costs anticipated for routine recalibration, service visits, and shipping where the device includes the direct exchange method of servicing, and listing any items available without charge if any, along with a list of installation/service providers in their respective county, a toll-free 24 hour telephone number to be called from anywhere in the continental United States to secure up-to-date information as to all installation/service providers located anywhere in the continental United States and for emergency assistance, and a technical support number

available during specified business hours to reach a trained staff person to answer questions and to respond to mechanical concerns associated with the ignition interlock device;

(3) record the odometer reading of the motor vehicle in which the ignition interlock device is installed and during all service visits;

(4) remove an ignition interlock device and return the vehicle to normal operating condition only after having received a certificate of completion or a letter of de-installation from the monitor as authorized pursuant to section 358.7 of this Part. Where at the time of removal the installation/service provider notices any failed tests that have not been backed up by a successful re-test, the monitor shall be notified for approval before the removal is made. Where the device includes direct exchange method of servicing, the qualified manufacturer shall report to the monitor before removal is made. If a device is removed for repair and cannot be reinstalled immediately, a substitute device shall be provided;

(5) installation shall be performed in a professional manner by persons trained and authorized by the manufacturer pursuant to section 358.5(c) (10);

(6) installation shall be performed according to the manufacturer's detailed written instructions, with calibration to the required set point of .025 BAC percent and in a manner so as to ensure proper vehicular operation;

(7) at the time of installation permanently affix the warning label notice prescribed by the department of health in a highly visible location on the installed ignition interlock device;

(8) be equipped with the necessary tools and equipment to ensure proper ignition interlock device installation and removal;

(9) perform installations and maintenance, including recalibrations, within a secure area of the installation/service provider's or qualified manufacturer's business establishment or at a location serviced by a mobile unit to prevent unauthorized persons from observing or accessing secured items such as tamper seals and installation, data download, transmission, or recalibration instructions;

(10) maintain records of installation and maintenance work performed on the devices;

(11) screen vehicles for mechanical and electrical conditions that would interfere with the functioning of the device, such as low battery or alternator voltage, defective horn, untuned engine, and frequent stalling;

(12) prior to installation, require that the operator complete mechanical repairs or adjustments where necessary for the proper functioning of the device. In such event, the seven (7) day installation period in paragraph one shall commence when repairs or adjustments are completed;

(13) prior to installation of the ignition interlock device, obtain and record the following information from every operator:

- (i) photo identification;
 - (ii) the name and policy number of his/her automobile insurance;
 - (iii) the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other individuals who operate the motor vehicle(s) owned or driven by the operator; and
 - (iv) a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator;
- (14) if, during the installation, the operator fails to pass the initial breath test, the installation will be halted and the monitor notified;
- (15) after installation during any service visit, recalibrate as necessary or required in this Part and check the device and vehicle to ensure proper operation;
- (16) notify the monitor and county probation department when an ignition interlock device has been installed on an operator's vehicle(s) within three (3) business days of installation;
- (17) complete the following with respect to service visits:
- (i) document photo identification from the operator during all required in-person services;
 - (ii) provide service/monitoring of the ignition interlock device as required herein;
 - (iii) recalibrate as necessary the ignition interlock device at each service visit;
 - (iv) check for signs of circumvention or tampering; and
- (18) adhere to any other applicable state or federal requirement.

X. SERVICE VISITS

Applicants shall certify that the manufacturer or its authorized installation/service providers will complete the following with respect to service visits:

1. Conduct service visits within thirty (30) calendar days of initial installation(s) and subsequent service visits every thirty (30) calendar days where the device does not automatically transmit data directly to the monitor; and submit to service visits within thirty (30) calendar days of initial installation(s) and subsequent service visits every sixty (60) calendar days where the device either automatically transmits data directly to the monitor or the device head is required to be sent to the qualified manufacturer every thirty (30) calendar days. However, an operator shall only remove the device head upon receipt of a new device head.
2. obtain and record photo identification from the operator during all required in-person services.
3. provide service/monitoring of the ignition interlock device as required in 9 NYCRR Part 358.

4. recalibrate as necessary the ignition interlock device at each service visit.
5. check for signs of circumvention or tampering.
6. installation/service provider or the manufacturer shall download the usage history of every operator's ignition interlock device within thirty (30) calendar days between service visits or if the operator fails to appear for a service visit(s) as soon thereafter as the device can be downloaded, and provide the monitor with such information and in such format as determined by the division. Further guarantee that the installation/service provider shall take appropriate, reasonable and necessary steps to confirm any report of failed tasks, failed tests, circumvention, or tampering and thereafter notify the appropriate monitor within three (3) business days of knowledge or receipt of data, indicating:
 - (i) installation of a device on an operator's vehicle(s);
 - (ii) report of a failed start-up re-test;
 - (iii) report of a missed start-up re-test;
 - (iv) report of a failed rolling re-test;
 - (v) report of a missed rolling re-test;
 - (vi) report of the device entering lockout mode;
 - (vii) failure of an operator to appear at a scheduled service visit; or
 - (viii) report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by paragraphs (a), (c) or (d) of subdivision (9) of section 1198 of the Vehicle and Traffic Law, or an attempt thereof;
 - (ix) report of a failed test or re-test where the BAC is .05 percent or higher.
 - (x) adhere to real time reporting and emergency notification program requirements, where such is required in any county plan. Where real time reporting is utilized, such reports provided to the monitor as required above must occur contemporaneously as the event occurs or as soon as cellular reception permits. Where an emergency notification program is utilized, immediate report notification as required above must be transmitted to the appropriate monitor and any other law enforcement specified by the county;
7. agree to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized by division regulation, by law, or court order. Record retention and disposition of all records of any qualified manufacturer, and installation/service provider with respect to 9 NYCRR Part 358 shall be in accordance with the applicable Records Retention and Disposition schedule promulgated by the State Education Department.
8. provide, no more than monthly to the operator upon his or her request, the operator's usage history, including any report of failed tasks, failed tests, circumvention, or tampering. An operator may only make one request during any month for such information. Such request shall be in writing and provide either an email address or self-addressed stamped envelope;

XI. IGNITION INTERLOCK DEVICE REMOVAL

Applicants shall certify that its installation/service providers will comply with the following requirements related to the removal of the IID:

1. remove an IID and return the vehicle to normal operating condition only after having received a certificate of completion or a letter of de-installation from the monitor as authorized by 9 NYCRR Part 358. If a device is removed for repair and cannot be reinstalled immediately, a substitute device shall be provided;

2. where at the time of removal the installation/service provider notices any failed tests that have not been backed up by a successful re-test, the monitor shall be notified for approval before the removal is made.

XII. RECORDS AND REPORTING

The applicant shall certify that their business and its installation/service providers will comply with DCJS and other regulatory reporting requirements in providing information and reports as may be necessary with respect to an operator's use of the ignition interlock device. The applicant shall also certify that it will provide, no more than monthly, to the operator upon his or her request, the operator's usage history, including any report of failed tasks, failed tests, circumvention, or tampering. Such request shall be in writing and provide either an email address or self-addressed stamped envelope.

XIII. APPLICATION REQUIREMENTS AND THE REVIEW PROCESS

Applicants shall submit a complete response to this RFA that conforms to the format and content requirements as set forth in this RFA and the attached application.

Every applicant must furnish three (3) completed original signed applications, and five (5) additional hard copies. Applications should be enclosed in one mailing envelope or box with the notation "CJS-2017-02 Ignition Interlock Program Application" clearly visible on the front. Fax or email transmittals will not be accepted.

Send Applications to:

**Mr. Sandy Fader
Assistant Director/Procurement Officer
Office of Financial Administration
NYS Division of Criminal Justice Services
Alfred E. Smith Office Building, 10th Floor
80 South Swan Street Albany, New York 12210**

All applications will become the property of DCJS, and will be considered public documents once awards are granted, with the exception of any information deemed proprietary by DCJS upon review of such request from a manufacturer.

Disclosure of items related to this RFA and any future Contract shall be permitted consistent with the laws of the State of New York and specifically, Article 6 of the Public Officers Law, commonly referred to as the Freedom of Information Law (FOIL). The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are otherwise exempt from disclosure under that statute. Information constituting trade secrets or critical infrastructure information, for purposes of FOIL, must be clearly marked and identified as such upon submission. If the Applicant intends to request an exemption from disclosure under FOIL for trade secret materials or critical infrastructure information, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Applicant; or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure

pursuant to §87(2) of FOIL. Acceptance of the identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to the availability of the identified information will be made in accordance with FOIL at the time a request for such information is received by the State. For further detail, see Section XIV(F) and §§87 and 89 of FOIL.

Review and Selection Process

The review and selection process will begin upon receipt of the application. Award/Approval decisions will be made by DCJS, based on a review of responses to the requirements delineated in this RFA and contained in the application. A team consisting of at least 2 DCJS employees will conduct the review process and make recommendations to the Executive Deputy Commissioner of DCJS. Upon a thorough review by OPCA, applications will be recommended for award based upon certification of compliance with all (100%) of the elements contained in this RFA. There will be no limit to the number of awards issued. Every application meeting the criteria contained in this RFA will be awarded approval to contract with DCJS to provide IID services in New York State. All vendors must register for Vendor Responsibility with the Office of the State Comptroller and are required to complete a Vendor Responsibility Questionnaire (See Section XIV-L-5). Results of the Vendor Responsibility Questionnaire will be used by the State Comptroller in the course of the contract process. (See State Finance Law Section 112) The final decision to grant an award rests with the Commissioner/Executive Deputy Commissioner of DCJS in consultation with the Director of Probation and Correctional Alternatives.

XIV. ADMINISTRATIVE CRITERIA AND CONDITIONS

A. Cost Incurred Prior to Contract Approval

The State of New York is not liable for any cost incurred by an applicant manufacturer, and/or installation/service provider in preparation for, or prior to, the approval of an executed contract by the State of New York. Additionally, no cost will be incurred by the State for any participation in any pre-contract award activity.

B. Commitment

Submission of response to this RFA shall not be construed as a commitment by the State to proceed with this project.

C. Certain State's Rights

The State reserves the right to:

1.
 - a Change any of the scheduled dates and times stated herein;
 - b Amend RFA specifications after their release to correct errors or oversights, or to supply additional information as it becomes available and so notify all Applicants;
 - c Withdraw the RFA, at its sole discretion;

- d Disqualify an Applicant from receiving an award if such Applicant has previously failed to perform satisfactorily in connection with public bidding or contracts(s) or is deemed otherwise not responsible;
- e Eliminate a mandatory requirement when all Applicants cannot meet such requirement;
- f Evaluate, accept and/or reject any and all applications, in whole or in part, and to waive technicalities, irregularities, and omissions if, in the Division's considered judgment, the best interests of the Division will be served;
- g Require the Applicant to provide proof of or otherwise demonstrate, to the satisfaction of the Division, any information presented as a part of their application;
- h Use information obtained through the Division's investigation of an Applicant's qualifications, experience, ability or financial standing, and any material or information submitted by the Applicant in response to the Division's request for clarifying information in the course of evaluation and selection under this RFA;
- i Negotiate with successful Applicants within the scope of the RFA to serve the best interests of the Division and the State.
- j Make an award under the RFA in whole or in part;
- k Disqualify any Applicant whose conduct and/or application fails to conform to the requirements of the RFA;
- l Seek clarifications and revisions of any applications;
- m Prior to application opening, amend the RFA specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- n Prior to the application opening, direct applicants to submit application modifications addressing subsequent RFA amendments;
- o Waive any requirements that are not material;

- p Utilize any and all ideas submitted in the proposals received; and/or
- q Require clarification at any time during the application procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an applicant's application and/or to determine an applicant's compliance with the requirements of the solicitation;.

D. Contract Negotiations

During contract negotiations, the State expects to have direct access to applicant personnel who have full authority to make commitments on behalf of the applicant.

E. Executed Contracts

Any negotiated contract must conform to the laws of New York State and will be subject to approval by the Department of Law and the Office of the State Comptroller. A successful applicant must timely enter into a contract with NYS related to service delivery within ten (10) business days of notification and receipt of the final contract. The Contract, including the SLOC, must be promptly forwarded to DCJS within such time period. Appendix E is a draft contract of terms and conditions, some of which cannot be changed (i.e. *Appendix A: Standard Clauses for New York State Contracts*). The final contract may contain new or amended contractual provisions. NYS reserves the right to negotiate minor terms and conditions relative to the RFA and the applicant's response to meet agency program requirements consistent with the solicitation. During contract negotiations, the State expects to have direct access to Applicant's personnel who have full authority to make commitments on behalf of the Applicant. Any negotiated contract must conform to the laws of New York State.

F. Proposal Security

Public inspection of the application is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The applications are presumptively available for public inspection. Pursuant to §87(2)(d) of FOIL, records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise" may be exempt from disclosure.

If this would be unacceptable to an applicant, the applicant should apply to the State for trade secret protection of its application. In applying for trade secret protection, it would be unacceptable to indiscriminately categorize the entire application as such. An Applicant shall notify DCJS upon submission of its Application if it intends to seek an exemption from disclosure under FOIL of either or both types of material. Where such claimed material is embedded in the Application, the Applicant is required to submit two (2) additional copies of their application with claimed material clearly labeled and a footnote on every page indicating "REDACTED VERSION." Claimed material must not be indicated on any other copies of the Applicant's application. (see also Section XIII)

G. State Property

All proposals and any accompanying documentation become the property of the State of New York and will not be returned.

H. Proposal Certifications

The following certification (Bidding Practices) must be included.

1. Bidding Practices

a. Each applicant shall submit, as part of the application, a completed copy of the Non-Collusive Bidding Certification. This submission will certify that, to the best of the applicant's knowledge and belief:

- i. The prices in the application have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other applicant or with any competitor;
- ii. Unless otherwise required by law, the prices which have been quoted in the application have not been knowingly disclosed by the applicant and will not knowingly be disclosed by the applicant, directly or indirectly, to any other applicant or to any competitor prior to completion of the selection process; and
- iii. No attempt has been made or will be made by the applicant to induce any other person, partnership or corporation to submit or not to submit an application for the purpose of restricting competition.

b. In accordance with NYS Finance Law §139-d, an application shall not be considered for award nor shall any award be made where the above conditions have not been complied with; provided, however, that if in any case the applicant cannot make the foregoing certification, the applicant shall so state and shall furnish with the application a signed statement which sets forth, in detail, the reasons therefore. Where the above conditions have not been complied with, the application shall not be considered for award nor shall any award be made unless the head of the purchasing unit of DCJS determines that such disclosure was not made for the purpose of restricting competition.

c. The fact that an applicant has published price lists, rates, or tariffs covering items or services being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning stated above.

2. Fair Employment

In accordance with State Finance Law Section 165, compliance with the MacBride Fair Employment Principles must be certified by completion of the Nondiscrimination in Employment in Northern Ireland statement.

3. Vendor Responsibility

New York State Procurement Laws and Guidelines require the award of State contracts to responsible vendors. Accordingly, the Vendor Responsibility Questionnaire form must be certified for non-governmental agencies. Vendor Responsibility filing requirements can be found in Section XIV-L (5).

I. Announcements or Releases

Public announcements or news releases pertaining to the selection of the applicant or award of a contract must not be made without prior written approval from DCJS.

J. Debriefing Sessions

Unsuccessful applicants will be notified in writing and will be offered an opportunity to be debriefed. A debriefing, if any, will be scheduled for all unsuccessful applicants, upon request of those applicants, at a date and time convenient to both DCJS and the applicants concerned.

K. Contract Provisions

1. Standard Clauses for All New York State Contracts

The applicant must agree to abide by all of the provisions of Appendix A, Standard Clauses for New York State Contracts, contained herein, which has precedence over the Contract entered into with the successful applicant and the RFA and its other attachments and any other Appendices.

L. Miscellaneous Requirements

1. In general, all approved applicants, referred herein as "CONTRACTORS" as part of contractual terms and conditions must specifically agree to comply with New York State's "Information Security Breach and Notification Act" as set forth in State Technology Law (STL) §208 and General Business Law (GBL) §899-aa. The CONTRACTOR shall promptly notify DCJS and specifically OPCA where there is reasonable belief of breach of security, unauthorized access or unauthorized release of personal computer data containing personal information and take appropriate action with respect to notification of affected individuals and to other required state agencies consistent with such Act. CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors. Personal information means any information concerning a person which because of name, number, personal mark, or other identifier, can be used to identify such person. Specific details are as follows:

Information Security Breach and Notification Act, Indemnification of DCJS and Authorized Users for Breach of Security

STL §208 and GBL §899-aa require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Disclosure of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures have been taken subject to approval of DCJS or such other applicable State agency to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation.

State entities subject to STL §208 that experience breaches of computerized data which includes private information must file notices with the New York Attorney

General; Department of State's Division of Consumer Protection; and the Office of Information Technology Services' Enterprise Information Security Office.

GBL §899-aa provides that persons or businesses conducting business in New York must disclose any breaches of computerized data which includes private information by notifying the offices of the New York Attorney General; the NYS Division of State Police; and the Department of State's Division of Consumer Protection.

Information relative to the law and the notification process is available at: <http://its.ny.gov/eiso/breach-notification>

GBL: §899-aa (6)(a) provides in part that:

whenever the Attorney General shall believe from evidence satisfactory to him that there is a violation of this article he may bring an action in the name and on behalf of the People of the State of New York, in a court of justice having jurisdiction to issue an injunction, to enjoin and restrain the continuation of such violation. In such action, preliminary relief may be granted under Article sixty-three of the Civil Practice Law and Rules. In such action the court may award damages for actual costs or losses incurred by a person entitled to notice pursuant to this article, if notification was not provided to such person pursuant to this article, including consequential financial losses. Whenever the court shall determine in such action that a person or business violated this article knowingly or recklessly, the court may impose a civil penalty of the greater of five thousand dollars or up to ten dollars per instance of failed notification, provided that the latter amount shall not exceed one hundred fifty thousand dollars.

The remedies in GBL§899-aa(6)(a) and STL§208 are in addition to any other lawful remedy and in addition to any other remedy available under the terms of the Contract executed between DCJS and the Contractor.

Successful Applicants must agree to indemnify DCJS without limitation against any claims brought against DCJS by reason of a wrongful disclosure of confidential information attributed to the Applicant or any Applicant employee and will cooperate fully with DCJS and the Attorney General in defense of the claim.

The Contract executed between DCJS and the Applicant/Contractor may be terminated by the State for cause for a material breach of this section, and the provisions of GBL§899-aa and STL§208 shall survive the termination of this Agreement.

2. Minority & Women Owned Business Enterprises

The Offerer agrees to make good faith efforts to promote and assist the participation of certified minority-business enterprises (MBE) and women-owned business enterprises (WBE) as subcontractors and suppliers on this project for the provision of services and materials. See description of the requirements of Article 15-A.

Executive Law Article 15-A:

DCJS is required to implement the provisions of Executive Law Article 15-A for all of its contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any

combination of the foregoing and (2) for contracts in excess of \$100,000 for real property renovation and construction. For purposes of this contract, DCJS hereby establishes a goal of (25)% for minority business enterprises (MBE) participation and (5)% for women-owned business enterprises (WBE) participation. MBE and WBE goals are for goods and services in support of the actual services to be provided.

3. Workers' Compensation And Disability Benefits Compliance: New York State law requires that all state agencies receive written documentation that any funded agency has both workers' compensation and disability benefits insurance coverage, or where applicable has received a disability exemption. Accordingly, it is necessary that you include such written documentation of coverage and/or exemption in application material returned to OPCA. If you think you are exempt from the requirement to carry New York State Workers' Compensation and/or Disability Benefits, this should be verified with the Workers' Compensation Board, Bureau of Compliance, which can be reached at 518-486-6307 or toll-free at 866-298-7830, prior to filing form CE-200 (Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage.) For more information as to this requirement and to obtain any necessary forms, please refer to the instructional manual which is available on-line at the Workers' Compensation Board's website, <http://www.wcb.ny.gov/content/main/Employers/EmployerHandbook.pdf>

4. Procurement Lobbying Guidelines are attached as APPENDIX PLG. The Offerer/Bidder must affirm that it understands and agrees to comply with DCJS' procedures relative to the "Affirmation of Understanding and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)", "Offerer Disclosure of Non-Responsibility Determination" and "Offerer's Certification of Compliance with State Finance Law §139-k(5) by completing and submitting the forms found in APPENDIX PLG.

5. Vendor Responsibility – VendRep System process change (*July 2011*)
The New York State Division of Criminal Justice Services recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. However, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State Vend Rep System, see the Vend Rep System Instructions available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at <https://portal.osc.state.ny.us> . For direct VendRep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at itservicedesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the New York State Division of Criminal Justice Services or the Office of the State Comptroller's Help Desk for a copy of the paper form.

6. Tax Law 5-A Amended April 26, 2006

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose

sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this bid. Form No. ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new Form No. ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed and submitted to DCJS as the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms with their bid submission. Failure to make either of these filings may render a vendor non-responsive and non-responsible. Vendors shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at 1-800-698--2909 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site:
<http://www.tax.ny.gov>

The Offerer/Bidder must also complete and submit to DCJS the Procurement Lobbying Guidelines found in APPENDIX PLG; specifically forms entitled "Offerer Disclosure of Prior Non-Responsibility Determinations", and "Offerer's Certification of Compliance with State Finance Law §139-k (5)"

Following please find a checklist to assist with your completion and submission of this application.

Checklist of <u>Required</u> Documents and Attachments	Submitted with Application Yes/No
Transmittal Letter signed by the individual authorized to make contractual commitments on the organization's behalf and must contain ALL of the following: (1) A statement attesting to the accuracy and truthfulness of all information contained in the application and (2) A statement that the applicant has read, understands, and is able and willing to comply with all standards and participation requirements described in the RFA.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Completed Application and Certification (Appendix D both part 1 and part 2)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Copies of NYS Department of Health (DOH) certifications approving the use of the manufacturer's/distributor's device(s) in this state.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Completed Device(s) Classification and Fee/Charge Schedule for each device proposed to be used in this state (Appendix C).	<input type="checkbox"/> Yes <input type="checkbox"/> No
A current list of installation/service providers in this state as described in item 11 of the Application/Certification	<input type="checkbox"/> Yes <input type="checkbox"/> No
Copy of most recent annual financial audit	<input type="checkbox"/> Yes <input type="checkbox"/> No
Documentation and verification of insurance (to be submitted upon each policy issuance or renewal) covering product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total.	<input type="checkbox"/> Yes <input type="checkbox"/> No
A signed statement that the qualified manufacturer or its representative will indemnify and hold harmless the State of New York, the division, the department of health, every county where it does business, and their officers, employees and agents as described in this RFA.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Certification of commitment to obtain, provide documentation and verification of and maintain a requisite Standby Letter of Credit (SLOC) as described in this RFA.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Completed Vendor Responsibility Questionnaire with signed and notarized certification - (or filed electronically)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Workers' Compensation and Disability Benefits Compliance documentation as referenced in this RFA	<input type="checkbox"/> Yes <input type="checkbox"/> No
Non-Collusive Bidding Certification dated and completed including street addresses and signed.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Lobby Law Forms	<input type="checkbox"/> Yes <input type="checkbox"/> No
Encouraging Business in NYS Form	<input type="checkbox"/> Yes <input type="checkbox"/> No
Minority and Women-Owned Business Enterprise (MWBE) and Equal Opportunities Requirements	<input type="checkbox"/> Yes <input type="checkbox"/> No
ST-220 Forms (ST220-CA and ST-220 TD)	<input type="checkbox"/> Yes <input type="checkbox"/> No

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

January 2014

*PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.*

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate

against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be

sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any

business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION

ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

APPENDIX B

DCJS' IGNITION INTERLOCK RULE-9 NYCRR PART 358

APPENDIX B: RULE TEXT

Part 358 - Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.

