



## Appendix D Insurance Requirements

The Grantee shall be required to procure, at its sole cost and expense, all insurance required by this Attachment. The Grantee shall be required to provide proof of compliance with the requirements of this Attachment, as follows:

- Proof of all insurance required by Section B below shall be provided in accordance with the provisions hereof;
- After award, the Grantee shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Grantees shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of “A-,” Class “VII” or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. The Office of Cannabis Management (“OCM”) may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company’s strong financial rating. If, during the term of a policy, the carrier’s A.M. Best rating falls below “A-,” Class “VII,” the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Grantees shall deliver to OCM evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation in a form satisfactory to OCM. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OCM does not, and shall not be construed to, relieve Grantees of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

The Grantee shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

### **A. General Conditions Applicable to Insurance:**

All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from Grantees are specified in Paragraph B Insurance Requirements below.
- 2. Policy Forms.** Except as otherwise specifically provided herein, or agreed to in the Contract resulting from this Solicitation, all policies of insurance required by this Attachment shall be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at

minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy.

**3. Certificates of Insurance/Notices.** Grantees shall provide OCM with a Certificate or Certificates of Insurance, in a form satisfactory to OCM as detailed below, and pursuant to the timelines set forth in Section A.13. below. Certificates shall name **The New York State Office of Cannabis Management, 1220 Washington Ave., Bldg. 9., Albany, New York 12226** as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OCM and in accordance with the New York State Insurance Law (e.g., an ACORD 25 certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: **Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.**

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OCM requires Grantees to submit only certificates of insurance and additional insured endorsements. Grantees should refrain from submitting entire insurance policies. If an entire insurance policy is submitted but not requested, OCM shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OCM does not constitute proof of compliance with the insurance requirements and does not discharge Grantees from submitting the requested insurance documentation. OCM reserves the right to request other proof of insurance, including, but not limited to, policies, and Grantees agree to comply with all reasonable requests.

**4. Primary Coverage.** All Commercial General Liability, Business Automobile Liability, and Excess Umbrella Liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of Cannabis Management, and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of Cannabis Management, and their officers, agents, and employees shall be excess of and shall not contribute with the Grantee's insurance.

**5. Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Attachment at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New

York State Office of Cannabis Management, and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

**6. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OCM. Such approval shall not be unreasonably withheld, conditioned or delayed. Grantees shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Grantee is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

**7. Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Grantee shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage shall be provided to the Grantee prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

**8. Waiver of Subrogation.** For all Commercial General Liability, Business Automobile Liability, Excess/Umbrella Liability policies and the workers' compensation insurance required below, the Grantee shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of Cannabis Management, and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Grantee waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of Cannabis Management, and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of Cannabis Management, and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

**9. Additional Insured.** The Grantee shall cause to be included in each of the Commercial General Liability, Business Automobile Liability, and Excess/Umbrella Liability policies required below for on-going and completed operations naming as additional insured (via ISO form CG 20 10 12 19 and CG 20 37 12 19 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): The People of the State of New York, the New York State Office of Cannabis Management, and their officers, agents, and employees. An Additional Insured Endorsement, or the equivalent, evidencing such coverage shall be provided to OCM pursuant to the timelines set forth in Section A.13. below. A blanket

Additional Insured Endorsement evidencing such coverage is also acceptable. For Grantees who are self-insured, the Grantee shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Grantee would have been required to pursuant to this Attachment had the Grantee obtained such insurance policies.

**10. Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

**11. Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Grantee shall provide OCM with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

**12. Policy Renewal/Expiration** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OCM. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to OCM, the Grantee shall immediately cease work. The Grantee shall not resume work until authorized to do so by OCM.

**13. Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the OCM Community Reinvestment Program contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Grantee shall provide the applicable insurance document to OCM as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days;
- For information on self-insurance or self-retention programs: 15 calendar days;
- For other requested documentation evidencing coverage: 15 calendar days;
- For additional insured and waiver of subrogation endorsements: 30 calendar days;
- *and*
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from request or renewal.

Notwithstanding the foregoing, if the Grantee shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps

necessary to obtain such documents from its insurer and submit them to OCM, OCM shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

**B. Insurance Requirements:**

Grantees shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
<b>Commercial General Liability</b>	No less than \$1,000,000 each occurrence	Upon notification of tentative award and updated in accordance with Contract
General Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Medical Expenses Limit	\$5,000	
<b>Business Automobile Liability Insurance</b>	No less than \$1,000,000 each accident	
<b>Professional Liability</b>	\$2,000,000	
<b>Property Insurance</b>	Not less than the Full Insurable Value	
<b>Workers' Compensation</b>		
<b>Disability Benefits</b>		

**1. Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage. Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:

- Premises liability arising from operations;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- Cross liability for additional insureds; and
- Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by the Contract.

**2. Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of automobiles used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Grantee does not own, lease or hire any automobiles used in connection with performance under the Contract, the Grantee does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Grantee does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OCM. If, however, during the term of the Contract, the Grantee acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Grantee must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OCM in accordance with the insurance requirements of any Contract resulting from this Solicitation.

**3. Workers' Compensation Insurance and Disability Benefits Requirements:** Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Grantee will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OCM.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OCM at the time of notification of tentative award, policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

**Proof of Compliance with Workers' Compensation Coverage Requirements:**

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.businessexpress.ny.gov](http://www.businessexpress.ny.gov));
- Form C-105.2 (9/15), Certificate of Workers' Compensation Insurance, sent to OCM by the Grantee's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OCM upon request from the Grantee; or
- Form SI-12, Certificate of Workers' Compensation Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Grantees' Group Self-Insurance Administrator.

**Proof of Compliance with Disability Benefits Coverage Requirements:**

- Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.businessexpress.ny.gov](http://www.businessexpress.ny.gov));
- Form DB-120.1, Certificate of Disability Benefits Insurance, sent to OCM by the Grantees insurance carrier upon request; or
- Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

Information clarifying the New York State Workers' Compensation Law requirements is available at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>.

**Grantee acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of OCM constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to OCM. Grantee's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for OCM' immediate termination of any contract resulting from this Solicitation, subject only to a five (5) business day cure period. Any termination by OCM under this section shall in no event constitute or be deemed a breach of any contract resulting from this Solicitation and no liability shall be incurred by or arise against the Office of Cannabis Management, its agents and employees therefore for lost profits or any other damages.**