Section 358.1 - Objective.

Section 358.2 - Applicability.

Section 358.3 - Definitions.

Section 358.4 - County Ignition Interlock Program Plan.

Section 358.5 - Approval Process and Responsibilities of Qualified Manufacturers.

Section 358.6 - Cancellation, suspension, and revocation of qualified manufacturers, and installation/service providers, and certified ignition interlock devices.

Section 358.7 - Monitoring.

Section 358.8 - Costs and maintenance.

Section 358.9 - Record Retention and Disposition.

Section 358.10 - Liability.

Section 358.1 - Objective.

This Part's objective is to promote public/traffic safety, offender accountability, and quality assurance through the establishment of minimum standards for the usage and monitoring of ignition interlock devices imposed by a criminal court for a felony or misdemeanor under the Vehicle and Traffic Law or Penal Law.

Section 358.2 Applicability.

This Part shall be applicable to every county, monitor, and operator, and shall govern qualified manufacturers and installation/service providers as to use, installation, and reporting with respect to ignition interlock devices imposed upon the aforementioned criminal court population within New York State and be effective immediately except section 358.6 through 358.10 which shall be effective August 15, 2010.

Section 358.3 Definitions.

When used in this Part:

(a) The term "blood alcohol concentration" or "BAC" shall mean the weight amount of alcohol contained in a unit volume of blood, measured as grams ethanol/ 100 ml. blood and expressed as %, grams %, % weight/volume (w/v), and % BAC. Blood alcohol concentration in this Part shall be designated as % BAC.

(b) The term "certificate of completion" shall mean a document issued by the monitor after the conclusion of the ignition interlock period, including any extensions or modifications as may have occurred since the date of sentence which shows either completion of the operator's sentence or a change in the conditions of probation or conditional discharge no longer requiring the need for a device.

(c) The term “circumvent” shall mean to request, solicit or allow any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with the device, for the purpose of providing the operator whose driving privileges is so restricted with an operable motor vehicle, or to blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted or to tamper with an operable ignition interlock device.

(d) The term “county” shall mean every county outside of the city of New York, and the City of New York as a whole.

(e) The term “county executive” shall mean a county administrator, county manager, county director or county president and in cities with a population of one million or more, the mayor.

(f) The term “division” shall mean the division of criminal justice services.

(g) The term “drinking driver program” shall mean an alcohol and drug rehabilitation program established pursuant to section 1196 of the Vehicle and Traffic Law.

(h) The term “failed tasks” shall mean failure to install the ignition interlock device or failure to comply with a service visit or any requirement resulting therefrom as prescribed by this Part.

(i) The term “failed tests” shall mean a failed start-up re-test, failed rolling re-test, or missed rolling re-test.

(j) The term “failure report recipients” shall mean all persons or entities required to receive a report from the monitor of an operator’s failed tasks or failed tests pursuant to a county’s plan which may include, but is not limited to the sentencing court, district attorney, operator’s alcohol treatment provider, and the drinking driver program, where applicable.

(k) The term “ignition interlock device” shall mean any blood alcohol concentration equivalence measuring device which connects to a motor vehicle ignition system and prevents a motor vehicle from being started without first determining through a deep lung breath sample that the operator’s equivalent blood alcohol level does not exceed the calibrated setting on the device as required by standards of the department of health.

(l) The term “installation/service provider” shall mean an entity approved by a qualified manufacturer that installs, services, and/or removes an ignition interlock device.

(m) The term “lockout mode” shall mean circumstances enumerated in this Part which trigger the ignition interlock device to cause the operator’s vehicle to become inoperable if not serviced within five (5) calendar days.

(n) The term “monitor” shall mean the local probation department where the operator is under probation supervision or any person(s) or entity (ies) designated in the county’s ignition interlock program plan for any operator granted conditional discharge.

(o) The term “operator” shall mean a person who is subject to installation of an ignition interlock device for a felony or misdemeanor under the Vehicle and Traffic Law or the Penal Law.

(p) The term “qualified manufacturer” shall mean a manufacturer or distributor of an ignition interlock device certified by the New York State department of health which has satisfied the specific operational requirements herein and has been approved as an eligible vendor by the division in the designated region where the county is located.

(q) The term “region” shall mean counties comprising an area within New York State designated by the division where a qualified manufacturer is authorized and has agreed to service.

(r) The term “start-up test” shall mean a breath test taken by the operator to measure the operator’s blood alcohol concentration prior to starting the vehicle’s ignition.

(s) The term “start-up re-test” shall mean a breath test taken by the operator to measure the operator’s blood alcohol concentration required within five (5) to fifteen (15) minutes of a failed start-up test.

(t) The term “rolling test” shall mean a breath test, administered at random intervals, taken by the operator while the vehicle is running.

(u) The term “rolling re-test” shall mean a breath test, taken by the operator while the vehicle is running, within one (1) to three (3) minutes after a failed or missed rolling test.

(1) The term “failed rolling re-test” shall mean a rolling re-test in which the operator’s BAC is at or above the set point.

(2) The term “missed rolling re-test” shall mean failure to take the rolling re-test within the time period allotted to do so.

(v) The term “service period” shall mean the length of time between service visits.

(w) The term “service visit” shall mean a visit by the operator or another driver of the subject vehicle to or with the installation/service provider for purposes of having the ignition interlock device inspected, monitored, downloaded, recalibrated, or maintained. It shall also mean where applicable, the act by any operator of sending the portion of the interlock device that contains the data log and the breath testing module to the qualified manufacturer for the purposes of downloading the data, reporting to the monitor, and recalibrating the device.

(x) The term “set point” shall mean a pre-set or pre-determined BAC setting at which, or above, the device will prevent the ignition of a motor vehicle from operating.

(y) The term “STOP–DWI” shall mean special traffic options program–driving while intoxicated.

(z) The term “tamper” shall mean to alter, disconnect, physically disable, remove, deface, or destroy an ignition interlock device or any of its component seals in any way not authorized by this Part.

Section 358.4 County Ignition Interlock Program Plan.

(a) Every county shall establish a county ignition interlock program plan with respect to usage of ignition interlock devices and monitoring the compliance of an operator subject to installation of an ignition interlock device as directed by a sentencing court. Such plan shall be approved by the county executive and become effective on or before August 15, 2010, and shall be filed with the division no later than June 15, 2010. Where a plan has been amended by the county, it shall be promptly filed with the division in advance of its effective date.

(b) Every county shall develop a plan in consultation with the county’s probation director, district attorney, and in New York City the district attorney from each of the five boroughs, sheriff or Police Commissioner where applicable, STOP–DWI Coordinator, a representative of its drinking driver program where applicable and where more than one program exists in the county, a representative designated by the county executive, a superior and local criminal court judge designated by the administrative judge for the county, and in New York

City a superior and local criminal court judge designated by the deputy chief administrative judge, a representative of an agency providing legal services to those unable to afford counsel in criminal cases designated by the county executive. Nothing herein shall prohibit a county from consulting with other persons or entities as the county executive deems appropriate with respect to development of its plan.

(c) Every plan shall specify monitoring by the probation department where the operator is subject to a period of probation supervision and may designate one or more alternative persons or entities, in lieu of the probation department, responsible for monitoring where an ignition interlock device has been imposed pursuant to a conditional discharge. An alternative person or entity may include but is not limited to the sheriff, police commissioner, district attorney, STOP-DWI coordinator, traffic safety board representative, drinking driver program, treatment alternative for safer communities program, or any other similar individual, agency, or organization. Nothing shall preclude a county from sharing monitoring resources, including equipment, with another county to effectuate the provisions of this Part.

(d) Every plan at a minimum shall:

(1) designate the persons or entities, or combination thereof, responsible for monitoring an operator's compliance with an ignition interlock requirement in cases where an operator does not receive a period of probation supervision; establish that where an operator is under probation supervision, the probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in its region. The operator may select the model of the ignition interlock device, meeting the specific class and features selected by the probation department from a qualified manufacturer in the operator's region of residence;

(2) establish that where an operator has received a sentence of conditional discharge, the monitor shall select the class of ignition interlock device available from a qualified manufacturer in its region for any such operator. The operator may select the model of the ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence;

(3) in the event more than one qualified manufacturer does business within its region, the county shall establish an equitable procedure for manufacturers to provide ignition interlock devices without costs where an operator has been determined financially unable to afford the costs and has received a waiver from the sentencing court. The equitable procedure should be based upon proportion of ignition interlock devices paid to each qualified manufacturer by operators in the county;

(4) through any available funding earmarked for such purpose, establish a distribution formula for probation supervision and/or monitoring purposes associated with this Part;

(5) establish a procedure whereby the probation department and any other monitor will be notified no later than five (5) business days from the date an ignition interlock condition is imposed by the sentencing court, any waiver of the cost of the device granted by the sentencing court, and of any intrastate transfer of probation or interstate transfer of any case which either has responsibility to monitor. Such procedure shall also establish a mechanism for advance notification as to date of release where local or state imprisonment is imposed; and

(6) establish a procedure governing failure report recipients, including method and timeframe with respect to specific notification and circumstances. At a minimum the procedure shall be consistent with the provisions of section 358.7(d) with respect to sentencing court and district attorney notification of specific failed tasks and failed tests reports.

Section 358.5 Approval Process and Responsibilities of Qualified Manufacturers.

(a) (1) On or after August 15, 2010, only a qualified manufacturer may conduct business in New York State with respect to any operator. An interested manufacturer of a certified ignition interlock device seeking to conduct business within New York State shall apply to the division to become a qualified manufacturer in one or more designated regions of New York State.

(2) The four regions of the state by counties for purposes of this Part are as follows:

(i) Region 1: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates;

(ii) Region 2: Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins;

(iii) Region 3: Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington; and

(iv) Region 4: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester.

(b) (1) The format and content of any application shall be established by the division. The application deadline for any manufacturer seeking approval of the division as a qualified manufacturer to conduct business by August 15, 2010 shall be on or before May 12, 2010. Thereafter, applications may be filed at any time for division approval by manufacturers seeking to conduct business after August 15, 2010. The application shall require at a minimum that the manufacturer submit relevant information, reports, and other documents requested by the division with respect to competitive pricing, service performance, select one or more regions in which it shall agree to conduct business, and certify that it will comply with all applicable provisions specified in this Part with respect to service delivery. In addition, the manufacturer or its representative shall provide a signed statement that the manufacturer or its representative will indemnify and hold harmless the State of New York, the division, the department of health, every county where it does business, and their officers, employees and agents from all claims, demands and actions as a result of property damage and/or injury or death to persons which arise, directly or indirectly, out of any act or omission by the manufacturer, its representative, or installation/service providers relating to the installation, service, inspection, maintenance, repair, use and/or removal of the ignition interlock device.

(2) Every manufacturer who applies shall provide a thorough description of each device intended for use in New York State, provide proof of such certification by the department of health for each device intended for use in New York State, and the fee structure associated with that specific device. Descriptive information about the device shall include but not be limited to: make and model of device, special features of the device such as camera, reporting capabilities, removable head, global positioning satellite, and real-time or next day reporting. Fee structure information shall include any and all fees charged to the operator, including but not limited to installation fee, monthly fee, any special service fees, shipping fee, and de-installation fee. The proposed fee structure shall take into consideration and be based upon an anticipated ten percent (10%) waiver of the fees by sentencing courts due to operator unaffordability. On or about February 15, 2011 and annually thereafter, the division shall review requests by qualified manufacturers for rate adjustments which shall include information submitted by qualified manufacturers involving unaffordability waivers granted by courts. At its discretion, the division shall approve rate adjustments where appropriate.

(3) The division shall classify all certified ignition interlock devices into categories based upon features and provide such list to every county. This classification system and subsequent device classification is subject to change by the division as new information becomes available. Upon review of a manufacturer's application, the division shall make a determination whether the manufacturer satisfies all requirements to be designated a qualified manufacturer and provide notification to the applicant and every county within the region that the qualified manufacturer may conduct business. Every qualified manufacturer shall enter into a contractual agreement for a minimum period of three years with the division setting forth the requirements of the qualified manufacturer and all of its installation/service providers consistent with this Part and the application submission approved by the division.

(c) Every qualified manufacturer shall:

(1) adhere to all regulatory provisions of the department of health with respect to certification, testing, labeling, reporting and any additional requirements, and shall also specifically adhere to its responsibilities contained in this Part;

(2) agree that an ignition interlock device shall conform to national highway traffic safety administration standards and department of health specifications, be calibrated at a set point of .025 BAC percent, and also require the operator after passing the start-up test allowing the engine to start, to submit to an initial rolling test within a randomly variable interval ranging from five to fifteen minutes. Subsequent rolling tests shall continue to be required at random intervals not to exceed thirty (30) minutes for the duration of the travel. A start-up re-test shall be required within five (5) to fifteen (15) minutes of a failed start-up test. A rolling re-test shall be required within one (1) to three (3) minutes after a failed or missed rolling test. An ignition interlock device shall enter into a lockout mode upon the following events: one failed start-up retest, one missed start-up re-test, one failed rolling re-test or one missed rolling re-test within a service period, or one missed service visit;

(3) agree to adhere to a maximum fee/charge schedule with respect to all operator's costs associated with such devices, offer a payment plan for any operator determined to be financially unable to pay the cost of the ignition interlock device where a payment plan is so ordered, and provide a device free of fee/charge to the operator where the cost is waived by the sentencing court, or pursuant to such other agreement as may be entered into for provision of the device. Any contractual agreement between the operator and the qualified manufacturer or its installation/service providers shall permit an early termination without penalty to the operator when a certificate of completion has been issued, where the sentence has been revoked, and whenever the operator has been transferred to a jurisdiction where the manufacturer does not do business. Nothing shall prevent a qualified manufacturer from lowering the fee/charge schedule during the course of an operator's contract and/or the contractual agreement with the division;

(4) agree to service every county within a region and ensure that there shall be an installation/service provider within 50 miles from the operator's residence or location where the vehicle is parked or garaged, whichever is closest and ensure repair or replacement of a defective ignition interlock device shall be made available within the same 50 mile radius by a fixed or mobile installation/service provider, or through a qualified manufacturer sending a replacement, within 48 hours of receipt of a complaint, or within 72 hours where an intervening weekend or holiday. Mobile servicing may be permissible provided that the above facility requirements are met and a specific mobile servicing unit with regular hours is indicated;

(5) guarantee that an installation/service provider or the manufacturer shall download the usage history of every operator's ignition interlock device within thirty (30) calendar days between service visits or if the operator fails to appear for a service visit(s) as soon thereafter as the device can be downloaded, and provide

the monitor with such information and in such format as determined by the division. Further guarantee that the installation/service provider shall take appropriate, reasonable and necessary steps to confirm any report of failed tasks, failed tests, circumvention, or tampering and thereafter notify the appropriate monitor within three (3) business days of knowledge or receipt of data, indicating:

(i) installation of a device on an operator's vehicle(s);

(ii) report of a failed start-up re-test;

(iii) report of a missed start-up re-test;

(iv) report of a failed rolling re-test;

(v) report of a missed rolling re-test;

(vi) report of the device entering lockout mode;

(vii) failure of an operator to appear at a scheduled service visit; or

(viii) report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by paragraphs (a), (c) or (d) of subdivision (9) of section 1198 of the Vehicle and Traffic Law, or an attempt thereof;

(6) provide, no more than monthly to the operator upon his or her request, the operator's usage history, including any report of failed tasks, failed tests, circumvention, or tampering. An operator may only make one request during any month for such information. Such request shall be in writing and provide either an email address or self-addressed stamped envelope;

(7) agree to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or by court order. All records maintained by the manufacturer and any of its installation/service providers with respect to ignition interlock devices in New York State shall be retained in accordance with section 358.9;

(8) ensure that the installation/service provider complies with division and county reporting requirements in providing information and reports as may be necessary with respect to an operator's use of the ignition interlock device;

(9) establish and distribute to the division, its installation/service providers, and any county where it does business prior to August 15, 2010, or if subsequently approved as a qualified manufacturer prior to doing business in the state, a current list of all installation/service providers in the county, including business name, address and telephone number and maintain a toll-free 24 hour telephone number to be called from anywhere in the continental United States for an up-to-date listing of installation/service providers in the continental United States and for emergency assistance. Distribute an up-to-date listing of New York State installation/service providers to the division;

(10) provide written certification to the division in a format prescribed by the division that all installation/service providers:

(i) have been trained in advance as to installation, maintenance, troubleshooting, set point requirement of .025 BAC percent, and recalibration of such manufacturer's devices;

(ii) have instructions as to installation and usage of such manufacturer's devices;

- (iii) have agreed to comply with their manufacturer's service agreements;
- (iv) have agreed to comply with the provisions of section 358.5(c) and (d);
- (v) have agreed to provide hands-on training to the operator, any member of the same family or household, or any owner of a motor vehicle in which an ignition interlock device is being installed, with a valid driver's license who appears with the operator at installation to receive training as to the operation of an installed device on the vehicle, and to provide written or video instructional material to the operator;
- (vi) have been informed of New York State law governing circumvention of ignition interlock devices and penalties associated therewith;
- (vii) have agreed to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or court order; and
- (viii) have been made aware that non-compliance will result in immediate removal and updating the listing of installation/service providers identified in section 358.5(c) (9). An installation/service provider may be reinstated by the division, at its discretion, upon satisfactory proof from the qualified manufacturer of corrective action;
- (11) conduct annual quality assurance audits or reviews of installation/service providers to ensure compliance with applicable laws, regulations and any contractual agreements and provide the division with yearly sworn statements that such audits have been conducted. Failure to conduct quality assurance audits may result in removal of the qualified manufacturer from doing business in the State of New York. Nothing shall preclude the division and/or its representative from conducting random audits and quality assurance audits or reviews;
- (12) take all reasonable steps necessary to prevent tampering or circumvention of the ignition interlock device and promptly notify the division, the applicable county's monitor and district attorney of any reasonable belief that an employee of an installation/service provider has attempted to alter or has altered ignition interlock data or has been otherwise involved in tampering or circumventing an ignition interlock device of any operator or any attempt thereof. Failure to notify the monitor and the district attorney may result in removal of the qualified manufacturer from doing business in the State of New York;
- (13) provide immediate notice to the division and the applicable county monitor(s) of any removal of any installation/service provider and the reasons for such;
- (14) provide immediate notice to the division and the department of health whenever the manufacturer's device has been disapproved, suspended, revoked, or otherwise cancelled by another state or jurisdiction;
- (15) submit reports, as requested and in such format as determined by the division, for each model or type of certified device, including, but not limited to:
 - (i) operator and other vehicular user operation error;
 - (ii) faulty automotive equipment that directly impacts successful implementation and use of the device;
 - (iii) apparent misuse or attempts to circumvent or tamper/bypass a device;
 - (iv) device malfunctions, including action taken by the manufacturer to correct such malfunctions;
 - (v) deficiencies in device calibration stability; and
 - (vi) operator, vehicular user, and installation/service provider complaints;

(16) provide documentation and verification of insurance (to be submitted upon each policy issuance or renewal) covering product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total. The manufacturer shall provide a signed statement holding harmless the State of New York, the division, every county, and their employees and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any act or omission by the manufacturer or their installation/service provider relating to the installation, service, repair, use and/or removal of an ignition interlock device;

(17) submit any other information determined by the division to be relevant to the effectiveness, reliability and value of ignition interlock devices as a sentencing sanction; and

(18) agree that the consequences of a failure to adhere to any manufacturer requirements specified in this Part may result in removal of the qualified manufacturer from doing business in the State of New York.

(d) Every qualified manufacturer shall ensure that its installation/service providers comply with the following additional requirements:

(1) the ignition interlock device shall be installed in any vehicle(s) owned or operated by the operator within seven (7) business days of the operator's request for installation of the device;

(2) provide to all operators, at the time of device installation a hardcopy statement of fees/charges clearly specifying warranty details, schedule of lease payments where applicable, any additional costs anticipated for routine recalibration, service visits, and shipping where the device includes the direct exchange method of servicing, and listing any items available without charge if any, along with a list of installation/service providers in their respective county, a toll-free 24 hour telephone number to be called from anywhere in the continental United States to secure up-to-date information as to all installation/service providers located anywhere in the continental United States and for emergency assistance, and a technical support number available during specified business hours to reach a trained staff person to answer questions and to respond to mechanical concerns associated with the ignition interlock device;

(3) record the odometer reading of the motor vehicle in which the ignition interlock device is installed and during all service visits;

(4) remove an ignition interlock device and return the vehicle to normal operating condition only after having received a certificate of completion or a letter of de-installation from the monitor as authorized pursuant to section 358.7 of this Part. Where at the time of removal the installation/service provider notices any failed tests that have not been backed up by a successful re-test, the monitor shall be notified for approval before the removal is made. Where the device includes direct exchange method of servicing, the qualified manufacturer shall report to the monitor before removal is made. If a device is removed for repair and cannot be reinstalled immediately, a substitute device shall be provided;

(5) installation shall be performed in a professional manner by persons trained and authorized by the manufacturer pursuant to section 358.5(c) (10);

(6) installation shall be performed according to the manufacturer's detailed written instructions, with calibration to the required set point of .025 BAC percent and in a manner so as to ensure proper vehicular operation;

(7) at the time of installation permanently affix the warning label notice prescribed by the department of health in a highly visible location on the installed ignition interlock device;

- (8) be equipped with the necessary tools and equipment to ensure proper ignition interlock device installation and removal;
- (9) perform installations and maintenance, including recalibrations, within a secure area of the installation/service provider's or qualified manufacturer's business establishment or at a location serviced by a mobile unit to prevent unauthorized persons from observing or accessing secured items such as tamper seals and installation, data download, transmission, or recalibration instructions;
- (10) maintain records of installation and maintenance work performed on the devices;
- (11) screen vehicles for mechanical and electrical conditions that would interfere with the functioning of the device, such as low battery or alternator voltage, defective horn, untuned engine, and frequent stalling;
- (12) prior to installation, require that the operator complete mechanical repairs or adjustments where necessary for the proper functioning of the device. In such event, the seven (7) day installation period in paragraph one shall commence when repairs or adjustments are completed;
- (13) prior to installation of the ignition interlock device, obtain and record the following information from every operator:
- (i) photo identification;
 - (ii) the name and policy number of his/her automobile insurance;
 - (iii) the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other individuals who operate the motor vehicle(s) owned or driven by the operator; and
 - (iv) a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator;
- (14) if, during the installation, the operator fails to pass the initial breath test, the installation will be halted and the monitor notified;
- (15) after installation during any service visit, recalibrate as necessary or required in this Part and check the device and vehicle to ensure proper operation;
- (16) notify the monitor and county probation department when an ignition interlock device has been installed on an operator's vehicle(s) within three (3) business days of installation;
- (17) complete the following with respect to service visits:
- (i) document photo identification from the operator during all required in-person services;
 - (ii) provide service/monitoring of the ignition interlock device as required herein;
 - (iii) recalibrate as necessary the ignition interlock device at each service visit;
 - (iv) check for signs of circumvention or tampering; and
- (18) adhere to any other applicable state or federal requirement.

Section 358.6 Cancellation, suspension, and revocation of qualified manufacturers, installation/service providers, and certified ignition interlock devices.

(a) Any of the following reasons may result in revocation of a certified ignition interlock device or removal of a qualified manufacturer or installation/service provider:

- (1) when there is a voluntary request by a manufacturer to cancel certification of a device;
- (2) when notified by the department of health that a device no longer meets their regulatory standards;
- (3) when a device is discontinued by the manufacturer;
- (4) when the manufacturer's liability insurance is terminated or cancelled;
- (5) when the manufacturer or installation/service provider conceals or attempts to conceal its true ownership;
- (6) when materially false or inaccurate information is provided relating to a device's performance standards;
- (7) when there are defects in design, materials, or workmanship causing repeated failures of a device;
- (8) when the manufacturer or installation/service provider knowingly permits nonqualified service technicians to perform work;
- (9) when a manufacturer or installation/service provider assists users with circumventing or tampering with a device;
- (10) when service or the submission of required reports is not provided in a timely manner as required by this Part;
- (11) when the manufacturer or installation/service provider refuses to provide an ignition interlock device free of charge to an operator who has received a judicial waiver;
- (12) when there is a pattern of substandard customer service;
- (13) when a manufacturer or installation/service provider interferes with or obstructs a review or investigation by the division or any designee;
- (14) when there are any other violations of the provisions contained in this Part, including division and department of health regulations, or any ignition interlock contractual agreement;
- (15) upon notification of disapproval, suspension, revocation, or cancellation of a manufacturer's device by another state or jurisdiction;
- (16) when a manufacturer or installation/service provider provides gratuities or any other personal incentives to a state or local official or any monitor for purposes of soliciting business; and
- (17) when a manufacturer or installation/service provider conducts business in New York State outside of the designated region or regions of operation approved by the division.

Section 358.7 Monitoring.

(a) (1) Any monitor shall receive notification pursuant to its county plan of all operators which it has responsibility to monitor within five (5) business days of the sentencing court's order

imposing the condition of an ignition interlock device and of an operator's release from imprisonment, in accordance with section 358.4(d)(3). Such monitor shall obtain proof of installation by the operator and installation/service provider. The installation/service provider shall provide notification of installation of an ignition interlock device to the appropriate monitor and probation department in accordance with section 358.5 (d) (16) and the operator in accordance with subdivision (c) of this section;

(2) Where a monitor learns that the operator no longer owns or operates a motor vehicle in which an ignition interlock device has been installed, the monitor may issue a letter of de-installation directly to the installation/service provider which authorizes removal of the device;

(b) (1) Where the operator is under probation supervision and resides in another county at the time of sentencing or subsequently desires to reside in another county, upon intrastate transfer of probation, the receiving county probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in its region. Thereafter, the operator may select the model of the ignition interlock device meeting the specific class and features selected by the receiving county probation department from a qualified manufacturer in the operator's region of residence. Where intrastate transfer occurs after sentencing and the installation of a different device is required as a result of the transfer, the device shall be installed within ten (10) business days of relocation. All intrastate transfer of probation shall be in accordance with Part 349;

(2) Where an operator has received a sentence of conditional discharge and resides in another county at the time of sentencing or thereafter, the receiving county monitor shall select the class of ignition interlock device available from a qualified manufacturer in its region for any such operator. The operator may select the model of the ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence. The receiving county monitor shall perform monitor services and the sentencing court retains jurisdiction of the operator. Upon knowledge, the monitor of the sentencing county shall provide necessary operator information in advance to the receiving county monitor. The receiving county monitor shall notify the sentencing court and county district attorney pursuant to paragraph (d) of this section;

(3) Where an operator, subject to probation supervision or a sentence of conditional discharge, resides or desires to reside out-of-state and is an offender subject to the interstate compact for adult offender supervision pursuant to section two hundred fifty-nine-mm of the executive law, the governing rules of such compact shall control. Additionally, Part 349 shall apply with respect to transfer of supervision of probationers. Where transfer is permitted, the receiving state retains its authority to accept or deny the transfer in accordance with compact rules. Where an operator is subject to probation supervision and is granted reporting instructions and/or acceptance by a receiving state, the sending probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in the receiving state. Thereafter, the operator may select the model of the ignition interlock device meeting the specific class and features selected by the sending county probation department from a qualified manufacturer in the receiving state region. The device shall be installed prior to relocation or return where feasible. A qualified manufacturer shall make necessary arrangements to ensure the county monitor in New York State and the receiving state receive timely reports from the manufacturer and/or installation/service provider; and

(4) Where an operator resides or desires to reside out-of-state, is not subject to the interstate compact for adult offender supervision and such compact's governing rules, and has been given permission to return or relocate by the sentencing court or monitor, the same provisions with respect to selection specified in paragraph three of this subdivision applies and the device shall be installed prior to relocation or return. A qualified manufacturer shall make necessary arrangements to ensure the county monitor receives timely reports from the manufacturer and/or installation/service provider. Pursuant to the compact, an operator convicted of his or her first DWI misdemeanor is not subject to the compact.

(c) Every operator shall:

(1) have installed and maintain a functioning ignition interlock device in any vehicle(s) he or she owns or operates within ten (10) business days of the condition being imposed by the court or if sentenced to imprisonment upon release from imprisonment, whichever is applicable and to have the device installed in accordance with this Part and, within three (3) business days of installation, submit proof of installation to the court, county probation department, and any other designated monitor. Nothing in this Part shall preclude an operator from having installed a certified ignition interlock device in excess of the class and/or features authorized herein;

(2) submit to service visits within thirty (30) calendar days of prior installation or service visits for the collection of data from the ignition interlock device and/or for inspection, maintenance, and recalibration purposes where the device does not automatically transmit data directly to the monitor; and submit to an initial service visit within thirty (30) calendar days of installation and service visits within sixty (60) calendar days of prior service visits where the device either automatically transmits data directly to the monitor for inspection, maintenance, or recalibration purposes or the device head is sent to the qualified manufacturer every thirty (30) calendar days for such purposes, including data download. However, an operator shall only remove the device head upon receipt of a new device head;

(3) provide the installation/service provider and the monitor prior to installation of the ignition interlock device, the following information:

(i) his/her photo identification/license for examination purposes;

(ii) the name and policy number of his/her motor vehicle insurance;

(iii) the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other individuals who operate the motor vehicle(s) owned or driven by the operator; and

(iv) a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator;

(4) present photo identification/license for examination purposes during any in-person service visit; and

(5) provide the monitor with documentation requested by the monitor as to vehicle(s) owned or driven by the operator. Prior to an operator legally driving an employer's vehicle within the scope of his or her employment, the operator must provide satisfactory proof to the monitor that the employer has been notified of the operator's driving privilege is restricted and necessitates installation and maintenance of a functioning ignition interlock device and such employer grants permission for the operator to drive the employer's vehicle without the device only for business purposes. Such exemption for business purposes shall not apply to any vehicle owned by a business entity all or partly owned or controlled by the operator. Any operator shall provide satisfactory proof to the monitor that any other person who rents, leases, or loans a motor vehicle to him or her has been notified that the operator's driving privilege is restricted and necessitates installation of the ignition interlock device on any vehicle he or she owns or operates and that the person grants permission for the operator to install the device on such vehicle(s) and operate the vehicle(s). Further, prior to return of any vehicle which is leased, rented, or loaned, the operator shall comply with service visit requirements of this Part;

(d) (1) Upon learning of the following events:

- (i) that the operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates;
- (ii) that the operator has not complied with service visits requirements;
- (iii) a report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof;
- (iv) a report of a failed start-up re-test;
- (v) a report of a missed start-up re-test;
- (vi) a report of a failed rolling re-test;
- (vii) a report of a missed rolling re-test; and/or
- (viii) a report of a lockout mode;

the applicable monitor shall take appropriate action consistent with public safety. Where under probation supervision, the county probation department shall adhere to Part 352. With respect to any operator sentenced to conditional discharge, the monitor shall take action in accordance with the provisions of its county ignition interlock program plan.

At a minimum, any monitor shall notify the appropriate court and district attorney, within three (3) business days, where an operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates, where the operator has not complied with a service visit requirement, any report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof, any report of a lock-out mode, and/or any report of a failed test or re-test where the BAC is .05 percent or higher.

(2) The monitor may recommend modification of the operator's condition of his or her sentence or release whichever is applicable as otherwise authorized by law, including extension of his/her ignition interlock period, a requirement that the operator attend alcohol and substance abuse treatment and/or drinking driver program, referral to the department of motor vehicles to determine whether the department may suspend or revoke the operator's license, or recommend revocation of his/her sentence or release.

(3) Where the operator is under supervision by the division of parole, the monitor shall coordinate monitoring with the division of parole and promptly provide the parole agency with reports of any failed tasks or failed tests.

(e) Any monitor may disseminate relevant case records, including failed tasks or failed reports not otherwise sealed or specifically restricted in terms of access by state or federal law to appropriate law enforcement authorities, district attorney, treatment agencies, licensed or certified treatment providers, the judiciary, for law enforcement and/or case management purposes relating to criminal investigations and/or execution of warrants, supervision and/or monitoring of ignition interlock conditions, and treatment and/or counseling. Personal information in any financial disclosure report shall only be accessible to the monitor, court, and district attorney for purposes related to determination of financial affordability. Case record information is not to be used for noncriminal justice purposes and shall otherwise only be available pursuant to a court order. In all such instances, those to whom access has been granted shall not secondarily disclose such information without the express written permission of the monitor that authorized access. Section 358.8 Costs and maintenance.

(a) Any operator shall pay the cost of installing and maintaining the ignition interlock device unless the operator has been determined to be financially unable to afford the cost of the ignition interlock device by the sentencing court whereupon such cost may be imposed pursuant to a payment plan or waived.

(b) Any operator who claims financial inability to pay for the device shall submit in advance of sentencing three (3) copies of his or her financial disclosure report, on a form prescribed by the division, to the sentencing court which shall distribute copies to the district attorney and defense counsel. The report shall enumerate factors which may be considered by the sentencing court with respect to financial inability of the operator to pay for the device and shall include, but not be limited to income from all sources, assets, and expenses. This report shall be made available to assist the court in determining whether or not the operator is financially able to afford the cost of the ignition interlock device, and if not whether to impose a payment plan. Where it is determined that a payment plan is not feasible, the court shall determine whether the fee/charge for the device shall be waived.

Section 358.9 Record Retention and Disposition.

Record retention and disposition of all records of the county, any qualified manufacturer, and installation/service provider with respect to this Part shall be in accordance with the applicable Records Retention and Disposition Schedule promulgated by the state education department.

Section 358.10 Liability.

Nothing contained in the Part shall impose liability upon the division, the State of New York, or any county, for any damages related to the installation, monitoring or maintenance of an ignition interlock device or an operator's use or failure to use such devices.

APPENDIX C

DEVICE CLASSIFICATION AND FEE STRUCTURE

APPENDIX C

**DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE
CLASS I DEVICE**

Applicant Name:

Device Make:

Device Model:

- **Check and fill in all spaces that apply to the specified CLASS I device listed above.**
- **Applicants must submit an APPENDIX C DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE for each proposed device/model.**

CLASS I Required Device Features:

- Meets all New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards
- Utilizes fuel cell technology
- Has reporting capabilities
- Has capability for storage of data
- Programmable re-test sequences
- Data download, inspection and re-calibration service
- Anti-tampering and anti-circumvention features
- Camera-Photographic positive identification capability
- Photo of Operator will be taken every time operator is prompted to take a test
- Infra-red or other low-light camera capability for night use
- Breath sample validity features
- 24/7 Internet access to operator data by monitors
- Voice or visual instruction

Optional Features under CLASS I:

- Keys enabling service codes to be entered
- Early recall system if a fuel cell fails- uses split cell technology
- Restricted drive time capabilities
- Unlock code to minimize towing due to lockouts
- Other feature- specify
- Other feature- specify

Fee Structure: Following is the fee structure for this device. This fee structure is based upon an anticipated ten percent (10%) waiver of the fee by sentencing courts due to unaffordability and includes any and all fees charged to the operator.

- Installation fee
- Monthly fee
- Special service fees- specify
- Shipping fee
- De-installation fee
- Other fee- specify
- Other fee- specify
- Other fee- specify

Comments: Please place any other descriptive comments about this device here.

**APPENDIX C
DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE
CLASS II DEVICE**

Applicant Name:

Device Make:

Device Model:

***Check and fill in all spaces that apply to the specified CLASS II device listed above.**

***Applicants must submit an APPENDIX C DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE for each proposed device/model.**

CLASS I Required Device Features:

- Meets all New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards
- Utilizes fuel cell technology
- Has reporting capabilities
- Has capability for storage of data
- Programmable re-test sequences
- Data download, inspection and re-calibration service
- Anti-tampering and anti-circumvention features
- Camera-Photographic positive identification capability
- Photo of Operator will be taken every time operator is prompted to take a test
- Infra-red or other low-light camera capability for night use
- Breath sample validity features
- 24/7 Internet access to operator data by monitors
- Voice or visual instruction

CLASS II: This CLASS has all the minimum, required features of CLASS I and contains the following additional features:

- Global Positioning System location of vehicle
- Real Time data reporting
- Other feature- specify
- Other feature- specify

Fee Structure: Following is the fee structure for this device. This fee structure is based upon an anticipated ten percent (10%) waiver of the fee by sentencing courts due to unaffordability and includes any and all fees charged to the operator.

- Installation fee
- Monthly fee
- Special service fees- specify
- Shipping fee
- De-installation fee
- Other fee- specify
- Other fee- specify
- Other fee- specify

Comments: Please place any other descriptive comments about this device here.

**APPENDIX C
DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE
CLASS III DEVICE**

Applicant Name:

Device Make:

Device Model:

***Check and fill in all spaces that apply to the specified CLASS III device listed above.**

***Applicants must submit an APPENDIX C DEVICE(s) CLASSIFICATION AND FEE/CHARGE SCHEDULE for each proposed device/model.**

CLASS I Required Device Features:

- Meets all New York State Department of Health and National Highway Traffic Safety Administration Regulations and Standards
- Utilizes fuel cell technology
- Has reporting capabilities
- Has capability for storage of data
- Programmable re-test sequences
- Data download, inspection and re-calibration service
- Anti-tampering and anti-circumvention features
- Camera-Photographic positive identification capability
- Photo of Operator will be taken every time operator is prompted to take a test
- Infra-red or other low-light camera capability for night use
- Breath sample validity features
- 24/7 Internet access to operator data by monitors
- Voice or visual instruction

CLASS II: This CLASS has all the minimum, required features of CLASS I and contains the following additional features:

- Global Positioning System location of vehicle
- Real Time data reporting

CLASS III: This CLASS has all the minimum, required features of CLASSES I and II and contains the following additional feature(s):

- Emergency Notification Program (i.e.) for interception of a targeted vehicle during a Rolling Re-Test Failure
- Other feature- specify
 Other feature- specify

Fee Structure: Following is the fee structure for this device. This fee structure is based upon an anticipated ten percent (10%) waiver of the fee by sentencing courts due to unaffordability and includes any and all fees charged to the operator.

- Installation fee
- Monthly fee
- Special service fees- specify
- Shipping fee
- De-installation fee
- Other fee- specify

Comments: Please place any other descriptive comments about this device here.

APPENDIX CR

CHANGE REQUEST FORM

Appendix CR

CHANGE REQUEST
(Pricing/Change Request Form)

Contract #

1. Description of Requested Change:
2. Reason/Justification for Change:
3. Additional or Deleted Tasks or Deliverables Required by Change:
4. Additional or Deleted Cost and/or Timeframes Required by Change:
5. Pricing and Gross Margin Information:

The signatures below represent that the New York State Division of Criminal Justice Services and Contractor are in AGREEMENT with the above change(s) to the project deliverables for the Interlock AGREEMENT. Attach additional documentation necessary to support this request.

New York State Division of Criminal Justice Services	Contractor(Specify Name)
Name (Print):	Name (Print):
Signature:	Signature:
Title:	Title:
Date:	Date:

Contract Number:	Change Control Number:
Contract Vendor:	Disposition and Date:

APPENDIX D

APPLICATION AND CERTIFICATION

APPENDIX D: IGNITION INTERLOCK MANUFACTURER APPLICATION/CERTIFICATION

PART 1
INSTRUCTIONS

Manufacturers, or distributors, seeking to join existing DCJS-approved qualified manufacturers in providing an ignition interlock services in New York State, shall submit a complete response to this application.

Applications must be signed by the individual authorized to make contractual commitments on the applicant's behalf. Where attachments are indicated they must be attached to this application/. The applicant must furnish three (3) completed original signed applications, and five (5) additional hard copies. Your response should be enclosed in one mailing envelope or box with the notation "CJS2017-02 Ignition Interlock Program Application" clearly visible on the front. Fax or e-mail transmittals will not be accepted. Send Applications by RFA Date and Time Deadline to:

Sandy Fader
Assistant Director/Procurement Officer/Office of Financial Administration
NYS Division of Criminal Justice Services
Alfred E. Smith Office Building, 10th Floor
80 South Swan Street
Albany, New York 12210

All applications will become the property of DCJS, and will be considered public documents once final decisions are made, with the exception of any information deemed proprietary by the division upon review of such request from a manufacturer.

Application Contact Information

1. Applicant:
Chief Executive Officer:
Address:
City:
State/Zip Code:
Email:
Phone Number

2. Person Responsible for Completing Application
Name:
Title:
Phone Number:
Fax Number:
(Address if different from Applicant)
Address:
City:
State/Zip Code
Email:

3. Who should we contact with questions about this application?

Name:

Title:

Phone Number:

Fax Number:

Email:

**APPENDIX D: IGNITION INTERLOCK APPLICATION/CERTIFICATION
PART 2**

INSTRUCTIONS: This application with certifications must be signed by the individual authorized to make contractual commitments on the applicant organization's behalf.

Applicant Organization:

1. Describe your experience in the development and maintenance of a statewide ignition interlock service program. In your description include the following: a listing of all the states, territories and the District of Columbia, and other countries in which you operate, and how you organize, pay, and train your installation/service providers. Additionally, separately list any state, territory, the District of Columbia, and country, where your company services have been suspended, terminated, revoked, or cancelled, in whole or in part, within the preceding three (3) years. Please provide specific details by listing the grounds cited by the jurisdiction(s) that resulted in such suspension, termination, revocation, or cancellation, including, but not limited to, relevant dates, subsequent remedial, corrective, or other legal actions, if any, and a summary of any pending or final litigation/administrative proceeding. Where company services have not been suspended, terminated, revoked, or cancelled, in whole or in part, within the past three (3) years, the applicant must provide a statement to that effect. DCJS will consider any suspension, termination, revocation, or cancellation, and details provided by the applicant in DCJS' evaluation and ultimate determination whether or not to approve the applicant as a Qualified Manufacturer for purposes of this RFA and related contractual services.

CERTIFICATIONS

<p>1. I certify that the applicant organization will adhere to all regulatory provisions of the NYS Department of Health with respect to certification, testing, labeling, reporting and any additional requirements, and shall also specifically adhere to its responsibilities contained in 9 NYCRR Part 358;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>2. I certify that an ignition interlock device shall conform to national highway traffic safety administration standards and department of health specifications, be calibrated at a set point of .025 BAC percent, and also require the operator after passing the start-up test allowing the engine to start, to submit to an initial rolling test within a randomly variable interval ranging from five to fifteen minutes. Subsequent rolling tests shall continue to be required at random intervals not to exceed thirty (30) minutes for the duration of the travel. A start-up re-test shall be required within five (5) to fifteen (15) minutes of a failed start-up test. A rolling re-test shall be required within one (1) to three (3) minutes after a failed or missed rolling test. An ignition interlock device shall enter into a lockout mode upon the following events: one failed start-up retest, one missed start-up re-test, one failed rolling re-test or one missed rolling re-test within a service period, or one missed service visit;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>3. I certify that a reduced breath sample volume as permitted in national highway traffic safety administration standards from 1.5 liters to 1.2 liters, or any subsequent NHTSA</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>reduced volume sample standards, may only be utilized where an individual has submitted sufficient documentation from a physician of a condition which prevents regular operation at normal breath volume levels and such proof authorizing reduction in the breath sample volume has been approved by the applicable criminal court.</p>		
<p>4. I understand that an operator shall pay the cost of installing and maintaining the ignition interlock device unless the operator has been determined to be financially unable to afford the cost of the ignition interlock device by the sentencing court whereupon such cost may be imposed pursuant to a payment plan or waived. I agree to adhere to a maximum fee/charge schedule with respect to all operator's costs associated with such devices, offer a payment plan for any operator determined to be financially unable to pay the cost of the ignition interlock device where a payment plan is so ordered, and provide a device free of fee/charge to the operator where the cost is waived by the sentencing court, or pursuant to such other agreement as may be entered into for provision of the device. Any contractual agreement between the operator and the qualified manufacturer or its installation/service providers shall permit an early termination without penalty to the operator when a certificate of completion has been issued, where the sentence has been revoked, and whenever the operator has been transferred to a jurisdiction where the manufacturer does not do business. Nothing shall prevent a qualified manufacturer from lowering the fee/charge schedule during the course of an operator's contract and/or the contractual agreement with the division;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>5. I certify that if authorized to provide services in a region, I will adhere to and comply with all applicable provisions specified in 9 NYCRR Part 358, with respect to service delivery. I certify that installation/service providers will be available to service every county within the region or regions in which the manufacturer is qualified to operate. I agree to service every county within a region and ensure that there shall be an installation/service provider located in this state within 50 miles from the operator's residence or location where the vehicle is parked or garaged, whichever is closest and ensure repair or replacement of a defective ignition interlock device shall be made available within the same 50 mile radius by a fixed or mobile installation/service provider, or through a qualified manufacturer sending a replacement, within 48 hours of receipt of a complaint, or within 72 hours where an intervening weekend or holiday. Mobile servicing may be permissible provided that the above facility requirements are met and a specific mobile servicing unit with regular hours is indicated;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>6. I guarantee that the applicant organization or one of our installation/service providers shall download the usage</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>history of every operator's ignition interlock device within thirty (30) calendar days between service visits or if the operator fails to appear for a service visit(s) as soon thereafter as the device can be downloaded, and provide the monitor with such information and in such format as determined by the division. I further guarantee that the installation/service provider, unless the applicant organization provides such notification, shall take appropriate, reasonable and necessary steps to confirm any report of failed tasks, failed tests, circumvention, or tampering and thereafter notify the appropriate monitor within three (3) business days of knowledge or receipt of data, indicating:</p> <p>(i) installation of a device on an operator's vehicle(s);</p> <p>(ii) report of a failed start-up re-test;</p> <p>(iii) report of a missed start-up re-test;</p> <p>(iv) report of a failed rolling re-test;</p> <p>(v) report of a missed rolling re-test;</p> <p>(vi) report of the device entering lockout mode;</p> <p>(vii) failure of an operator to appear at a scheduled service visit; or</p> <p>(viii) report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by paragraphs (a), (c) or (d) of subdivision (9) of section 1198 of the Vehicle and Traffic Law, or an attempt thereof;</p> <p>(ix) report of a failed test or re-test where the BAC is .05 percent or higher.</p>		
<p>7. I certify that the applicant organization will adhere to real-time reporting and emergency response program requirements, where such is required in any county plan. Where real time reporting is utilized, such reports provided to the monitor as required above must occur contemporaneously as the event occurs or as soon as cellular reception permits. Where an emergency response program is utilized, immediate report notification as required above must be transmitted to the appropriate monitor and any other law enforcement specified by the county;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>8. I certify that the applicant organization will provide, no more than monthly to the operator upon his or her request, the operator's usage history, including any report of failed tasks, failed tests, circumvention, or tampering. An operator may only make one request during any month for such information. Such request shall be in writing and provide</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>either an email address or self-addressed stamped envelope;</p>		
<p>9. I agree to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or by court order. All records maintained by the manufacturer and distributor and any of its installation/service providers with respect to ignition interlock devices in New York State shall be retained in accordance with section 358.9;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>10. I agree to ensure that the applicant organization and/or its installation/service provider, where applicable, complies with any reporting requirements established by the division in providing information and reports to the division, and on a case –by- case basis to localities as may be necessary with respect to an operator’s use of the ignition interlock device;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>11. I certify that the applicant organization will establish and distribute to the division, its installation/service providers, and any county where it does business a current list of all installation/service providers in the county, including business name, address and telephone number and maintain a toll-free 24 hour telephone number to be called from anywhere in the continental United States for an up-to-date listing of installation/service providers in the continental United States and for emergency assistance. I am providing an up-to-date listing of New York State installation/service providers as part of my application submission.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>12. I certify that all installation/service providers:</p> <p>(i) have been trained in advance as to installation, maintenance, troubleshooting, set point requirement of .025. BAC percent, and recalibration of such qualified manufacturer’s devices;</p> <p>(ii) have instructions as to installation and usage of such manufacturer’s devices;</p> <p>(iii) have agreed to comply with the qualified manufacturer’s service agreements;</p> <p>(iv) have agreed to comply with the provisions of section 358.5(c) and (d);</p> <p>(v) have agreed to provide hands-on training to the operator, any member of the same family or household, or any owner of a motor vehicle in which an ignition interlock device is being installed, with a valid driver’s license who appears with the operator at installation to receive training as to the operation of an installed device on the vehicle, and to provide written or video instructional material to the</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>operator;</p> <p>(vi) have been informed of New York State law governing circumvention of ignition interlock devices and penalties associated therewith;</p> <p>(vii) have agreed to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or court order; and</p> <p>(viii) have been made aware that non-compliance will result in immediate removal and updating the listing of installation/service providers identified in section 358.5). An installation/service provider may be reinstated by the division, at its discretion, upon satisfactory proof from the qualified manufacturer of corrective action;</p>		
<p>13. I certify that the applicant organization will conduct annual quality assurance audits or reviews of installation/service providers to ensure compliance with applicable laws, regulations and any contractual agreements and provide DCJS with yearly sworn statements that such audits have been conducted, as well as a copy of the findings of such annual quality assurance audits. Failure to conduct quality assurance audits may result in removal of the qualified manufacturer from doing business in the State of New York. Nothing shall preclude the division and/or its representative from conducting random audits and quality assurance audits or reviews;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>14. I certify that the applicant organization take all reasonable steps necessary to prevent tampering or circumvention of the ignition interlock device and promptly notify the division, the applicable county's monitor and district attorney of any reasonable belief that an employee of an installation/service provider has attempted to alter or has altered ignition interlock data or has been otherwise involved in tampering or circumventing an ignition interlock device of any operator or any attempt thereof. Failure to notify the monitor and the district attorney may result in removal of the qualified manufacturer from doing business in the State of New York;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>15. I certify that the r applicant organization will provide immediate written notice to the division and the applicable county monitor(s) of any removal of any installation/service provider and the reasons for such;</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>16. I certify that the applicant organization will provide immediate written notice to DCJS and the NYS Department of Health whenever any of its manufacturer's, and/or distributor's, device(s), or applicant organization's services, and/or operations has been compromised or does not function as intended in New York State or any other state or jurisdiction in which the manufacturer does business, or disapproved, suspended in whole or in part, revoked, or</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>otherwise cancelled by another state or jurisdiction, or has received notice or communication from another state or jurisdiction that any such actions are imminent</p>		
<p>17. I certify that the applicant organization agrees to submit such reports, as requested and in such format and timeframes as determined by DCJS , for each model or type of certified device, including, but not limited to:</p> <p>(i) operator and other vehicular user operation error;</p> <p>(ii) faulty automotive equipment that directly impact successful implementation and use of the device;</p> <p>(iii) apparent misuse or attempts to circumvent or tamper/bypass a device;</p> <p>(iv) device malfunctions, including proposed and follow-up action taken by the manufacturer to correct such malfunctions;</p> <p>(v) deficiencies in device calibration stability;</p> <p>(vi) deficiencies in device reporting or information transmission as a result of any reason, including but not limited to service outages or downtimes of any nature;</p> <p>(vii) any proposed operational modification or other proposed operational and/or administrative change, including but not limited to server, firmware, and other technical change or business structural change which may have the potential of affecting service delivery or reporting; and</p> <p>(viii) operator, vehicular user, and installation/service provider complaint.</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>
<p>18. I certify that the applicant organization will provide documentation and verification of insurance (to be submitted upon each policy issuance or renewal) covering product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total. The applicant organization shall provide a signed statement holding harmless the State of New York, DCJS and OPCA, and every county, and their employees and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any act or omission by the applicant organization and/or distributor or their installation/service provider relating to the installation, service, repair, use and/or removal of an ignition interlock device, upon each subsequent policy issuance or renewal.</p> <p>This documentation is required to prepare a contract.</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>

<p>Check one box</p> <p><input type="checkbox"/> documentation submitted with application</p> <p><input type="checkbox"/> documentation will be submitted within 10 business days of initial notice of approval as a Qualified Manufacturer.</p>		
<p>19. I certify commitment to obtain, provide documentation and verification of and maintain a requisite Standby Letter of Credit (SLOC) if approved for a RFA award consistent with RFA and contractual requirements;</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>
<p>20. I certify that the applicant organization will submit any other information determined by the division to be relevant to the effectiveness, reliability and value of ignition interlock devices as a sentencing sanction and/or monitoring tool; and</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>
<p>21. I agree that the consequences of a failure to adhere to any requirements specified in 9 NYCRR Part 358 and/or in contractual provisions with the State of New York may result in suspension or removal of the qualified manufacturer from doing business in the State of New York, or, in the event of suspension, such terms and conditions required by the division in any manufacturer's subsequent reconciliation plan.</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>
<p>22. I certify that any operational modification to a certified device must be submitted in advance with necessary documentation to DCJS and DOH and to obtain DOH approval before releasing the modified device. Further to notify DCJS in writing of intent of any operational modification and any subsequent approval and provide a written summary of any requested or approved modification. Operational modification means any change to the product design or function that could affect the devices anti-circumvention, anti-tampering or analytical features as determined by DOH.</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>
<p>23. I designate the following region or regions of New York State in which to provide ignition interlock services and in so designating, I certify that the applicant organization will adhere to and comply with all applicable provisions specified in 9 NYCRR Part 358 and contractual provisions, as applicable. For purposes of 9 NYCRR Part 358, Regions and the counties contained therein are as follows:</p> <p>Check to designate and certify:</p> <p><input type="checkbox"/> Region 1: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates</p> <p><input type="checkbox"/> Region 2: Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins</p>		

Region 3: Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington

Region 4: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester

<p>24. I certify that the applicant organization will provide to DCJS' OPCA documentation and verification of insurance covering product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total upon each subsequent policy issuance or renewal.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>25. I understand that a SLOC is required in the amount of \$100,000 for any qualified manufacturer if their IIDs installed in the field at any given time (IID base) in New York State is less than 500 and \$200,000 if their installed IIDs in the field at any given time (IID base) is 500 or more. New successful applicants will be required to have an initial SLOC in the amount of \$100,000. Any new or amended SLOC will be required to reflect the contract number and contractual term. A SLOC in the appropriate amount must be maintained throughout the contractual term, contract extension or post transition period.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>26. I certify that the applicant organization will provide a signed statement holding harmless the State of New York, the Division of Criminal Justice Services, and every county and their employees and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any act or omission by the applicant organization or their installation/service provider relating to the installation, service, repair, use and/or removal of an ignition interlock device.</p> <p>Check one box <input type="checkbox"/> signed statement submitted with application</p> <p> <input type="checkbox"/> signed statement will be provided on or before Friday May 26, 2017</p> <p style="text-align: center;">(date)</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>27. I understand that DCJS' OPCA will classify all certified</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>ignition interlock devices into categories based upon features of the devices and provide the list to every county.</p>		
<p>28. I am providing a thorough description of each device intended for use in New York State by the applicant organization, and the fee structure associated with each specific device. The proposed fee structure should take into consideration and be based upon an anticipated ten percent (10%) waiver of the fees by sentencing courts due to operator unaffordability. Descriptive information about the device should include but not be limited to: make and model of device, special features of the device such as camera, reporting capabilities, removable head, Global Positioning System capability, and real-time or next day reporting. Fee structure information shall include any and all fees charged to the operator, including but not limited to installation fee, monthly fee, any special service fees, shipping fee and de-installation fee. Use APPENDIX C to provide this requested information.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>29. I agree to enter into a contractual agreement with DCJS for an initial term effective when the contract is fully executed by all Parties and approved by the Attorney General's and State Comptroller's offices in New York State with a term commencing on or about October 1, 2017 and continuing through August 14, 2019, and with a DCJS option of up to 2 one year extensions setting forth the requirements of the qualified manufacturer and all of its installation/service providers consistent with Division regulations 9 NYCRR Part 358 and this application submission approved by OPCA.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>30. I certify that any contractual agreement between the operator and the qualified manufacturer or its installation/service providers will permit an early termination without penalty to the operator when a certificate of completion has been issued, where operator's sentence or release has been revoked, and whenever the operator has been transferred to a jurisdiction where the manufacturer does not do business.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>31. I understand that on or about February 15th of each year, OPCA shall review requests by qualified manufacturers for rate adjustments which shall include information submitted by qualified manufacturers involving unaffordability waivers granted by courts, and at its discretion approve rate adjustments where appropriate.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>32. I understand that any of the following reasons may result in revocation of a certified ignition interlock device or suspension or removal of a qualified manufacturer or installation/service provider:</p> <ul style="list-style-type: none"> i. When there is a voluntary request by a manufacturer or the distributor applicant to cancel certification of a device; ii. When notified by the department of health that a device no 	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<ul style="list-style-type: none"> longer meets their regulatory standards; iii. When a device is discontinued by the manufacturer or the distributor applicant; iv. When the qualified manufacturer's liability insurance is terminated or cancelled; v. When the qualified manufacturer or installation/service provider conceals or attempts to conceal its true ownership; vi. When materially false or inaccurate information is provided relating to a device's performance standards; vii. When there are defects in design, materials, or workmanship causing repeated failures of a device; viii. When the qualified manufacturer or installation/service provider knowingly permits nonqualified service technicians to perform work; ix. When a qualified manufacturer or installation/service provider assists users with circumventing or tampering with a device; x. When service or the submission of required reports is not provided in a timely manner as required in 9 NYCRR Part 358; xi. When the qualified manufacturer or installation/service provider refuses to provide an ignition interlock device free of charge to an operator who has received a judicial waiver; xii. When there is a pattern of substandard customer service; xiii. When a qualified manufacturer or installation/service provider interferes with or obstructs a review or investigation by the office or any designee; xiv. When there are any other violations of the provisions contained in 9 NYCRR Part 358, including division and department of health regulations, or any ignition interlock contractual agreement; xv. Upon verbal and/or written notification or communication of disapproval, suspension in whole or in part, revocation, or cancellation of a manufacturer's device, applicant organization or one of its manufacturer's services, and/or operations by another state or jurisdiction; When a manufacturer or installation/service provider provides gratuities or any other personal incentives to a state or local official or any monitor for purposes of soliciting business, and xvi. When a qualified manufacturer or installation/service provider conducts business in New York State outside of the designated region or regions of operation approved by OPCA. 		
<p>33. I certify that all ignition interlock devices used in New York State by the applicant organization meet New York State Department of Health (DOH) regulatory standards contained in 10 NYCRR Part 59. The applicant organization shall provide proof of such certification for each device intended for use in New York State.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>Check one box:</p> <p><input type="checkbox"/> Proof of DOH certification attached</p> <p><input type="checkbox"/> DOH certification anticipated and proof of certification will be submitted prior to (date)</p>		
<p>34. I certify that all of the applicant organization's installation/service providers will comply with the following requirements:</p> <p>i. the ignition interlock device shall be installed in any vehicle(s) owned or operated by the operator within seven (7) business days of the operator's request for installation of the device.</p> <p>ii. provide to all operators, at the time of device installation a hardcopy statement of fees/charges clearly specifying warranty details, schedule of lease payments where applicable, any additional costs anticipated for routine recalibration, service visits, and shipping where the device includes the direct exchange method of servicing, and listing any items available without charge if any, along with a list of installation/service providers in their respective county, a toll-free 24 hour telephone number to be called from anywhere in the continental United States to secure up-to-date information as to all installation/service providers located anywhere in the continental United States, and for emergency assistance, and a technical support number available during specified business hours to reach a trained staff person to answer questions and to respond to mechanical concerns associated with the ignition interlock device.</p> <p>iii. record the odometer reading of the motor vehicle in which the ignition interlock is installed and during all service visits.</p> <p>iv. installation shall be performed in a professional manner by persons trained and authorized by the manufacturer pursuant to 9 NYCRR Part 358.</p> <p>v. installation shall be performed according to the manufacturer's and/or distributor's detailed written instructions, with calibration to the required set point of .025 BAC percent and in a manner so as to ensure proper vehicular operation.</p> <p>vi. at the time of installation permanently affix the warning label notice prescribed by the department of health in a highly visible location on the installed ignition interlock device.</p> <p>vii. be equipped with the necessary tools and equipment to ensure proper ignition interlock device installation and removal.</p> <p>viii. perform installations and maintenance, including recalibrations, within a secure area of the installation/service provider's or qualified manufacturer's business establishment or at a location serviced by a mobile unit to prevent unauthorized persons from observing or accessing secured items such as tamper seals and</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>

<p>installation, data download, transmission, or recalibration instructions.</p> <p>ix. maintain records of installation and maintenance work performed on the devices.</p> <p>x. screen vehicles for mechanical and electrical conditions that would interfere with the functioning of the device, such as low battery or alternator voltage, defective horn, un-tuned engine, and frequent stalling.</p> <p>xi. prior to installation, require that the operator complete mechanical repairs or adjustments where necessary for the proper functioning of the device. In such event, the seven (7) day installation period in paragraph one shall commence when repairs or adjustments are completed.</p> <p>xii. after installation during any service visit, recalibrate as necessary or required in 9 NYCRR Part 358 and check the device and vehicle to ensure proper operation.</p> <p>xiii. notify the monitor as applicable, when an ignition interlock device has been installed on an operator's vehicle(s) within three (3) business days of installation.</p> <p>xiv. adhere to any other applicable state or federal requirements.</p> <p>xv. prior to installation of the ignition interlock device, obtain and record the following information from every operator:</p> <ul style="list-style-type: none"> a. photo identification; b. the name and policy number of his/her automobile insurance; c. the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other individuals who operate the motor vehicle(s) owned or driven by the operator. d. a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator. <p>xvi. if, during the installation, the operator fails to pass the initial breath test, the installation will be halted and the monitor notified.</p>		
<p>35. I certify that the applicant organization or its authorized installation/service providers will complete the following with respect to service visits:</p> <ul style="list-style-type: none"> a) obtain and record photo identification from the operator during all required in-person services. b) provide service/monitoring of the ignition interlock device as required in 9 NYCRR Part 358. c) recalibrate as necessary the ignition interlock device at each service visit. d) check for signs of circumvention or tampering. e) installation/service provider or the applicant organization shall download the usage history of every operator's ignition interlock device within thirty (30) calendar days between service visits or if the operator fails to appear for a service visit(s) as soon thereafter as the device can be downloaded, and provide the monitor with such information and in such format as determined by the office. Further 	<input type="checkbox"/> Yes	<input type="checkbox"/> No

<p>guarantee that the installation/service provider shall take appropriate, reasonable and necessary steps to confirm any report of failed tasks, failed tests, circumvention, or tampering and thereafter notify the appropriate monitor within three (3) business days of knowledge or receipt of data, indicating :</p> <ol style="list-style-type: none"> 1. installation of a device on an operator's vehicle(s); 2. report of a failed start-up re-test; 3. report of a missed start-up re-test; 4. report of a failed rolling re-test; 5. report of a missed rolling re-test; 6. report of the device entering lockout mode; 7. failure of an operator to appear at a scheduled service visit; or 8. report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by paragraphs (a), (c) or (d) of subdivision (9) of section 1198 of the Vehicle and Traffic Law, or an attempt thereof. <p>f. agree to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized by division regulation, by law, or court order. Record retention and disposition of all records of any qualified manufacturer, and installation/service provider with respect to 9 NYCRR Part 358 shall be in accordance with the applicable Records Retention and Disposition schedule promulgated by the State Education Department.</p>		
<p>36. I certify that the applicant organization's installation/service providers will comply with the following requirements related to the removal of the ignition interlock device:</p> <ol style="list-style-type: none"> a) remove an ignition interlock device and return the vehicle to normal operating condition only after having received a certificate of completion or a letter of de-installation from the monitor as authorized by 9 NYCRR Part 358. If a device is removed for repair and cannot be reinstalled immediately, a substitute device shall be provided; b) where at the time of removal the installation/service provider notices any failed tests that have not been backed up by a successful re-test, the monitor shall be notified for approval before the removal is made. Where the device includes direct exchange method of servicing, the qualified manufacturer shall report to the monitor before removal is made. 	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>37. I certify that the applicant organization and its installation/service providers will comply with DCJS and county reporting requirements in providing information and reports as may be necessary with respect to an operator's use of the ignition interlock device.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>38. I certify that the applicant organization will adhere to the same maximum fee schedule for every operator sanctioned</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

administratively under the DMV regulations. In such cases, the applicant organization will not be required to offer a payment plan or offer a waiver of fees to such administratively sanctioned operator.		
39. I have submitted the following documentation as required in the REQUEST FOR APPLICATIONS with this application:		
a) Non-Collusive Bidding Certification dated and completed including street addresses and signed.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b) Lobbying Law forms	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c) Encouraging Business in NYS Form	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d) Completed Vendor Responsibility Questionnaire with signed and notarized certification.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e) Copy of most recent annual financial audit.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f) Workers Compensation and Disability Benefits Compliance documentation. This documentation is due to OPCA within 10 business days of OPCA notification to applicant of preliminary approval as a Qualified Manufacturer. Final approval is contingent upon execution of a contract.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g) MWBE staffing plan	<input type="checkbox"/> Yes	<input type="checkbox"/> No
h) SDVOB	<input type="checkbox"/> Yes	<input type="checkbox"/> No
NOTE: If answer to g) above is No, check box below if you agree with the statement. <input type="checkbox"/> I understand that Worker's Compensation and Disability Benefits Compliance documentation is required and will provide such within 10 business days of OPCA notification to this applicant of preliminary approval as a Qualified Manufacturer. I also understand that an executed contract between DCJS and this applicant is required prior to final approval as a Qualified Manufacturer.		

ATTESTATION: This attestation must be signed by the individual authorized to make contractual commitments on the applicant's behalf.

I have read, understand and am able and willing to comply with all standards contained in this Request for Applications, in the New York State Division of Criminal Justice Services Rules and Regulations 9 NYCRR Part 358 and in the New York State Department of Health Rules and Regulations 10 NYCRR Part 59. I attest to the accuracy and truthfulness of all information contained in this application.

Signature _____ **Date** _____

Printed Name: _____

Title _____

APPENDIX E

DRAFT CONTRACT

APPENDIX E

DRAFT CONTRACT

STATE OF NEW YORK and [INSERT APPLICANT'S NAME]

IGNITION INTERLOCK AGREEMENT

New York State Comptroller's Contract [Insert #]

This AGREEMENT is hereby made by and between the State of New York Division of Criminal Justice Services (DIVISION or DCJS), an Executive Agency of the State of New York and [Insert Applicant's Name] (CONTRACTOR) having their primary offices located at [Insert Address].

WHEREAS, in furtherance of Chapter 496 of the Laws of 2009 and Chapter 169 of the Laws of 2013 to safeguard against drunk driving and to facilitate the timely and successful implementation and adherence of new ignition interlock laws throughout the State of New York, the DIVISION has the authority to regulate the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services and has issued regulations with respect to specific statutory and regulatory requirements; and

WHEREAS, the DIVISION, previously issued a Request for Application (RFA) submitted for publishing in the Economic Development Newsletter (The Contract Reporter) on May 5, 2016 defining requirements which must be satisfied to be approved as a qualified manufacturer; and

WHEREAS, the DIVISION subsequently approved three applicants as qualified manufacturers and entered into contractual agreements which have been fully executed by all Parties and approved by the Attorney General's and State Comptroller's offices; and

WHEREAS, the DIVISION desires to expand the pool of qualified manufacturers in New York State to better maximize delivery and increase competition of ignition interlock service operations; and

WHEREAS, the DIVISION recently issued a new RFA submitted for publishing in The Contract Reporter on [INSERT MONTH/DATE], 2017 to afford the opportunity of interested manufacturers and/or distributors not yet approved as qualified manufacturers to apply; and

WHEREAS, during the new application process, the CONTRACTOR submitted the required application demonstrating that it meets specific operational certification requirements as to its performance and that of its installation/service providers where applicable with respect to ignition interlock program services, and the DIVISION has determined that the CONTRACTOR has satisfactorily agreed to conform and ensure conformance by its installation/service providers with all such applicable requirements including the Vendor Responsibility analysis required by the Office of the State Comptroller; and

WHEREAS, the CONTRACTOR and the DIVISION have had an opportunity for due deliberation as to the requirements of this AGREEMENT and of the Ignition Interlock Program; and

WHEREAS, the DIVISION has agreed to designate the CONTRACTOR as a qualified manufacturer of specific ignition interlock devices based upon its filing of required submissions and its official New York State (NYS) Department of Health (DOH) certification as to their specific ignition interlock devices; and

WHEREAS, the DIVISION has completed its own analysis of the Vendor Responsibility Profile submitted by the Contractor and other information available to the Division and has found the Contractor apparently acceptable, subject to the further review of the Office of the State Comptroller in its own Vendor Responsibility Analysis; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such PROGRAM services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT; and

NOW THEREFORE, in consideration of the promises, responsibilities and covenants herein, the DIVISION and the CONTRACTOR agree as follows:

This AGREEMENT, including all appendices, attachments and exhibits, copies of which are attached and incorporated by reference as though set forth in their entirety herein, constitutes the entire AGREEMENT between the Parties. To the extent that they conflict with the terms hereof, all prior AGREEMENT(S), representations, statements, negotiations and undertakings are superseded by this AGREEMENT. All statements made by DCJS, OPCA or the State shall be deemed to be representations and not warranties. This AGREEMENT is subject to amendment(s) only upon mutual written consent of the Parties as provided herein, and if required by the Comptroller of the State of New York, the approval by the Comptroller of the State of New York or staff of the Office of the State Comptroller designated for such purpose.

I. Order of Precedence:

This AGREEMENT includes the following documents which are incorporated into the terms of this AGREEMENT by reference as though fully set forth in their entirety herein and which are annexed hereto or annexed to any proposal of Contractor submitted. In the event that any dispute may arise in connection with the interpretation or application of this AGREEMENT, the following shall be the order of preference of application for the resolution of such dispute:

- a) Appendix A (Standard Clauses for NYS Contracts)
- b) Any Amendments to this Contract
- c) This Contract and all appendices, attachments, and exhibits annexed hereto
- d) DCJS Request for Applications (RFA) CJS 2017-02 and its Appendices (e.g. Appendix B-DCJS' Interlock Rule Requirements-9 NYCRR Part 358 and Appendix CR-Change Request), other than Appendix A (Standard Clauses for NYS Contracts), and any Attachments and/or Exhibits, and DCJS' written responses dated [INSERT MONTH AND DATE, 2017] to RFA questions

CONTRACTOR hereby agrees to render, subject to the terms and conditions hereof, the goods and services (the "Services") described in this AGREEMENT and all incorporated Addenda and Attachments (each, an "Addendum") specifically detailing the terms and statement of work to be performed as agreed to from time to time by both CONTRACTOR and the STATE.

II. Term and Modification:

This AGREEMENT shall not be deemed executed until signed by both Parties and approved by the NYS Office of the Attorney General (OAG) and the NYS Office of the State Comptroller (OSC) or their respective staff designated for that purpose. This Agreement initially shall be effective on the date when fully executed with a term commencing on or about October 1, 2017 and continuing through August 14, 2019, unless modified or terminated in accordance with the provisions of this AGREEMENT.

DCJS reserves the option to agree to up to two 1 year extensions of this AGREEMENT. Unless otherwise provided herein for minor parts, upgraded hardware or software and accessories, which may be achieved through execution of a Change Request, this AGREEMENT may be modified only by formal Amendment executed by the Parties and approved by all required Control Agencies.

From time to time subsequent to the execution of this AGREEMENT and any renewals thereof, the Parties may propose changes, additions and deletions to the products, software, services, memory, parts and accessories identified herein as being available for sale, lease or installation. The intent of this provision is to allow for the administration of changes to pricing for goods and services provided hereunder in cases where the change does not result in a major deviation in features and availability, affordability and gross margin. The number of accessories and features offered in connection with these products is increasing. The Parties desire to provide a vehicle to handle small changes, for example a mouthpiece constructed from a different material or an easier to use design which fits the Interlock device and functions in the same manner and does not require the submission of a formal contract amendment. The Parties agree that changes which result in discontinuance of a product line, maintenance therefor or of availability of a function or price changes beyond existing pricing and Gross Margins exceed the concept of "small changes" hereunder and shall require a formal contract amendment.

The Parties agree that provided that the gross margin is of a similar or greater percentage or the actual selling price is the same or less the Parties may submit a Change Request identified by date and serial number and upon AGREEMENT by the parties the Change Request shall become effective as of the date specified therein. The Change Request will be sent to OSC after the fact. The Comptroller retains the right to cancel the request after the fact or to require modifications.

The words "similar gross margin" and "small changes" shall mean a maximum change of not more than ten percent from the existing gross margin.

The Change Request must state the reason for the change, for example, the addition of improved components such as a camera with greater resolution or storage capacity, replacement mouthpiece

of better design and the like. All such changes must be fully documented as to impact on pricing, availability of features and whether such change is required to conform the product, service and accessory offerings to statutory or regulatory requirements. The Parties shall certify their agreement by signature on the Change Request form which shall become effective on the date provided therein. When such a change is proposed DCJS shall evaluate the change including whether the change impacts the ability of the Contractor to comply with all deliverables under this AGREEMENT. If the change is of a major nature or if there is a deviation in Gross Margin or retail price of more than ten percent the change shall require a contract amendment which must be approved by required Control Agencies prior to becoming effective. Any change exceeding the maximum deviation permitted hereunder in the amount of fee/charge with respect to any certified ignition interlock device, parts or services therefor, change in scope, or change in the term, must only occur through execution of a contractual amendment which is subject to the approval of the Attorney General and the Office of State Comptroller (OSC). A Change Request form may be found at Appendix CR.

III. Program Services:

- A. The CONTRACTOR shall perform all services to the satisfaction of the DIVISION. The CONTRACTOR shall provide services in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and any applicable fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program. The CONTRACTOR agrees to abide by Appendix A (Standard Clauses for all State contracts), DIVISION Rule Requirements applicable to the CONTRACTOR, established in 9 NYCRR Part 358 and set forth in Appendix B, and ensure that its installation/service providers adhere to applicable regulatory and other legal requirements. Attached is Appendix C, the Device(s) Classification and Fee/Charge Schedule which the CONTRACTOR acknowledges and agrees to comply with during the term of this AGREEMENT. It is understood that on or about February 15 of each calendar year, the DIVISION will review requests by qualified manufacturers for rate adjustments which shall include information submitted by qualified manufacturers involving unaffordability waivers granted by courts. At its discretion, the DIVISION shall approve rate adjustments where appropriate. Further, it is agreed that only ignition interlock devices certified by the NYS DOH may be used and that the CONTRACTOR shall give timely notice to the DIVISION of submission of a device for certification and whether the device has been certified or denied. The Contractor must submit any operational modifications to any Ignition Interlock Device in advance with necessary documentation to DOH and obtain DOH approval before releasing the modified device. Further, the Contractor shall notify DCJS in writing of their intent of any operational modification and also any subsequent approval and provide a written summary of any requested or approved modification. Operational modification means any change to the product design or function that would or could affect the devices anti-circumvention, anti-tampering or analytical features as determined by DOH.
- B. The CONTRACTOR agrees to provide services throughout the specific region(s) in New York State which it has requested in its application and been approved in writing by the DIVISION unless it receives prior written permission to extend service delivery to another region. It is expressly understood and agreed by all Parties, that prior to

commencement of contractual services, the Contractor shall provide the DIVISION with a listing of all of its installation/service providers within Region [Insert applicable #(s)] and such other information as may be requested by the DIVISION to ensure contractual and regulatory compliance. Upon full contract execution and satisfaction of all compliance requirements, the DIVISION shall notify the Contractor in writing as to approval to provide services in [Insert applicable #(s)] Region and Contractor shall provide services throughout Region [Insert applicable #'s] in accordance with this Contract. Additionally, the Division agrees to permit the Contractor to roll out services in other regions of the State of New York as may be requested by the Contractor subject to such terms and conditions required by the DIVISION. At the time of the request, the Contractor shall submit a listing of all of its installation/service providers within said region(s) and such other information as may be requested by the DIVISION to ensure contractual and regulatory requirements. Upon approval, the DIVISION shall notify the Contractor when delivery of services in the requested region shall commence and Contractor shall provide services throughout the approved region(s).

- C. Where the CONTRACTOR enters into subcontracts or other AGREEMENTs with its installation/service provider for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the DIVISION under this AGREEMENT.
- D. The CONTRACTOR shall develop, maintain, and update, as needed, policies and procedures on their respective PROGRAM services and the CONTRACTOR shall provide the DIVISION copies of such material, upon request.
- E. The CONTRACTOR agrees to promptly notify the DIVISION of any critical incidents involving its respective PROGRAM operation, its installation/service providers, as well as negative media reports, as required by the DIVISION.
- F. Each party has a mutual affirmative obligation to immediately notify the other party in writing at any time that a potential or actual material defect or breach in performance becomes known to the Party, time being of the essence. This affirmative obligation to disclose includes that Party's own non-compliance as well as the non-compliance of the other Party. The notice shall specify in reasonable detail the nature and evidence of the alleged failure to materially comply. The provision of this notice by either Party shall not diminish either Party's right(s) to pursue legal or equitable remedies available to it. Failure to disclose shall constitute a failure to materially comply hereunder.
- G. In addition to regulatory requirements, it is further agreed and understood that the Contractor:
 - (i) agrees that a reduced breath sample volume as permitted in National Highway Traffic Safety Administration (NHTSA) Standards from 1.5 liters to 1.2 liters, or any subsequent NHTSA reduced volume sample standards, may only be utilized where an operator has submitted sufficient documentation from a physician of a condition which prevents regular operation at normal breath volume levels and such proof authorizing

- reduction in the breath sample volume has been approved by the applicable criminal court;
- (ii) ensures that the installation/service provider, unless the Contractor provides notification, reports failed test or re-test where the BAC is .05 percent or higher;
 - (iii) adheres to real- time reporting and emergency notification program requirements, where such is required in any county plan. Where real time reporting is utilized, such reports provided to the monitor as required by regulation or this Agreement must occur contemporaneously as the event occurs or as soon as cellular reception permits. Where an emergency notification program is utilized, immediate report notification as required must be transmitted to the appropriate monitor and any other law enforcement specified by the county;
 - (iv) provide a copy to DCJS of the findings of the Contractor's annual quality assurance audits;
 - (v) provide immediate written notice to DCJS and the applicable county monitor(s) of any removal of any installation/service provider and the reasons for such;
 - (vi) provide immediate written notice to DCJS and DOH whenever the Contractor's device, services, and/or operations has been compromised or does not function as intended in NYS or any other state or jurisdiction in which the Contractor does business, or disapproved, suspended in whole or in part, revoked, or otherwise cancelled by another state or jurisdiction, or has received notice or communication from another state or jurisdiction that any such actions are imminent;
 - (vii) submit reports as requested and in such format and timeframes as determined by DCJS, for each model or type of certified device as required by DCJS' regulatory provisions as well as deficiencies in device reporting or information transmission for any reason, including, but not limited to, service outages or downtimes of any nature, and any proposed operational modification or other proposed operational and/or administrative change, including but not limited to, server, firmware, and other technical changes or business structural changes which may have the potential of affecting service delivery or reporting;
 - (viii) agrees that consequences of failure to adhere to regulatory and/or contractual requirements may result in suspension or removal of the Contractor as a qualified manufacturer from doing business in NYS, and agrees to adhere in the event of suspension to such terms and conditions required by DCJS in any subsequent reconciliation plan;
 - (ix) agrees to ensure that their installation/service providers abide by applicable DCJS regulatory provisions;
 - (x) agrees to ensure that their installation/service providers shall promptly notify the applicable monitor when an operator fails to pass the initial breath test and to halt installation; and
 - (xi) agrees to ensure that their installation/service providers shall notify the applicable monitor when an ignition interlock device has been installed on an operator's vehicle(s) within three (3) business days of installation.

IV. Standby Letter of Credit (SLOC):

The CONTRACTOR has submitted an original signed and completed Standby Letter of Credit (SLOC) to DCJS in the form set forth at Appendix SLOC, effective on or about October 1, 2017 and must otherwise comply with the requirements of this Section.

A. Contractor's Obligation to Maintain

The CONTRACTOR shall at all times maintain in effect an irrevocable SLOC for the entire contract term and any applicable extensions, as may now or hereafter be modified upon mutual AGREEMENT of the Parties, or any post transition period. Failure to maintain such SLOC in the full aggregate amount set forth herein shall constitute a material breach by the CONTRACTOR.

The SLOC must be issued by a financial institution authorized to do business under the laws of the State of New York.

B. Form of SLOC

The form for the SLOC shall be as set forth in Appendix SLOC Standby Letter of Credit Form.

C. Issuer's Obligations

1. SLOC

The obligation of Issuer under the SLOC shall be the individual obligation of Issuer and in no way contingent upon reimbursement by the CONTRACTOR with respect thereto.

2. Term

A SLOC shall be irrevocably maintained in effect by the CONTRACTOR upon commencement of contract term and continuing throughout the contract term, any contract extension, or post-transition period, where applicable. ("SLOC Term")

3. Required Notices

Issuer is required to provide the Procurement Officer of the State of New York Division of Criminal Justice Services with a written notice of: (i) any failure of the Contractor to replenish the SLOC to the full aggregate amount; or (ii) any failure of the Issuer to renew the SLOC.

4. Presentment & Demand

The NYS DCJS shall be entitled to present a written draft at sight (sight draft) on the Issuer. All drafts made under and in compliance with the terms and conditions of the SLOC shall be duly honored by Issuer upon presentment. The State's failure to make such demand for a particular action shall not be deemed a waiver of its rights under the SLOC. Partial and multiple drawings are permitted under the SLOC and such drawings will immediately reduce the then available balance of the SLOC, subject to the replenishment provisions, below. The Issuer, for value received, must stipulate and agree that the obligations of said Issuer and its Irrevocable Standby Letter of Credit shall be in no way impaired or affected by (i) any extensions of the times within which: (a) the State may receive, review, accept or pay for deliverables under the

Contract, or (b) within which the CONTRACTOR may furnish a Standby Letter of Credit in the requisite amount, or (ii) any waiver by the State of any of the requirements of said Contract, and Issuer must waive notice of any such extensions or waivers.

D. Aggregate Amount & Replenishment

1. Aggregate Amount

The executed SLOC shall be maintained by the CONTRACTOR at all times during the Contract Term, contract extension, or post-transition period, in the full amount required based upon the number of Ignition Interlock Devices (IIDs) in usage of the CONTRACTOR within the State. A SLOC in the amount of two hundred thousand dollars and no cents (\$200,000 USD) shall be required where there are 500 or greater IIDs in the field at any given time (IID base) and a SLOC in the amount of one hundred thousand dollars and no cents (\$100,000 USD) shall be required where there are less than 500 IIDs in the field at any given time (IID base). The CONTRACTOR agrees to provide monthly reports, within fifteen calendar days of every month, to the DIVISION 's Office of Probation and Correctional Alternatives and to DCJS' Procurement Officer as to the number of its IIDs in each local jurisdiction within the State in such specificity and format as required by the DIVISION. Should the number of IIDs rise beyond 500 IIDs in the field at any given time (IID base) necessitating an increase in the SLOC, the CONTRACTOR shall be responsible for securing a SLOC in the higher amount within thirty calendar days of the CONTRACTOR's obtaining such a number. Failure of the CONTRACTOR to timely secure and provide proof to the DIVISION of an appropriate SLOC dollar amount shall be deemed a material breach of the Contract. Failure of the CONTRACTOR to submit such reports in a timely manner may be grounds for termination of contractual services.

2. Replenishment

In the event the State makes a partial or complete drawing(s) against the SLOC, the amount(s) of such drawing(s) must be replenished by the CONTRACTOR to the full aggregate amount within five (5) business days of any individual draws against the SLOC. Failure of the CONTRACTOR to replenish the SLOC within the required timeframe shall be deemed a material breach of this Contract.

E. Jurisdiction & Venue

Issuer may designate a separate location for receipt of the State's draft, however, presentment shall be deemed to occur within the State of New York regardless of the physical location designated for receipt of the State's draft. Any actions or proceedings under the SLOC shall be governed by the laws and heard in Courts of the State of New York. Any rights set forth in this section shall be deemed cumulative, and in addition to any other remedies available at law or in equity.

F. SLOC Fees

The CONTRACTOR shall be responsible for payment of all fees associated with obtaining and maintaining the SLOC, including any extension/post-transition period(s) which may be granted by the DIVISION or necessary increase in dollar amounts.

V. Payment, Reporting, Accounting, Auditing, and Certification

- A. It is understood that the CONTRACTOR shall receive no payment from the DIVISION or a County within New York State or the City of New York for services rendered to an operator. In no event may the CONTRACTOR exceed the fee/charge schedule in Appendix C, and the CONTRACTOR must offer a payment plan to any operator where it has been imposed by a sentencing court and provide a device and associated services free of fee/charge to any operator who has received a waiver from the court based upon a determination of financial unaffordability.
- B. Reports required to be submitted by the CONTRACTOR to the DIVISION shall be completed and submitted in accordance with timeframes and procedures and in such format established by the DIVISION.
- C. The CONTRACTOR is responsible for the administration of PROGRAM requirements enumerated in this AGREEMENT. The CONTRACTOR agrees to regularly monitor performance of all PROGRAM operations through securing programmatic reports and data, audit its installation/service providers, and ensure contractual terms and conditions are met. Regular on-site visits of programmatic operations where applicable are conducted by the CONTRACTOR to assess programmatic operations and review and verify documentation of service delivery.
- D. Any activity, fiscal, and account records and supplementary data relating to this AGREEMENT shall be accessible to authorized representatives of the DIVISION or OSC, or both, as may be required to assure proper accounting of fiscal costs, PROGRAM services, and activities conducted pursuant to this AGREEMENT. All such activity, fiscal, and account records and supplementary data shall be retained by the CONTRACTOR for a period of at least six (6) years from the termination of this AGREEMENT or until the CONTRACTOR is notified by the DIVISION that a final audit has been completed and all questions arising under this AGREEMENT have been resolved. The CONTRACTOR further agrees to permit onsite inspection of activities, records and data by representatives of the DIVISION and OSC and to allow appropriate New York State agencies, or its representatives when specifically directed by the DIVISION, to take possession of all books, records, and documents relating to this PROGRAM without notice provided, however, that the DIVISION will return to the CONTRACTOR all such books, records, and documents upon completion of the agency's official purpose. The CONTRACTOR will accept responsibility for compensating appropriate individual(s) or entities for any exceptions which are revealed in an audit and sustained after completion of normal audit procedures.
- E. The CONTRACTOR shall certify and provide documentation describing and supporting its vendor responsibility determination and understands its obligation to formally

communicate to the DIVISION and other appropriate authorities in New York State any change in their vendor responsibility disclosure. Documentation shall include a copy of the most recent annual financial audit of the CONTRACTOR.

- F. The CONTRACTOR shall provide documentation and verification of insurance coverage required by this AGREEMENT and by any other applicable law, and other legal certification documentation to the DIVISION which it may require to verify CONTRACTOR compliance with the terms and conditions of this AGREEMENT.
- G. It is understood and agreed that the CONTRACTOR will give written permission to the DIVISION authorizing their wireless/cellular service provider to provide the DIVISION with advance notice of any lapse in payment, suspension, or termination of services and to otherwise communicate with them as to service delivery and fiscal account status.

Cancellation, suspension, and revocation of contractor, qualified manufacturers and/or distributors, installation/service providers, and certified ignition interlock devices:

- A. Reasons including, but not limited to, the following may result in cancellation, suspension, or revocation of a certified ignition interlock device, a qualified manufacturer, contractor or installation/service provider:
 - (1) when there is a voluntary request by a manufacturer to cancel certification of a device;
 - (2) when notified by the New York State Department of Health that a device no longer meets their regulatory standards;
 - (3) when a device is discontinued by the manufacturer;
 - (4) when the manufacturer's liability insurance is terminated or cancelled;
 - (5) when the manufacturer or installation/service provider conceals or attempts to conceal its true ownership;
 - (6) when materially false or inaccurate information is provided relating to a device's performance standards;
 - (7) when there are defects in design, materials, or workmanship causing repeated failures of a device;
 - (8) when the manufacturer or installation/service provider knowingly permits nonqualified service technicians to perform work;
 - (9) when a manufacturer or installation/service provider assists users with circumventing or tampering with a device;
 - (10) when service or the submission of required reports is not provided in a timely manner as required by 9 NYCRR, Part 358;
 - (11) when the manufacturer or installation/service provider refuses to provide an ignition interlock device free of charge to an operator who has received a judicial waiver;
 - (12) when there is a pattern of substandard customer service;
 - (13) when a manufacturer or installation/service provider interferes with or obstructs a review or investigation by the division or any designee;
 - (14) when there are any other violations of the ignition interlock provisions contained in Title 9 NYCRR Part 358, including DCJS and NYS DOH regulations, or any ignition interlock contractual AGREEMENT;

- (15) upon verbal and/or written notification or communication of disapproval, suspension, revocation, or cancellation of a manufacturer's device, services and/or operations by another state or jurisdiction;
- (16) when a manufacturer or installation/service provider provides gratuities or any other personal incentives to a state or local official or any monitor for purposes of soliciting business; and
- (17) when a manufacturer or installation/service provider conducts business in New York State outside of the designated region or regions of operation approved by the division;
- (18) when a device fails to function pursuant to the minimum requirements of its class;
- (19) when there is failure to comply with any manufacturer or installation/service provider requirements indicated in 9 NYCRR Part 358 or this Agreement, and
- (20) where the manufacturer's operation or current financial state including, but not limited to, sufficient free cash flow is insufficient to sustain continuing operations for the duration of this AGREEMENT and any continuing obligations arising out of this AGREEMENT which may continue beyond the termination of this AGREEMENT such that a Vendor Responsibility (Vend Rep) Review conducted by the Comptroller or staff designated for such purpose or by the DIVISION would be less than adequate to secure initial contract approval, provided that nothing herein shall prevent the DIVISION or OSC from allowing the Vendor to implement a plan to restore its Vendor Responsibility status to a satisfactory level within a timeframe solely determined by the DIVISION or by OSC except that approval to implement such a plan is solely at the discretion of OSC or the DIVISION; the Vendor is not entitled thereto and no application of estoppel or laches shall result in such entitlement which is in all events at the sole discretion of OSC or the DIVISION.

VII. Termination/Suspension

- A. The DIVISION shall have the right to terminate this AGREEMENT early for: (i) cause; or (ii) upon mutual consent.
- B. The DIVISION may terminate the AGREEMENT immediately for cause upon written notice of termination to the CONTRACTOR: (i) if the DIVISION determines that the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or any laws, rules, regulations, policies or procedures affecting this AGREEMENT, including but not limited to, for reason of vendor responsibility or failure to accurately disclose in such document and/or for failure to timely obtain a SLOC in the requisite amount required herein.
- C. The DIVISION reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the DIVISION may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.
- D. The DIVISION may only invoke its right to terminate, provided the DIVISION has given written notice to the CONTRACTOR no later than thirty (30) calendar days or more prior

to the date of termination, except with respect to contractual language contained herein that gives the DIVISION the general right to terminate at any time.

- E. This AGREEMENT may be terminated at any time upon mutual written consent of the DIVISION and the CONTRACTOR or by the DIVISION upon serving thirty (30) calendar days written notice upon the other party, as specified by the DIVISION.

F. General Responsibility Language

The CONTRACTOR shall at all times during the Contractual term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of the New York State Division of Criminal Justice Services or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

G. Suspension of Work (for Non-Responsibility)

The Commissioner of the New York State Division of Criminal Justice Services or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of the New York State Division of Criminal Justice Services or his or her designee issues a written notice authorizing a resumption of performance under the AGREEMENT.

H. Termination (for Non-Responsibility)

Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard with appropriate Agency officials or staff, the Contract may be terminated by the Commissioner of the New York State Division of Criminal Justice Services or his or her designee at the Contractor's expense where the CONTRACTOR is determined by the Commissioner of the New York State Division of Criminal Justice Services or his or her designee to be non-responsible. In such event, the Commissioner of the New York State Division of Criminal Justice Services or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

- I. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
- (a) via certified or registered United States mail, return receipt requested;
 - (b) by facsimile transmission;
 - (c) by personal delivery;
 - (d) by expedited delivery service; or
 - (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the Parties may from time-to-time designate:

CONTRACTOR: Name:
Title:
Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

**New York State Division of Criminal Justice Services
Office of Probation and Correctional Alternatives**

Name: Robert M. Maccarone
Title: Deputy Commissioner and Director DCJS-OPCA
Address: Alfred E. Smith Office Building, 3rd Floor
80 South Swan Street
Albany, New York 12210
Telephone Number: (518) 485-7692
Facsimile Number: (518) 485-5140
E-Mail Address: robert.maccarone@dcjs.ny.gov

With a copy to:

Name: John M. Czajka , Esq.
Title: Deputy Commissioner and Counsel
Address: Alfred E. Smith Office Building, 8th Floor
80 South Swan Street
Albany, New York 12210
Telephone Number: (518) 457-4181
Facsimile Number: (518) 457-2416
E-Mail Address: john.czajka@dcjs.ny.gov

CONTRACTOR

Name:
Title:
Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

- J. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- K. The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this AGREEMENT by giving

fifteen (15) calendar days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this AGREEMENT. Additional 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.

- L. The termination shall be effective in accordance with the terms of the notice.
- M. Upon receipt of notice of termination, the CONTRACTOR shall adhere to DIVISION directives with respect to cessation and transition of service delivery and de-installation of devices.

VIII. Additional State Rights and Remedies

- A. In the event the CONTRACTOR violates the AGREEMENT, in addition to pursuing any other legal or equitable remedies, the STATE shall have the right to take one or more of the following actions:
 - (a) Terminate the AGREEMENT, in whole or in part; or
 - (b) Suspend the CONTRACTOR's services with respect to the AGREEMENT, in whole or in part, demand that the CONTRACTOR cure omissions, and continue the AGREEMENT with the requirement that the CONTRACTOR satisfy such terms and conditions as the DIVISION, at its sole discretion, may require.

In the event of suspension or termination, the STATE, at its sole discretion, may:

- (a) Proceed against the SLOC furnished by the CONTRACTOR, in accordance with the terms thereof which may be used to offset administrative and/or programmatic costs which may be incurred by the STATE in procuring and/or transitioning and monitoring alternative services;
 - (b) Pursue equitable remedies to compel the CONTRACTOR to perform; and/or
 - (c) Exercise all other rights set forth below.
- B. In the event of suspension or termination of this AGREEMENT in whole or in part based upon the CONTRACTOR's default or violation, the STATE shall, in its sole judgment, pursue any remedies as it deems advisable in assuring continuity of service delivery to the criminal justice system with sole reference to the best interests of the STATE and the Public Safety of its citizens, including, but not limited to:
 - (a) Procuring from another CONTRACTOR, upon such terms and conditions in such manner as the STATE deems appropriate, and:
 - i. Authorize alternative acceptable CONTRACTOR(s) to furnish services to the CONTRACTOR's customers who have Ignition Interlock devices in vehicles which they own and/or operate; and
 - ii. Pursue any other action(s) provided at law or in equity for remedies by the STATE, which may be used to offset administrative or programmatic costs which may be incurred by the STATE in procuring and/or transitioning and monitoring alternate services.

C. Transition Service Delivery.

(a) In the event of Termination, because of the public safety or best interests of the STATE, the STATE may require the CONTRACTOR and its Subcontractors (installation/service providers) to provide uninterrupted service after termination notice of the AGREEMENT until the date of the termination as the STATE deems reasonable and necessary for the continued safe operation of the ignition interlock devices and operator vehicles and/or as necessary for the STATE to ensure continuity of services to any other appropriate CONTRACTOR(s) and exchanging these Ignition Interlock devices to certified devices of other acceptable/approved CONTRACTOR(s).

(b) Any post termination transition period shall be determined by the STATE at its sole discretion, and be set forth in writing, return receipt notice to the CONTRACTOR. The STATE shall consult with the CONTRACTOR prior to making such a determination. The STATE shall reserve the right to subsequently amend the post termination transition period upon thirty (30) calendar days written notice to the CONTRACTOR unless emergency circumstances exist and less written notice is necessary. At all times during any post termination transition period, unless waived by the STATE, the CONTRACTOR shall continue all Contractual obligations set forth in the AGREEMENT until such time as the STATE (i) has approved a plan for the CONTRACTOR's post termination transition, and (ii) an orderly post termination transition to other appropriate CONTRACTOR(s) have been fully completed pursuant to the plan. The CONTRACTOR shall be required to meet its Contractual obligations, including appropriate level of services, notwithstanding the issuance of a notice of termination. The CONTRACTOR subject to termination shall transfer to any other appropriate CONTRACTOR(s) providing service delivery to its customers all leasing rights, or license rights of all hardware and equipment in use to allow for de-installation of their ignition interlock device and turn over to the appropriate local Monitor (the local probation department where the operator is under probation supervision or any person(s) or entity(ies) designated in a jurisdiction's ignition interlock program plan for any operator granted conditional discharge) all pertinent data files and documentation relative to ignition interlock device on each of their customers subject to the Ignition Interlock device. It is understood and agreed by all Parties that the SLOC shall be used to offset any and/or all associated transition expenses, including, but not limited to, administrative or programmatic costs which may be incurred by the STATE in procuring and/or transitioning and monitoring alternate services.

(c) Where transition services are necessary other qualified manufacturers shall ensure that their installation/service providers act in an expeditious manner to facilitate a seamless transition of services necessary to promote public safety. Where requested by the DIVISION because a SLOC previously issued appears insufficient to cover transition expenses, pricing for transition services rendered to new customers shall be at reduced or waived rates. In no event shall the CONTRACTOR assert any claim for damages or loss arising out of and in connection with de-installation of their devices, or any other costs related to transition services,

and shall not claim any charges or costs in connection with de-installation upon any driver, vehicle owner, or the State.

IX. Indemnification and Legal Status

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property or intellectual property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless, without monetary limitation, the State of New York, the DIVISION, every county, and their employees and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any act or omission by the Contractor, or their installation/service provider relating to the installation, service, repair, use and/or removal of an ignition interlock device. The CONTRACTOR shall submit to the DIVISION a signed statement with respect to such indemnification.
- B. It is mutually agreed between the parties to this AGREEMENT that the relationship of the CONTRACTOR to the DIVISION is that of an independent contractor for all purposes, including but not limited to workers' compensation coverage, unemployment insurance benefits, Social Security coverage, and retirement membership and credit. The CONTRACTOR agrees that it may neither hold itself out nor claim to be an officer, employee, or subdivision of the State of New York, the DIVISION, nor make any claim, demand, or application to or for any right based upon improper status. Further, no contractual relationship shall be deemed to exist between any subcontractor and the DIVISION.
- C. If it is determined by the DIVISION that a unit has failed to function pursuant to its class the CONTRACTOR shall reimburse the operator in a manner prescribed by the DIVISION for all related expenses incurred.

X. Safeguards for Services and Confidentiality

- A. The CONTRACTOR agrees that all records on this PROGRAM shall be safeguarded and not be open to public review. Towards this end, the CONTRACTOR shall establish written policies and procedures as to maintenance, security, retention and disposition of such records. The CONTRACTOR shall agree to maintain complete confidentiality of all personal information concerning employees, individual operators and their families which it may obtain during the course of performing the services of this AGREEMENT unless required in the performance of this AGREEMENT or otherwise authorized by law or court order. Except as authorized by law (including DIVISION regulations), court order, or for audit purposes, the CONTRACTOR shall not release any of personal information, including, but not limited to, names and addresses, without prior written permission from the DIVISION. Record retention and disposition shall be in accordance with this AGREEMENT and any applicable Federal or State laws, rules or regulations. The DIVISION shall have access to all CONTRACTOR records relating to the PROGRAM. Information relating to individuals who may receive services pursuant to this

CONTRACTOR shall be maintained and safeguarded in conformity with the applicable provisions of laws, regulations and policies and directives of the DIVISION.

- B. The CONTRACTOR specifically agrees to comply with New York State's "Information Security Breach and Notification Act" as set forth in State Technology Law (STL_§208 and General Business Law (GBL) § 899-aa. The CONTRACTOR shall promptly notify the DIVISION where there is reasonable belief of breach of security, unauthorized access or unauthorized release of personal computer data containing "personal information" and take appropriate action with respect to notification of affected individuals and to other required state agencies consistent with such Act. CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors. "Personal information" shall mean any information concerning a person which because of name, number, personal mark, or other identifier, can be used to identify such person.

Specifically, STL§208 and GBL§899-aa require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes "private information" including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. A disclosure of any breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures have been taken subject to approval of DCJS or such other applicable State agency to determine the scope of the breach and to restore integrity, but with delay if law enforcement determines it impedes a criminal investigation.

State entities subject to STL§208 that experience breaches of computerized data which includes private information must file notices with the New York Attorney General; Department of State's Division of Consumer Protection; and the Office of Information Technology Services' Enterprise Information Security Office.

GBL§899-aa provides that persons or businesses conducting business in New York must disclose any breaches of computerized data which includes private information by notifying the offices of the New York Attorney General; the NYS Division of State Police; and the Department of State's Division of Consumer Protection. Information relative to the law and the notification process is available at: <http://its.ny.gov/eiso/breach-notification>.

Indemnification of New York State and Authorized Users for Breach of Security

The Contractor will indemnify DCJS and the State *without limitation* against any claims brought against DCJS and/or the State by reason of a wrongful disclosure of

confidential information attributed to the Contractor or any of its agents, employees, and/or subcontractors and will cooperate fully with DCJS, the State, and the Attorney General in defense of any claims(s). GBL §899-aa(6)(a) provides in part that:

(a) whenever the Attorney General shall believe from evidence satisfactory to him/her that there is a violation of this article he/she may bring an action in the name and on behalf of the People of the State of New York, in a court of justice having jurisdiction to issue an injunction, to enjoin and restrain the continuation of such violation. In such action, preliminary relief may be granted under Article sixty-three of the Civil Practice Law and Rules (CPLR). In such action the court may award damages for actual costs or losses incurred by a person entitled to notice pursuant to this article, if notification was not provided to such person pursuant to this article, including consequential financial losses. Whenever the court shall determine in such action that a person or business violated this article knowingly or recklessly, the court may impose a civil penalty of the greater of five thousand dollars or up to ten dollars per instance of failed notification, provided that the latter amount shall not exceed one hundred fifty thousand dollars.

The remedies in GBL§899-aa(6)(a) are in addition to any other lawful remedy and in addition to any other remedy available under the terms of the Contract executed between the State and the Contractor. The Contract executed between the State and the Contractor may be terminated by the State for cause for a material breach of this section, and the provisions of STL§208 and GBL§ 899-aa shall survive the termination of the Master Agreement.

Contractor personnel performing under this Agreement, and all Contractor equipment used to process or store State data or to connect to network must comply with the requirements contained in:

The NYS Information Security Policy (P03-002), located at:
<https://www.its.ny.gov/document/information-security-policy>

NYS information technology policies, standards and best practice guidelines, located at: <http://www.its.ny.gov/tables/technologypolicyindex>

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) DCJS' unauthorized modification or alteration of a product; ii) DCJS' use of a product in combination with other products not furnished by Contractor unless such use has been approved by the Contractor in writing; and/or iii) DCJS' use in other than the specified operating conditions and environment.

Unless otherwise specifically enumerated herein neither Party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the Party has been advised of the possibility of such damages. Neither Party shall be liable for lost profits, lost revenue or lost institutional operating savings.

XI. Minority & Women Owned Business Enterprises
Participation by Minority Group Members & Women/ Requirements

- A. DCJS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction. For purposes of this Contract, DCJS hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises (MWBE) participation, 25% for minority- business enterprises (MBE) participation and 5% for women-owned business enterprises (WBE) participation. MBE and WBE goals are for goods and services in support of the actual services to be provided.

The Contractor agrees to fully comply and cooperate with DCJS in the implementation of New York State Executive Law Article 15-A and to make good faith efforts to promote and assist the participation of certified minority-business enterprises (MBE) and women-owned business enterprises (WBE) as subcontractors and suppliers with respect to this Agreement. Accordingly, Contractor agrees to adhere to Appendix MWBE of this Agreement.

XII. Encouraging the Use of New York Businesses in Contract Performance and Service-Disabled Veteran-Owned Businesses

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, any Contractor for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of their requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. The Contractor is strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, the Contractor must continue to utilize small, minority and women-owned businesses, consistent with current State law. Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its New York State business partners. New York State businesses will promote the Contractor's optimal performance under the Contract, thereby fully benefiting the public sector programs that are supported by associated procurements. Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects the Contractor to provide maximum assistance to New York businesses in their use of the Contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers. Contractor has agreed to complete and forward any form which may be required by DCJS relative to encouraging use of New York Business in connection with this Contract.

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, any Contractor for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf

DCJS strongly encourages the Contractor to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Additionally, the Contractor must continue to utilize small, minority and women-owned businesses consistent with current State law.

Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects any Contractor to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers. DCJS has established an agency goal of 6% SDVOBs with respect to agency procurements. The Contractor must report to DCJS on a quarterly basis on actual participation by any SDVOB during the term of the contract consistent with any DCJS policies and procedures in this area.

XIII. Forms and Submissions

A. NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE:

Where a Contract exceeds \$100,000, Contractor agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire available at www.osc.state.ny.us/vendrep. Contractor acknowledges that the State's approval of the Contract will be contingent upon the State's determination that the Contractor is responsible, and that the State will be relying upon the Contractor's responses to the Questionnaire in making that determination.

B. In accordance with State Finance Law Section 165 the MacBride Fair Employment Principles, Contractor has submitted a completed copy of the "Non-Discrimination in Employment in Northern Ireland" form, which is attached hereto as Appendix NI.

C. In accordance with State Finance Law Section 139-d, the Contractor has submitted a completed, certified "Non-Collusive Bidding" statement and has agreed to abide by the provisions of State Finance Law Section 139-d, which is attached hereto as Appendix NCB.

D. Contractor Certification of Compliance with State Finance Law §139-k (5). New York State Finance Law §139-k(5) requires that every procurement contract subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Contractor that all information provided to the procuring Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate. A Governmental Entity must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. Contractor has completed and submitted all necessary forms with respect to such certification.

E. Contractor must provide substitute form W-9 where applicable

F. The State has implemented a Statewide Financial System and has established a centralized vendor file. This data is critical to ensure the vendor file contains the information agencies need to contract with and pay the vendor. Contractor agrees to file a Substitute Form W-9 along with their Electronic Payment Authorization Form. Both forms can be found at the following link:

www.osc.state.ny.us/epay/index.htm - Electronic Payment and Substitute W-9

With regards to the epay Program, only originals of the Electronic Payment Authorization Form will be accepted and should be submitted with an attached voided check (as verification of the vendor's banking information). The Electronic Payment Authorization Form, together with the Substitute Form W-9, should be mailed to OSC's Bureau of Accounting Operations (see address below). If a vendor chooses not to submit a voided check, their Financial Institution can complete section two of the authorization form, and the Financial Institution must forward the application directly to:

NYS Office of the State Comptroller – Bureau of Accounting Operations
Warrant & Payment Control Unit
110 State Street, 9th Floor
Albany, NY 12236

Additional information and procedures for enrollment can be found at the Comptroller's website at www.osc.state.ny.us/epay/index.htm

If Contractor is already enrolled in the epay program, contractor agrees to complete Substitute Form W-9 and submit it to the above address.

If you have questions regarding the epay program, please contact the OSC – Bureau of Accounting Operations, Warrant & Payment Control Unit at 518-486-1255 or payments@osc.ny.gov

If you have questions regarding Substitute Form W-9, please contact the OSC – Bureau of State Expenditures, Vendor Management Unit at 518-474-5504 or vmu@osc.ny.gov

XIV. NYS Workers' Compensation and Disability Benefits Coverage

Workers' Compensation Requirements in New York State

To assist state and municipal entities in enforcing WCL §57, businesses requesting permits, licenses or seeking to enter into contracts must provide ONE of the following forms to the entity issuing the permit or entering into a contract:

- Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage (CE-200); or
- Certificate of Workers' Compensation Insurance (C-105.2) (the business' insurance carrier will send this form to the government entity upon request) Please Note: The State Insurance Fund provides its own version of this form, the U-26.3; or
- Certificate of Worker's Compensation Self-Insurance (SI-12) (the business calls the Board's Self- Insurance Office at 518-402-0247); or
- Certificate of Group Worker's Compensation Self-Insurance (GSI-105.2) (the business' Group Self- Insurance Administrator will send this form to the government entity upon request).

Effective September 9, 2007, all out-of-state employers with employees or subcontractors working in New York State are required to carry a full, statutory New York State workers' compensation insurance policy.

An employer has a full, statutory New York State workers' compensation insurance policy when New York is listed in Item "3A" on the Information Page of the employer's workers' compensation insurance policy. Please contact the Board's Bureau of Compliance at 1-866-298-7830 if you have any questions regarding these requirements.

Please note: If all work for the permit, license or contract is done outside of New York and no employees of the out-of-state business work in the state, New York State-specific coverage is not required and the employer may be able to file Form CE-200.

Disability Benefits Coverage Requirements

To assist state and municipal entities in enforcing Sec. 220 Subd. 8 of the New York State Disability Benefits Law, businesses requesting permits, licenses or seeking to enter into contracts must provide one of the following forms to the government entity issuing the permit, license or entering into a contract:

- Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage (CE-200); or
- Certificate of NYS Disability Benefits Insurance (DB-120.1) (the business' disability benefits carrier will send this form to the government entity upon request)

- Certificate of NYS Disability Benefits Self-Insurance. (DB-155) (businesses that are self-insured in NYS for disability benefits insurance should call the Workers' Compensation Board's Self-Insurance Office at (518) 402-0247 to obtain this form.)

Please note: New York State statutory disability benefits (DB) insurance coverage is totally different from and is not included in New York State workers' compensation insurance coverage. Statutory New York State disability benefits insurance covers employees for an off-the-job accident, injury or illness and pays half an employee's weekly wage, up to \$170 per week, for up to 26 weeks.

An out-of-state employer needs a New York State disability benefits insurance policy if the employer employs one or more individuals on each of at least 30 days in a calendar year in New York State. To be eligible for a disability benefits exemption using Form CE-200, an out-of-state employer must not have one or more individuals working on each of at least 30 days in a calendar year in New York. (Independent contractors are not considered to be employees under the Disability Benefits Law.)

If you have any additional questions regarding workers' compensation coverage requirements, please call the Bureau of Compliance at (866) 298-7830

Obtaining Workers' Compensation and Disability Benefits Insurance

In addition, a workers' compensation policy may be obtained from the NYS Insurance Fund by calling 1-888-875-5790 and a disability benefits insurance policy may be obtained from the NYS Insurance Fund by calling 1-866-697-4332.

If Claiming Exemption from NYS Workers Compensation and Disability, Certification is required. Please go to www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp to request exemption.

XV. Miscellaneous

- A. The failure of the DIVISION to insist upon strict adherence to any provision, fiscal obligation, or other requirement of this AGREEMENT shall not be considered a waiver to deprive the DIVISION of the right to insist upon strict adherence to the AGREEMENT in the future.
- B. The invalidity or the unenforceability of any provision of this AGREEMENT shall not affect the validity or enforceability of other provisions of the AGREEMENT, which shall remain in full force and effect.
- C. Appendix A takes precedence over all other parts of the AGREEMENT.
- D. Disputes involving the breach or alleged breach of the AGREEMENT may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

- E. Neither party shall be liable for losses, defaults, or damages under this AGREEMENT which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this AGREEMENT, due to or because of disastrous acts of nature including any earthquake or floods, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party shall resume full performance of such obligations and responsibilities promptly upon removal of any such cause.
- F. The CONTRACTOR agrees that no brochure, news/media/press release, public announcement, memorandum or other information of any kind regarding to activities under this Contract shall be disseminated in any way to the public, nor shall any presentation be given regarding those activities without prior written approval by DCJS, provided, however, that Contractor shall be authorized to provide copies of this Contract and answer any questions relating thereto to any State or Federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.
- G. The CONTRACTOR and specifically its signatory assure and certify that it possesses legal authority to enter into this AGREEMENT.
- H. Entire AGREEMENT and Survival

This AGREEMENT constitutes the entire contractual agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained or referenced herein shall be binding or valid. The terms, provisions, representations and warranties contained in this AGREEMENT shall survive performance hereunder. This AGREEMENT shall not be changed, modified or altered in any manner, other than as provided in this AGREEMENT, except by a written instrument executed by the Parties and approved by Office of the State Comptroller.

Contract Number
Agency Certification by DCJS

In addition to the acceptance of this Agreement, I also certify that original copies of this signature page will be attached to all other exact copies of this Agreement.

IN WITNESS WHEREOF, the Parties therefore hereby execute their mutual Agreement to the terms of this Agreement, bearing New York State Comptroller's Contract Number [Insert #] This Agreement constitutes a binding Agreement between the Parties as of the day and year indicated below that the approval of the Comptroller of the State of New York or staff of the Office of the State Comptroller (OSC) designated for such purpose was received. The Parties further agree that, where Contractor is asked to execute any original copies of this signature page along with a complete original copy of this Agreement, that the approved signature page will be affixed by DCJS upon its receipt of final approval of the Comptroller of the State of New York or staff of the Office of the State Comptroller (OSC) designated for such purpose, to additional copies of this Agreement which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

Contractor

DIVISION OF CRIMINAL JUSTICE SERVICES

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Eric T. Schneiderman,
Attorney General

Thomas DiNapoli,
State Comptroller

Date: _____

Date: _____

CONTRACTOR ACKNOWLEDGMENT (Draft)

STATE OF _____ }
COUNTY OF _____ }

On the ___ day of _____ in the year 201_, before me personally appeared,
_____, known to me to be the person who executed the
foregoing instrument, who, being duly sworn by me did depose and say that he/she resides at
_____, Town of _____, County of _____, State of
_____; and further that he/she is _____ a
duly authorized officer of _____; that he/she is authorized to execute the
foregoing instrument on behalf of _____ for purposes set forth therein; and
that, pursuant to that authority, s/he executed the foregoing instrument in the name of and on
behalf of said company as the act and deed of said company.

Notary Public

APPENDIX: EBNYS

**ENCOURAGING USE OF NEW YORK STATE BUSINESSES
IN CONTRACT PERFORMANCE**

APPENDIX: EBNYS

**ENCOURAGING USE OF NEW YORK STATE BUSINESSES
IN CONTRACT PERFORMANCE**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Print Legal Name of Bidder	
Sign Name and Title of Authorized Signatory	

Will New York State Businesses be used in the performance of this contract?

Yes No

If yes, identify New York State Business(es) that will be used below. (If additional space is required, please attach.)

NYS Business Name	NYS Business Address

APPENDIX NCBC

NON-COLLUSIVE BIDDING CERTIFICATION

APPENDIX NCBC: Non-Collusive Bidding Certification

**NON-COLLUSIVE BIDDING CERTIFICATION REQUIRED BY
SECTION 139-D OF THE STATE FINANCE LAW**

SECTION 139-D, Statement of Non-Collusion in bids to the State:

BY SUBMISSION OF THIS BID, BIDDER AND EACH PERSON SIGNING ON BEHALF OF BIDDER CERTIFIES, AND IN THE CASE OF JOINT BID, EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

[3] No attempt has been made or will be made by bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], AND [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]

Subscribed to under penalty of perjury under the laws of the State of New York, this _____ day of _____, 20____ as the act and deed of said corporation or partnership.

Non-Collusive Bidding Certification - 2

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAME

LEGAL RESIDENCE

President:

Secretary:

Treasurer:

President:

Secretary:

Treasurer:

Non-Collusive Bidding Certification - 3

Identifying Data

Potential Contractor _____

Address _____

Street

City, Town, etc.

Telephone _____ Title _____

If applicable, Responsible Corporate Officer

Name _____ Title _____

Signature _____

Joint or combined bids by companies or firms must be certified on behalf of each participant.

Legal name of person, firm or corporation

Legal name of person, firm or corporation

By _____

Name

Name

Title

Title

Address _____

Street

Address _____

Street

City State

City State

APPENDIX PLG

DCJS PROCUREMENT LOBBYING GUIDELINES

APPENDIX PLG: DCJS PROCUREMENT LOBBYING GUIDELINES
Division of Criminal Justice Services
Summary of Policy and Prohibitions on Procurement Lobbying

Background:

State Finance Law §139-j (6) requires that a Governmental Entity incorporate a summary of its policy and prohibitions regarding permissible Contacts during a covered procurement.

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. DCJS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period; the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found at the OGS website:

<http://ogs.ny.gov/acpl>

Mandatory Submissions:

The Division of Criminal Justice Services’ Procurement Lobbying Guidelines are attached as APPENDIX PLG. The Offerer/Bidder must affirm that it understands and agrees to comply with DCJS’ procedures relative to the “Affirmation of Understanding and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)” by completing and submitting Attachment 1 to APPENDIX PLG.

The Offerer/Bidder must also complete and submit Attachment 2 to APPENDIX PLG, the “Offerer Disclosure of Prior Non-Responsibility Determinations” and Form 4, “Offerer’s Certification of Compliance with State Finance Law §139-k (5)” to APPENDIX PLG..

**DIVISION OF CRIMINAL JUSTICE SERVICES
PROCUREMENT LOBBYING GUIDELINES**

I. INTRODUCTION

These Guidelines, which have been issued pursuant to the New York State Finance Law, apply to all Division of Criminal Justice Services' ("DCJS") procurement contracts and limit certain types of communications between Offerers and DCJS during the Restricted Period of a Governmental Procurement. During the Restricted Period, an Offerer may communicate only with the person or persons designated by DCJS to receive communications regarding such Governmental Procurement.

II. STATUTORY DEFINITIONS

Article of Procurement	A commodity, service, technology, public work, construction, revenue contract, or the purchase, sale or lease of real property or an acquisition or granting of an interest in real property that is the subject of a governmental procurement.
Contact	Any oral, written or electronic communication with DCJS under circumstances where a reasonable person would infer that the communication was intended to influence the governmental procurement.
Governmental Entity	Includes New York State agencies, public benefit corporations, public authorities of which at least one member is appointed by the Governor, both houses of the New York State Assembly and Senate, the Unified Court System, and certain Industrial Development Agencies.
Governmental Procurement	(i) the preparation of terms of the specifications, bid documents, requests for proposals, or evaluations criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the Comptroller, as applicable), renewal or extension of a

procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Offerer.

Offerer	The individual or entity, or any employee agent or consultant or person acting on behalf of such individual or entity, that contacts DCJS about a Governmental Procurement .
Procurement Contract	Any contract or other agreement for an Article of Procurement involving an estimated annualized expenditure in excess of \$15,000. Grants, Article Eleven-B State Finance Law Contracts, Intergovernmental Agreements, Railroad and Utility Force Accounts, Utility Relocation Project Agreements or Orders of Eminent Domain Transactions shall not be deemed Procurement Contracts in these Guidelines.
Restricted Period	The period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a Procurement Contract with DCJS and, ending with the final contract award and approval by, where applicable, the Office of the State Comptroller.

III. EXEMPTIONS

While an **Offerer** shall only contact the person or persons who may be contacted by **Offerers** as designated by the governmental entity relative to the government procurement during the restricted period, certain communications are exempt from these Guidelines. These include: (i) submissions in response to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to a designated contact set forth in an invitation for bid, request for proposal or other solicitation, (iii) participation in a conference provided for in an invitation for bid, request for proposal or other solicitation, (iv) contract negotiations, (v) inquiries regarding the factual status of a **Procurement Contract**, and (vi) complaints and protests regarding the procurement process and outcome.

IV. NEW YORK STATE LEGISLATURE OR LEGISLATIVE STAFF

Any communication received by DCJS from members of the New York State Legislature or legislative staff, when acting in their official capacity, shall not be considered a **Contact**.

V. VIOLATIONS

A violation of these Guidelines occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person or persons designated by DCJS to

receive communications for the particular **Governmental Procurement**. This includes instances where the **Offerer Contacts** DCJS regarding **Governmental Procurements** of other **Governmental Entities**.

Attempts by an **Offerer** to influence a **Governmental Procurement** in a manner that would result in a violation of the Public Officers Law or Penal Law also shall also be a violation of these Guidelines.

VI. PROCEDURES

A. Notifying Vendors of Procurement Lobbying Guidelines

1. For each **Procurement Contract**, the DCJS Finance Office will designate a person or persons to receive communications from **Offerers** concerning the **Procurement Contract**.
2. The DCJS Finance Office will incorporate a summary of the policy and prohibitions regarding permissible communications during a **Governmental Procurement** in its documents relating to the **Procurement Contract** and provide a copy of these Guidelines in such documents.
3. The DCJS Finance Office shall seek written affirmation from all **Offerers** as to the **Offerer's** understanding of and agreement to comply with these Guidelines (Attachment 1).

B. Making Determinations of Responsibility

1. Prior to award of a **Procurement Contract**, DCJS must make a responsibility determination with respect to the **Offerer** to be recommended for the award of the contract based upon, among other things, the information supplied by that **Offerer**. The **Offerer** must disclose, using the **Offerer** Disclosure of Prior Non-Responsibility Determinations Form (Attachment 2), whether it has been found non-responsible within the last four years by any **Governmental Entity** for: (1) failure to comply with State Finance Law §139-j; or (2) the intentional provision of false, inaccurate or incomplete information. This disclosure must be certified by the **Offerer** and must affirmatively state that the information supplied by the **Offerer** to DCJS is complete, true and accurate.
2. Any **Procurement Contract** award shall contain a certification by the **Offerer** that all information provided to DCJS is complete, true and accurate. Each DCJS contract shall contain a provision authorizing DCJS to terminate the contract in the event the certification is found to be intentionally false, intentionally incomplete, or intentionally inaccurate. DCJS will include in the procurement record a statement describing the basis for any action taken pursuant to such termination provision.

Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of the **Offerer** by DCJS. DCJS shall include in the procurement record a statement describing the basis for any action taken pursuant to such termination provision. DCJS can award a contract to the **Offerer** despite the past findings of non-responsibility if it determines that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Articles of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

C. Recording of **Contacts**

1. All DCJS employees must record any **Contact**. As defined, a **Contact** is one from any person or entity that is intended to influence procurement. However, any communication received by DCJS from members of the New York State Legislature, or the Legislative Staffs, when acting in their official capacity, shall not be recorded.
2. Upon any Contact during the restricted period, DCJS shall obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact and inquire and record whether the person or organization making such contact was the Offerer or was retained, employed or designated by or on behalf of the Offerer to appear before or contact DCJS about the governmental procurement. Contact may be initiated by parties with an interest in the procurement that are not necessarily connected directly to the Offerer. Contact may come in the form of telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Procurement Contact Form should be used to record Contacts. The form is available on the DCJS Intranet homepage under "Policies and Procedures," "Record of Procurement Contact." The form should be completed by the DCJS employee and e-mailed to "dcjs.sm.procurement.law" an e-mail account on the DCJS internal e-mail system. This e-mail account will send the form to both the DCJS Finance Office and the DCJS Ethics Officer.
3. The exempted communications set forth in Article III need not be reported unless a reasonable person would infer that the communications were intended to influence the procurement.
4. If a DCJS employee is in doubt about whether a communication was intended to influence the **Governmental Procurement**, he or she should

record the communication on the Record of Procurement Contact Form and submit it to dcjs.sm.procurement.law for further investigation.

5. The DCJS Finance Office will be required to include all Records of Procurement Contact in the procurement record for the related **Procurement Contract**.

D. Investigation of Contacts/ Penalties for Violations

1. All reported Contacts will be immediately investigated by the DCJS Ethics Officer, or his or her designee. If the DCJS Ethics Officer finds sufficient cause to believe that an Offerer has violated these Guidelines, the Offerer will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. Investigations will be completed as soon as practicable so as not to delay the progress of the Governmental Procurement.
2. If the DCJS Ethics Officer should find at the conclusion of the investigation that the Offerer knowingly and willfully made prohibited Contact in violation of these Guidelines, then the Offerer shall be disqualified as non-responsible, unless DCJS makes a finding that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health or safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary time frame. The basis of such a finding must be included in the procurement record of the Procurement Contract.

Attachment 1

**Offerer's Affirmation of Understanding of and Agreement pursuant to
State Finance Law §139-j (3) and §139-j (6) (b)**

Background:

State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts during the restricted period for a procurement contract in accordance with State Finance Law §§139-j and 139-k. This affirmation shall be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid.

I hereby affirm that I have read, understand and agree to comply with the Division of Criminal Justice Services' procedures related to permissible Contacts during a Governmental Procurement as required by State Finance Law §139-j (3) and §139-j (6) (b).

By: _____ Date: _____

Name: _____ (Please print)

Title: _____

Offerer Name: _____

Offerer Address: _____

Attachment 2

Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k (2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

As an alternative to this form, the Governmental Entity may elect to incorporate this disclosure question into its procurement questionnaire, such as the New York State Standard Vendor Responsibility Questionnaire set out at <http://www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf>

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature

Name: _____

Title: _____

**Form 4: Offerer's Certification of Compliance
With State Finance Law §139-k(5)**

Background:

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

Instructions:

A Governmental Entity must obtain the required certification that the information is complete, true and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to the certification and provide it to the procuring Governmental Entity

The Offerer/Bidder shall submit the following certification with its bid.

Offerer Certification:

I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____	Date: _____
Name: _____	
Title: _____	
Offerer's Name: _____	
Offerer's Address: _____	

APPENDIX SDVOB

USE OF SERVICE-DISABLED VETERAN-OWNED BUSINESS ENTERPRISES IN CONTRACT PERFORMANCE

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the State Finance Law and the Executive Law to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State law. Utilizing SDVOBs in State contracts will help create more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated public procurements. Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects bidders/proposers to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers. Bidders/proposers can demonstrate their commitment to the use of SDVOBs by responding to the questions below and including the responses with their bid/proposal:

Are you a bidder/proposer that is a NYS certified SDVOB? Yes ___ No ___

If yes, what is your DSDVBD Control #? _____

Will NYS certified SDVOBs be used in the performance of this contract?

Yes ___ No ___

If yes, identify the NYS certified SDVOBs that will be used below. (If additional space is required, please add to the table below).

SDVOB Name	SDVOB Address	DSDVBD Control #	Contract #
Nature of	% of Total Work	\$ Amount	

Participation	Performed		

APPENDIX SLOC

STANDBY LETTER OF CREDIT FORM

Standby Letter of Credit, to be issued on ISSUER's letterhead

IRREVOCABLE LETTER OF CREDIT
LETTER OF CREDIT NUMBER: [INSERT #]
AMOUNT: [Insert Applicable Dollar Amount: \$100,000 or \$200,000]

Beneficiary:

State of New York
Division of Criminal Justice Services
Alfred E. Smith Office Building
80 South Swan Street
Albany, NY 12210-8001

Customer/ Applicant:

[Insert Name and Address]

Issuer:

[Insert Bank Information and Address]

Effective Date: October 1, 2017

Ladies/Gentlemen:

By order of our client, [Insert Contractor Name] (“ Contractor”) located [Insert Contractor’s Address](Customer/Applicant), we hereby establish in favor of the State of New York Division of Criminal Justice Services (“Beneficiary”), Alfred E. Smith Office Building, 80 South Swan Street, Albany, New York 12210-8001 our Irrevocable Standby Letter of Credit No.[Insert #], for an aggregate amount of [Insert, as applicable, one hundred thousand or two hundred thousand] dollars and no cents (\$XXX,000 U.S. DOLLARS), established at the office of [Insert Bank Name], (“Issuer”) at [Insert Bank Address]. The effective date of this Letter of Credit shall be October 1, 2017 for Contract Number [Insert #].

The purpose of this Standby Letter of Credit is to irrevocably indemnify the Beneficiary in connection with New York State Comptroller’s Contract [Insert #], executed between the Applicant and the State of New York for the approval of Applicant as a Qualified Ignition Interlock Device Manufacturer, the requirements for which are more fully set forth in **DCJS’ RFA CJS 2017-02** and any Contract which may result in connection therewith, together the RFA and the Contract (“Contract”). Performance under the Contract includes the requirement that the Applicant will further maintain, service, support, provide customer service, payment processing cellular or wireless service, timely payment of cellular and/or wireless service charges, installation, payment of installation expenses, and customization as approved by DCJS, and at the State’s option expand and update the program equipment and/or services through the life of the Contract and any extensions which the State may elect. The Issuer, for value received, hereby stipulates and agrees that the obligations of said Issuer and its Irrevocable Standby Letter of Credit shall be in no way impaired or affected (i) by any extensions of the times within which: (a) Beneficiary may receive, review, accept or pay for deliverables under the Contract, or (b) within which the Customer/Applicant may furnish a Standby Letter of Credit, or (ii) by any waiver by the Beneficiary of any of the requirements of said Contract, and Issuer waives notice of any extension or waiver. The term “Beneficiary” includes any successor by operation of law of the named Beneficiary including without limitation, any liquidator, rehabilitator, receiver of conservator.

Funds under this Standby Letter of Credit are available to the Beneficiary, in whole or in part, upon presentation of the Beneficiary's current dated demand, signed by the Executive Deputy Commissioner of the Division of Criminal Justice Services of the State of New York, stating:

"The undersigned hereby draws the amount of \$_____ (United States Dollars) against Issuer Standby Letter of Credit No. [Insert #], which represents the amount due to us according to the terms of the Contract between the State of New York Division of Criminal Justice Services and [Insert Contractor's Name] ("Applicant") under the agreement bearing New York State Comptroller's Contract No. [Insert #], dated _____, 201_, for the approval of Beneficiary as a State of New York Qualified Manufacturer of Ignition Interlock Devices, Associated Services and Peripherals and of Cellular or Wireless Service in connection with the State's Ignition Interlock Device Program."

Partial and multiple drawings are permitted under this Standby Letter of Credit and such drawings will immediately reduce the then available balance of this Standby Letter of Credit. In the event of such drawing(s) under this Standby Letter of Credit, the amount(s) of such drawing(s) must be subsequently replenished by Applicant in accordance with the terms of the Contract to increase the then available balance of this Credit to the full aggregate amount.

We engage with the Beneficiary that all drafts drawn under and in compliance with the terms of this Standby Letter of Credit will be duly honored upon presentation of such drawings at the office of [Insert Bank Name], specifying Standby Letter of Credit No. [Insert #], on or prior to the expiration date of this Standby Letter of Credit.

This Standby Letter of Credit shall remain in effect throughout the contract term, any contract extensions, or post-transition period.

Any Disputes Under this Standby Letter of Credit shall be pursued in the New York Court system and the venue shall be in Albany, New York.

[Insert Bank Name]
[Insert Name and Title of Bank Signatory]

APPENDIX ST

ST-220 CA AND ST-220 TD FORMS



Department of Taxation and Finance
Contractor Certification
 (Pursuant to Tax Law Section 5-a, as amended,
 effective April 26, 2006)

ST-220-TD
 (4/15)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name			
Contractor's principal place of business		City	State ZIP code
Contractor's mailing address (if different than above)		City	State ZIP code
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ()	
Covered agency or state agency	Contract number or description	Covered agency telephone number ()	
Covered agency address	City	State	ZIP code
Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?			
Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time <input type="checkbox"/>			

General information

Tax Law section 5-a, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file Form ST-220-CA, *Contractor Certification to Covered Agency*, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT
 DATA ENTRY SECTION
 W A HARRIMAN CAMPUS
 ALBANY NY 12227-0826**

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?

	Visit our Web site at www.tax.ny.gov
	• get information and manage your taxes online
	• check for new online services and features
	Telephone assistance
	Sales Tax Information Center: (518) 485-2880
	To order forms and publications: (518) 457-5431
	Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082
	Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

Section 1 – Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 – Affiliate registration status

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 – Subcontractor registration status

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ___ day of _____, 20___

(sign before a notary public)

(title)

Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to contractor	B Name	C Address	D Federal ID number	E Sales tax ID number	F Registration in progress

- Column A – Enter C in column A if the contractor; A if an affiliate of the contractor; or S if a subcontractor.
- Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner’s given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.
- Column C – Address - Enter the street address of the entity’s principal place of business. Do not enter a PO box.
- Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.
- Column E – Sales tax ID number - Enter only if different from federal EIN in column D.
- Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____)

:

SS.: _____

COUNTY OF _____)

On the ___ day of _____ in the year 20___, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _____ he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

(Mark an X in the appropriate box and complete the accompanying statement.)

(If an individual) _____ he executed the foregoing instrument in his/her name and on his/her own behalf.

(If a corporation) _____ he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _____ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(If a partnership) _____ he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _____ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(If a limited liability company) _____ he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _____ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _____ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No. _____



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name		For covered agency use only	
Contractor's principal place of business		Contract number or description	
City	State	ZIP code	
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		\$
Contractor's telephone number	Covered agency name		
Covered agency address		Covered agency telephone number	

I, _____, hereby affirm, under penalty of perjury, that I am _____

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this _____ day of _____, 20 _____

(sign before a notary public)

(title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____ }

COUNTY OF _____ }

SS.: _____

On the ____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _____ he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public _____

Registration No. _____

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

Need help?
Visit our Web site at www.tax.ny.gov
- get information and manage your taxes online
- check for new online services and features
Telephone assistance
Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431
Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

APPENDIX MWBE

MWBE REQUIREMENTS

APPENDIX MWBE: MINORITY & WOMEN OWNED BUSINESS ENTERPRISES
Participation by Minority Group Members & Women/ Requirements

- I. General Provisions
- B. DCJS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- C. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to DCJS, to fully comply and cooperate with DCJS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Section or enforcement proceedings as allowed by the Contract.
- II. Contract Goals
- A. For purposes of this procurement, DCJS hereby establishes an overall goal of 30 % for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 25% for New York State certified minority-owned business enterprises (“MBE”) participation and 5% for New York State certified women-owned business enterprises (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of qualified MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.
- C. Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

D. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR §142.8, the Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to DCJS for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

A. The Contractor agrees to be bound by the provisions of Article 15-A, and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. The Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and subcontractor performing work on the Contract (“Subcontractor”) shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to DCJS within seventy-two (72) hours after the date of the notice by DCJS to award the Contract to the Contractor.
3. If the Contractor or Subcontractor does not have an existing EEO policy statement, DCJS may provide the Contractor or Subcontractor a model statement (see Form – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Contractor’s EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members

and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

C. Form - Staffing Plan

For contracts in excess of \$250,000, the Contractor has complied with the requirement to submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories.

D. Form - Workforce Employment Utilization Report ("Workforce Report")

- 1. During the term of Contract, the Contractor is responsible for updating and providing notice to DCJS of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
- 2. Separate forms shall be completed by Contractor and any Subcontractor.
- 3. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the

workforce to be utilized on the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to DCJS, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, DCJS shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor non-responsiveness.

V. Waivers

- A. For Waiver Requests, the Contractor should use the New York State Contracting System, via <https://ny.newnycontracts.com>; provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to DCJS.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, DCJS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

- C. If DCJS, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, DCJS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to DCJS by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where DCJS determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to DCJS liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by DCJS, the Contractor shall pay such liquidated damages to DCJS within sixty (60) days after they are assessed by DCJS unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of DCJS.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation

EEO (d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

Agreed to this _____ day of _____, 2_____

By _____

Print: _____

Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal
Employment
Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____30% Minority and Women’s Business Enterprise Participation

_____25__% Minority Business Enterprise Participation

_____5___% Women’s Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____

MWBE Utilization Proposal

Contractor Name		Contact Person	
Address		Telephone No.	
State	Zip Code	Email Address	

Proposed Contract Amt. _____

Project Name/Bid Title _____

Participation Goals Anticipated:
 (Enter anticipated total % of dollar amount to be spent with identified MBEs and/or WBEs at the start of the contract)

	MBE	%	WBE	%
--	-----	---	-----	---

In the section below please list the Certified MWBE Subcontractors/Suppliers your firm proposes to use.

Subcontractor Name and Address	Description of Services	Amount	Date of Subcontract	Identify whether MBE or WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE
		\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE

Contractors Agreement:
 My firm proposes to use the MWBEs listed above.

(Signature of Contractor)
(Printed Name)
(Date)

MWBE SUBCONTRACTOR UTILIZATION QUARTERLY REPORT

This report is to be submitted to DCJS quarterly during the life of this contract to report the actual payments made to all certified minority or women-owned subcontractors utilized for this project. Complete and mail to NYS Division of Criminal Justice Services, Financial Services, 80 So. Swan St., Albany, NY 12210 or email completed form as an attachment to Procurement.officer@dcjs.ny.gov.

Contractor	_____	Contract No.	_____
Federal ID#	_____	Project Name	_____
Contact Name	_____	Contract Start Date	_____
Contact Email Address	_____	Contract End Date	_____
Contact Phone#	_____	Contract Amount	_____

Place an X in the box for the quarter you are reporting on.
<input type="checkbox"/> 1 st Quarter (Apr 1-June 30)
<input type="checkbox"/> 2 nd Quarter (July 1 – Sept 30)
<input type="checkbox"/> 3 rd Quarter (Sept 1 – Dec 31)
<input type="checkbox"/> 4 th Quarter (Jan 1 – Mar31)

Subcontractor Name	Federal ID Number	Total Subcontractor Contract Amount		Payments this Quarter		Previous Payments		Total Payments Made to Date	
		MBE	WBE	MBE	WBE	MBE	WBE	MBE	WBE
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Signature

Date

(Printed Name)

APPENDIX EOWUR

EEO Workforce Utilization Report Instructions and Form

Instructions for Submitting the Workforce Utilization Report

The Workforce Utilization Report (“Report”) is to be submitted on a monthly basis for construction contracts, and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor’s and/or subcontractor’s total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor’s and/or subcontractor’s total workforce, information on the contractor’s and/or subcontractor’s total workforce shall be included in the Report.

Reports are to be submitted electronically, using the provided report worksheet. The form below represents a sample of this report: we will send a fillable Excel spreadsheet once the bidder has been chosen which must be submitted to Sandy.Fader@dcjs.ny.gov within ten (10) days of the end of each month or quarter, whichever is applicable. SUBJECT: EEO WORKFORCE UTILIZATION REPORT

Instructions for Completing the Workforce Utilization Report

1. Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. Enter the number of the contract that the Report applies to along with the name and address of the contractor or subcontractor for which the Report has been prepared.
3. Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report.
4. Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor’s or subcontractor’s total workforce.
5. Verify that job titles are provided under the column titled “SOC Job Title” for each employee whose work will be reflected on the Report. If a necessary job title is not included, please add the corresponding job category, title and corresponding job code to the “EEO 1 Job Categories” “SOC Job Title” and “SOC Job Code” columns from the list of job categories, SOC titles, and SOC codes reflected on the attached Classification Guide.
6. In the first group of boxes, identify the number of hours worked by persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
7. In the second group of boxes, identify the number of persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
8. Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

Race/Ethnic Identification

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Resources

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact Sandy Fader@sandy.fader@dcjs.ny.gov

APPENDIX IHS

INDEMNIFICATION/HARMLESS STATEMENT

APPENDIX IHS

INDEMNIFICATION/HARMLESS STATEMENT

The undersigned certifies that the Contractor or its representative will indemnify and hold harmless, without monetary limitation, the State of New York, the division, the department of health, every county where it does business, and their officers, employees and agents from all claims, demands and actions as a result of property damage and/or injury or death to persons which arise, directly or indirectly, out of any act or omission by the Contractor or its representative, or installation/service providers relating to the installation, service, inspection, maintenance, repair, use and/or removal of the ignition interlock device.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20__;

Notary Public

APPENDIX VRQ

**APPENDIX VRQ
VENDOR RESPONSIBILITY QUESTIONNAIRE**

APPENDIX VRQ VENDOR RESPONSIBILITY QUESTIONNAIRE

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at ITServiceDesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

REPORTING ENTITY

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

ASSOCIATED ENTITY

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

STRUCTURE OF THE QUESTIONNAIRE

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

I. LEGAL BUSINESS ENTITY INFORMATION

<u>Legal Business Entity Name</u> 1		<u>EIN</u>	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone ext.	Fax
Email		Website	

Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity, or EIN used in the last five (5) years and the status (active or inactive).

Type	Name	EIN	Status

1.0 Legal Business Entity Type – Check appropriate box and provide additional information:

<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)	Date of Incorporation
<input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>	Date of Organization
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u>)	Date of Registration or Establishment
<input type="checkbox"/> <u>Sole Proprietor</u>	How many years in business?
<input type="checkbox"/> Other	Date Established

If Other, explain:

1.1 Was the Legal Business Entity formed or incorporated in New York State? Yes No

If ‘No,’ indicate jurisdiction where Legal Business Entity was formed or incorporated and attach a Certificate of Good Standing from the applicable jurisdiction or provide an explanation if a Certificate of Good Standing is not available.

United States State _____

Other Country _____

Explain, if not available:

1.2 Is the Legal Business Entity publicly traded? Yes No

If “Yes,” provide CIK Code or Ticker Symbol

1.3 Does the Legal Business Entity have a DUNS Number? Yes No

If “Yes,” Enter DUNS Number

1.4 If the Legal Business Entity’s Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State? Yes No
 N/A
 (Select “N/A,” if Principal Place of Business is in New York State.)

I. LEGAL BUSINESS ENTITY INFORMATION

If “Yes,” provide the address and telephone number for one office located in New York State.

<p>1.5 Is the <u>Legal Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise (MBE)</u>, <u>Women-Owned Business Enterprise (WBE)</u>, <u>New York State Small Business (SB)</u> or a federally certified <u>Disadvantaged Business Enterprise (DBE)</u>?</p> <p>If “Yes,” check all that apply:</p> <p><input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise (MBE)</u></p> <p><input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise (WBE)</u></p> <p><input type="checkbox"/> New York State <u>Small Business (SB)</u></p> <p><input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise (DBE)</u></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
--	---

1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

Name	Title	Percentage Ownership <i>(Enter 0% if not applicable)</i>

II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

Legal Business Entity

Note: If selecting this option, “Reporting Entity” refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)

Organizational Unit within and operating under the authority of the Legal Business Entity

SEE DEFINITIONS OF “REPORTING ENTITY” AND “ORGANIZATIONAL UNIT” FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.

Note: If selecting this option, “Reporting Entity” refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)

IDENTIFYING INFORMATION

a) Reporting Entity Name

Address of the Primary Place of Business (street, city, state, zip code)

Telephone

ext.

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?

Yes No

If “Yes,” enter DUNS Number

e) Identify the designated manager(s) responsible for the business of the Reporting Entity.

For each person, include name and title. Attach additional pages if necessary.

Name

Title

INSTRUCTIONS FOR SECTIONS III THROUGH VII

For each “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each “Other,” provide an explanation which provides the basis for not definitively responding “Yes” or “No.” Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

III. LEADERSHIP INTEGRITY <i>Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:</i>	
3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
For each “Yes” or “Other” explain:	

IV. INTEGRITY – CONTRACT BIDDING <i>Within the past five (5) years, has the reporting entity:</i>	
4.0 Been <u>suspended</u> or <u>debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” explain:	

V. INTEGRITY – CONTRACT AWARD	
<i>Within the past five (5) years, has the reporting entity:</i>	
5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” explain:	

VI. CERTIFICATIONS/LICENSES	
<i>Within the past five (5) years, has the reporting entity:</i>	
6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” explain:	

VII. LEGAL PROCEEDINGS	
<i>Within the past five (5) years, has the reporting entity:</i>	
7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious</u> or <u>willful</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 Other than previously disclosed: a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” explain:	

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

8.0 Within the past five (5) years, has the Reporting Entity received any formal unsatisfactory performance assessment(s) from any government entity on any contract? Yes No

If “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.1 Within the past five (5) years, has the Reporting Entity had any liquidated damages assessed over \$25,000? Yes No

If “Yes,” provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.2 Within the past five (5) years, have any liens or judgments (not including UCC filings) over \$25,000 been filed against the Reporting Entity which remain undischarged? Yes No

If “Yes,” provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant’s name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.3 In the last seven (7) years, has the Reporting Entity initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending? Yes No

If “Yes,” provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as “Initiated,” “Pending” or “Closed.” Provide answer below or attach additional sheets with numbered responses.

8.4 During the past three (3) years, has the Reporting Entity failed to file or pay any tax returns required by federal, state or local tax laws? Yes No

If “Yes,” provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the Reporting Entity failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.

8.5 During the past three (3) years, has the Reporting Entity failed to file or pay any New York State unemployment insurance returns? Yes No

If “Yes,” provide the years the Reporting Entity failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

8.6 During the past three (3) years, has the Reporting Entity had any government audit(s) completed? Yes No

a) If “Yes,” did any audit of the Reporting Entity identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any material disallowance? Yes No

If “Yes” to 8.6 a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

IX. ASSOCIATED ENTITIES

This section pertains to any entity(ies) that either controls or is controlled by the reporting entity. (See definition of “associated entity” for additional information to complete this section.)

<p>9.0 Does the <u>Reporting Entity</u> have any <u>Associated Entities</u>?</p> <p>Note: All questions in this section must be answered if the <u>Reporting Entity</u> is either:</p> <ul style="list-style-type: none"> - An <u>Organizational Unit</u>; or - The entire <u>Legal Business Entity</u> which controls, or is controlled by, any other entity(ies). <p>If “No,” SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>9.1 Within the past five (5) years, has any <u>Associated Entity Official</u> or <u>Principal Owner</u> been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for:</p> <ul style="list-style-type: none"> a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness? 	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If “Yes,” provide an explanation of the issue(s), the individual involved, his/her title and role in the <u>Associated Entity</u>, his/her relationship to the <u>Reporting Entity</u>, relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s).</p>	
<p>9.2 Does any <u>Associated Entity</u> have any currently undischarged <u>federal</u>, New York State, New York City or New York local <u>government liens</u> or <u>judgments</u> (not including UCC filings) over \$50,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>If “Yes,” provide an explanation of the issue(s), identify the <u>Associated Entity</u>’s name(s), <u>EIN</u>(s), primary business activity, relationship to the <u>Reporting Entity</u>, relevant dates, the Lien holder or Claimant’s name(s), the amount of the <u>lien</u>(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.3 Within the past five (5) years, has any <u>Associated Entity</u>:</p>	
<p>a) Been <u>disqualified</u>, <u>suspended</u> or <u>debarred</u> from any <u>federal</u>, New York State, New York City or other New York local <u>government contracting process</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>b) Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>c) Been <u>suspended</u>, <u>cancelled</u> or <u>terminated for cause</u> (including for <u>non-responsibility</u>) on any <u>federal</u>, New York State, New York City or New York local <u>government contract</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>d) Been the subject of an <u>investigation</u>, whether open or closed, by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u> for a civil or criminal violation with a penalty in excess of \$500,000?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>e) Been the subject of an indictment, grant of immunity, <u>judgment</u>, or conviction (including entering into a plea bargain) for conduct constituting a crime?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u>?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>For each “Yes,” provide an explanation of the issue(s), identify the <u>Associated Entity</u>’s name(s), <u>EIN</u>(s), primary business activity, relationship to the <u>Reporting Entity</u>, relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	

X. FREEDOM OF INFORMATION LAW (FOIL)

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Yes No

Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.

If "Yes," indicate the question number(s) and explain the basis for the claim.

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE

Name	Telephone ext.	Fax
Title	Email	

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity’s business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity’s responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity’s responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20____;

_____ Notary Public

ATTACHMENT A

IGNITION INTERLOCK RFA-RELATED DEFINITIONS

Attachment A: Ignition Interlock RFA-Related Definitions.

(a) The term “blood alcohol concentration” or “BAC” shall mean the weight amount of alcohol contained in a unit volume of blood, measured as grams ethanol/ 100 ml. blood and expressed as %, grams %, % weight/volume (w/v), and % BAC. Blood alcohol concentration in this Part shall be designated as % BAC.

(b) The term “certificate of completion” shall mean a document issued by the monitor after the conclusion of the ignition interlock period set by the criminal court, including any extensions or modifications as may have subsequently occurred which shows either satisfactory completion of the ignition interlock condition or a change by the court in a pre-sentence order no longer requiring the need for a device, or a change in the conditions of probation or conditional discharge no longer requiring the need for a device after completion of the minimum ignition interlock period.

(c) The term “circumvent” shall mean to request, solicit or allow any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with the device, for the purpose of providing the operator whose driving privileges is so restricted with an operable motor vehicle, or to blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted or to tamper with an operable ignition interlock device.

(d) The term “county” shall mean every county outside of the city of New York, and the City of New York as a whole.

(e) The term “county executive” shall mean a county administrator, county manager, county director or county president and in cities with a population of one million or more, the mayor.

(f) The term “division” shall mean the division of criminal justice services.

(g) The term “drinking driver program” shall mean an alcohol and drug rehabilitation program established pursuant to section 1196 of the Vehicle and Traffic Law.

(h) The term “Emergency Notification Program” shall mean a protocol that utilizes real time data reporting and provides timely notification to law enforcement agencies regarding at minimum failed or missed rolling re-tests.

(i) The term “failed tasks” shall mean failure to install the ignition interlock device or failure to comply with a service visit or any requirement resulting therefrom as prescribed by this Part.

(j) The term “failed tests” shall mean a start-up re-test or rolling re-test at or above the set point, or a missed rolling re-test.

(k) The term “failure report recipients” shall mean all persons or entities required to receive a report from the monitor of an operator’s failed tasks or failed tests pursuant to a county’s plan which may include, but is not limited to the applicable court, district attorney, operator’s alcohol treatment provider, and the drinking driver program, where applicable.

(l) The term “ignition interlock device” shall mean any blood alcohol concentration equivalence measuring device which connects to a motor vehicle ignition system and prevents a motor vehicle from being started without first determining through a deep lung breath sample that the operator’s equivalent blood alcohol level does not exceed the calibrated setting on the device as required by standards of the department of health.

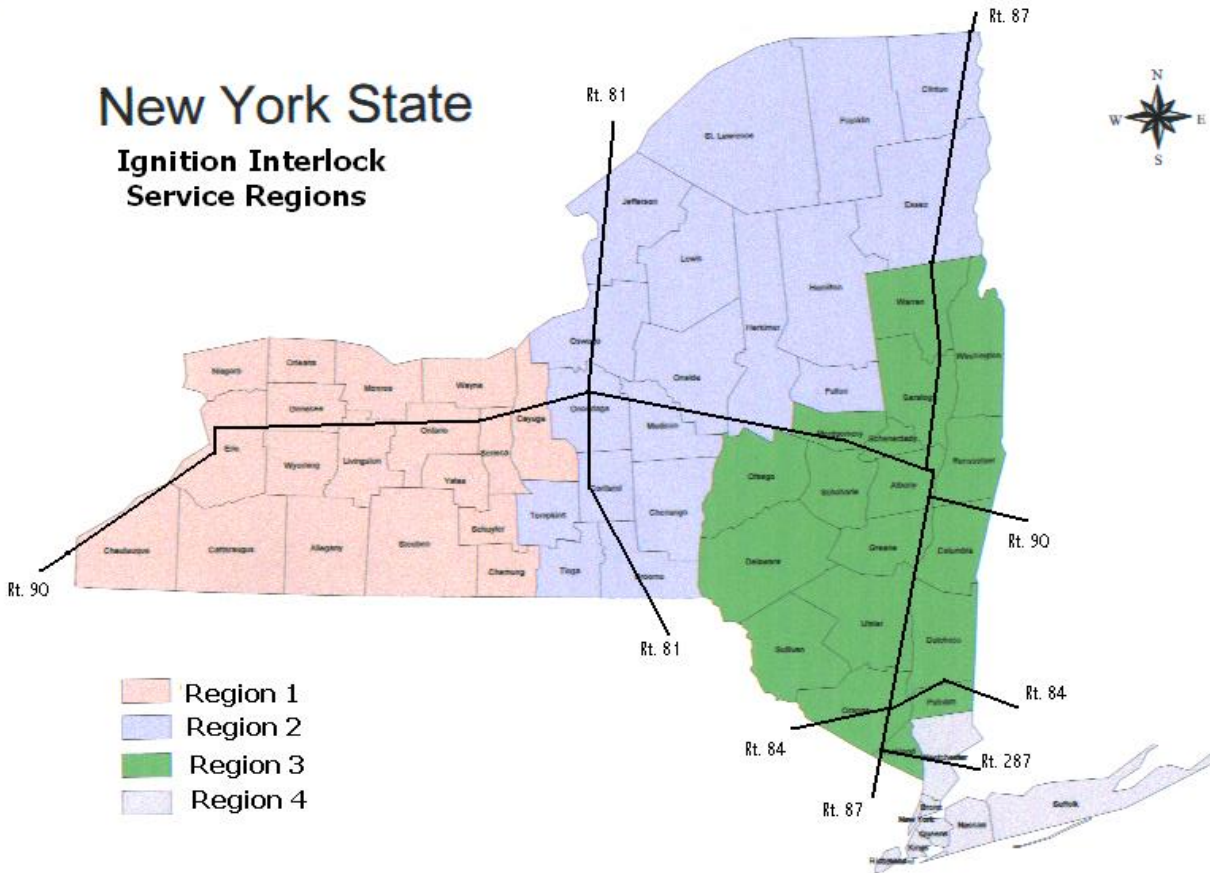
(m) The term “installation/service provider” shall mean an entity located in this state approved by a qualified manufacturer that installs, services, and/or removes an ignition interlock device.

- (n) The term “lockout mode” shall mean circumstances enumerated in this Part which trigger the ignition interlock device to cause the operator’s vehicle to become inoperable if not serviced within five (5) calendar days.
- (o) The term “monitor” shall mean the local probation department where the operator is under interim probation supervision or probation or any person(s) or entity (ies) designated in the county’s ignition interlock program plan for any operator granted conditional discharge or otherwise required to install an ignition interlock device and undergo monitoring in advance of sentencing pursuant to court order.
- (p) The term “operator” shall mean a person who is subject to installation of an ignition interlock device arising from a felony or misdemeanor charge or conviction under the Vehicle and Traffic Law or the Penal Law or arising from a youthful adjudication of any such crime.
- (q) The term “qualified manufacturer” shall mean a manufacturer or distributor of an ignition interlock device certified by the New York State department of health which has satisfied the specific operational requirements herein and has been approved as an eligible vendor by the division in the designated region where the county is located.
- (r) The term “real time reporting” shall mean the contemporaneous transmission of data of particular events, as defined in Section 358.5(c) (5), to a specified monitoring entity as the event occurs or as soon as cellular reception permits.
- (s) The term “region” shall mean counties comprising an area within New York State designated by the division where a qualified manufacturer is authorized and has agreed to service.
- (t) The term “start-up test” shall mean a breath test taken by the operator to measure the operator’s blood alcohol concentration prior to starting the vehicle’s ignition.
- (u) The term “start-up re-test” shall mean a breath test taken by the operator to measure the operator’s blood alcohol concentration required within five (5) to fifteen (15) minutes of a failed start-up test.
- (v) The term “rolling test” shall mean a breath test, administered at random intervals, taken by the operator while the vehicle is running.
- (w) The term “rolling re-test” shall mean a breath test, taken by the operator while the vehicle is running, within one (1) to three (3) minutes after a failed or missed rolling test.
- (1) The term “failed rolling re-test” shall mean a rolling re-test in which the operator’s BAC is at or above the set point.
- (2) The term “missed rolling re-test” shall mean failure to take the rolling re-test within the time period allotted to do so.
- (x) The term “service period” shall mean the length of time between service visits.
- (y) The term “service visit” shall mean a visit by the operator or another driver of the subject vehicle to or with the installation/service provider for purposes of having the ignition interlock device inspected for repair, defect, and detection of tampering and/or circumvention, downloaded, recalibrated, or maintained as authorized by this Part.
- (z) The term “set point” shall mean a pre-set or pre-determined BAC setting at which, or above, the device will prevent the ignition of a motor vehicle from operating.
- (aa) The term “STOP–DWI” shall mean special traffic options program–driving while intoxicated.
- (bb) The term “tamper” shall mean to alter, disconnect, physically disable, remove, deface, or destroy an ignition interlock device or any of its component seals in any way not authorized by this Part.

ATTACHMENT B:
MAP OF IGNITION INTERLOCK SERVICE REGIONS

New York State

Ignition Interlock Service Regions



The four ignition interlock service regions of the state by counties are as follows:

Region 1: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates;

Region 2: Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins;

Region 3: Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington; and

Region 4: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester.