

AGREEMENT NO. C000612

THIS Agreement effective January 1, 2013, is entered into by and between New York State Department of Civil Service ("Department" or "DCS"), having its principal office in Albany, NY, 12239 and Aon Consulting, Inc. (NJ) operating as Aon Hewitt ("Contractor"), a corporation authorized to do business in the State of New York with a principal place of business located at 200 East Randolph, Chicago, IL 60622, and collectively hereinafter referred to as "the Parties."

WITNESSETH

WHEREAS, New York State, through the Department, oversees the New York State Health Insurance Program ("NYSHIP") for New York State employees and retirees and their dependents; and

WHEREAS, NYSHIP is administered by the President of the New York State Civil Service Commission, who also serves as the Commissioner of the Department ("President"), subject to New York State laws and regulations including the Civil Service Law, the State Finance Law Article XI, and their respective implementing regulations; and

WHEREAS, on April 18, 2012, the Department issued a Request for Proposal entitled, "Actuarial and Benefits Management Consulting Services" ("RFP") to secure the services of a qualified organization to provide actuarial and benefits management consulting services to the Employee Benefits Division ("EBD") of the Department for use in the administration of NYSHIP and other benefits administered by the Department ("Project" or "Project Services"); and

WHEREAS, after thorough review and evaluation by the Department of Proposals accepted in response to the RFP, the Contractor's Proposal was selected as representing the "best value" to NYS; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver Project Services, in the manner set forth in the RFP and the Contractor's Proposal, pursuant to the terms and conditions set forth in the Contract;

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, the Parties agree as follows:

ARTICLE I: CONTRACTOR RESPONSIBILITIES AND QUALIFICATIONS

1.1.0 The Contractor is responsible for providing Project Services, in such a manner so as to be in compliance with the requirements as set forth in the Agreement and the RFP and for meeting all contractual obligations set forth in this Agreement, including all exhibits, and any subsequent amendments mutually agreed to in writing between the Parties. Contractor acknowledges that the Agreement is being entered into by NYS in reliance on Contractor's representations concerning the particular qualifications, experience, financial standing, management expertise and technical expertise of the Contractor and its staff assigned and subcontractors, if any, engaged to provide Project Services under this Agreement.

Throughout the contract term of this Agreement, in the event that there is a substantial or material change, as defined below, in the ownership or financial viability of the Contractor, its corporate affiliates, subsidiaries or divisions, the Contractor is required to provide notice and details of any such change to NYS via written notice immediately when such is first known by Contractor, its corporate affiliates, subsidiaries or divisions, or subcontractors.

"Substantial" or "material" change shall be defined to include, but not be limited to, sale, acquisitions, mergers or takeovers involving the Contractor, its corporate affiliates, subsidiaries or divisions or partners which result in a change in the controlling ownership or assets of such entity after the submission of the Proposal; or entry of an order for relief under Title 11 of the United

States Code; the making of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in bankruptcy of Contractor's, its corporate affiliates, subsidiaries or divisions, or partners' business or property; or action by Contractor, its corporate affiliates, subsidiaries or divisions, or partners under any state insolvency or similar law for the purposes of its bankruptcy, reorganization or liquidation; or court ordered liquidation against Contractor, its corporate affiliates, subsidiaries or divisions, or partners.

Upon NYS' receipt of such notice, NYS shall have thirty (30) Business Days from the date of written notice to review the information. The Contractor may not transfer the Contract among corporate affiliates, subsidiaries or divisions or partners without the consent of NYS. In addition to any other remedies available at law or equity, NYS shall have the right to prospectively cancel the Agreement, in whole or in part for cause if it finds that such change materially and adversely affects the delivery of Project Services solely determined by the Department with reference to the best interests of NYS.

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

- 2.1.0 The Agreement is for the period commencing on January 1, 2013, and continuing through and including December 31, 2017, subject to the approval by the New York State Attorney General's Office ("AG") and the New York State Office of the State Comptroller ("OSC"). The term of the Contract shall be for five years with an option to terminate at the end of the third and fourth years at the sole discretion of the Department.
- 2.2.0 The Agreement is subject to amendment(s) only upon consent of the Parties, reduced to writing and approval by the AG and OSC.

ARTICLE III: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

- 3.1.0 The Agreement shall be composed solely of the following documents which, in the event of an inconsistency or conflicting terms, shall be given precedence in the order indicated:
- 3.1.1. Appendix A (Standard Clauses for All NYS Contracts), dated December 2012;
- 3.1.2.i. Appendix B (dated May 2011), as amended by Article 29 herein the body of the Agreement;
- 3.1.2.ii Appendix D, including Exhibit #2, Business Participation Opportunities for MWBEs; and
- 3.1.2.iii Appendix C (dated April 2006)
- 3.1.3 Any Amendments to the body of the Agreement;
- 3.1.4. The body of the Agreement, excepting Article 29;
- 3.1.5. The RFP, other than Appendices A, B, C and D, as amended via the Department's Official Responses to Offerors' Questions dated April 18, 2012;
- 3.1.6. The Contractor's Proposal dated May 31, 2012 and including the Contractor's Clarification Responses as follows:
- June 25, 2012 Response to Clarification Request #1 dated June 21, 2012; and
 - June 28, 2012 Response to Clarification Request #2 dated June 28, 2012;
- and with the following changes:
- proposed Extraneous Terms 1, 4, 5, 8, 9, 10, and 12 as set forth on pages one hundred seventeen through one hundred twenty-one of the Contractor's Technical Proposal are hereby deleted; and
 - The number "35" under the column entitled "# of Hours for Subsequent Years" associated with the Lead Consultant position in the table entitled "Personnel and Hours for Task #1" on page 62 of the Contractor's Technical Proposal is changed to "55"; and
- 3.1.7. Exhibit #1, Contractor's Fee Schedules.

- 3.2.0 Only documents expressly enumerated above shall be deemed a part of the Agreement, and references contained in those documents to additional Contractor documents not enumerated above shall be of no force and effect.
- 3.3.0 All prior agreements, representations, statements, negotiations and undertakings are superseded. All statements made by the Department shall be deemed to be representations and not warranties.
- 3.3.4 Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation, or other entity, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Agreement.
- 3.3.5 The terms, provisions, representations, and warranties contained in the Agreement shall survive performance hereunder.

ARTICLE IV: LEGAL AUTHORITY TO PERFORM

- 4.1.0 The Contractor represents that the Contractor possesses the legal authority to perform Project Services in accordance with the terms and conditions of the Agreement.
- 4.2.0 The Contractor shall maintain appropriate corporate and/or legal authority, which shall include but is not limited to the maintenance of an administrative organization capable of delivering Project Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Project Services are to be delivered.
- 4.3.0 The Contractor shall provide the Department with immediate notice in writing of the initiation of any legal action or suit which relates in any way to the Agreement or which may affect performance of the Contractor's duties under the Agreement.

ARTICLE V PROJECT SERVICES

- 5.1.0 During the term of the Agreement, the Contractor will be responsible for the performance of those services/tasks as described herein this Article V of the Agreement and any and all other Project Services as referenced in the RFP.
- 5.2.0 Task #1 - Premium Rate Renewals and Plan Funding Requirements ("Rate Renewals"). Each year, the Department develops Empire Plan premium rates based on premium demands developed by the Empire Plan insurance carriers for each of the Plan's component contracts, specifically the Empire Plan's Hospital, Medical; Managed Mental Health and Substance Abuse and Prescription Drug contracts. These rates are subject to the approval of the New York State Division of Budget ("DOB"). Since Empire Plan premium rates are directly related to the projected Plan costs, the Department seeks assistance from the Contractor in the review of insurance carriers' rate submissions to provide assurances that implemented rates are reasonable ("Task #1"). Beginning in 2014, it is anticipated that the Prescription Drug contract will be awarded on a self funded basis and the Contractor will be responsible for supporting the Department in the development of funding requirements for the Prescription Drug contract as a Task #1 activity. During the term of the Agreement, one or more of the remaining three (3) Empire Plan contracts may be merged into a single contract and/or awarded on a self-funded basis. The Department anticipates that the vendor(s) selected to provide benefits under any self funded contract(s) would perform underwriting services comparable to those currently being provided by the insurance carriers as regards their existing insured contracts. Therefore, should one or more the three (3) remaining insured components of the Empire Pan (i.e., the Hospital Program, the Medical Program and/or the Managed Mental Health and Substance Abuse Program) converts from and insured program to a self funded program), then the Contractor will be responsible for providing support to the Department in determining funding requirements for that contract(s) as a Task #1 activity. Rate analysis to be performed by the Contractor shall focus primarily on each Carrier's projected aggregate experience and the justification provided by the Carriers to support their trend

projections and rate requests. As part of this task, the Contractor will also evaluate the costs and/or savings associated with any Plan revisions, if applicable. During the term of the Agreement, the Contractor shall:

- 5.2.1 Submit a Task #1 work plan to the Department prior to the beginning of the rate renewal process for the upcoming Plan Year. This Task #1 work plan must be submitted to the Department not later than July 1 and it must be acceptable to the Department. The first Plan Year under the Contract will begin on January 1, 2014, and, as such, the first Task #1 work plan under the Contract is due on July 1, 2013;
- 5.2.2 Submit to the Department Contractor developed, independent rate requirement estimates not later than August 31 of each year of the Agreement (i.e., "Benefits Management Consultant Independent Experience Projections and Premium Requirements" report);
- 5.2.3 Review and provide a written evaluation of the Empire Plan Benefit Providers' rate proposals. This will include a review of all factors used by the Benefit Providers to determine premium requirements including, but not limited to, projected paid and incurred claims, Benefit Provider retention, margin, and any deficit recoupment load;
- 5.2.4 Provide verbal commentary to the Department on the Empire Plan Benefit Providers' premium rate adjustments for any Plan changes negotiated with the Benefit Providers;
- 5.2.5 Support the Department in its negotiation of the Empire Plan rates with the Benefit Providers, including attendance at and participation in meetings as deemed necessary by the Department;
- 5.2.6 Assist the Department in presenting rate proposals to GOER, DOB, the Joint Labor Management Committee, and other entities, as the Department deems necessary. At least two (2) all day presentation meetings are anticipated annually as part of the Rate Renewal process. (Note: While the Contractor may be called upon to make presentations to or brief other NYS entities involved in the NYSHIP, the Department's, EBD is the "client", and as such, the Contractor is accountable to DCS' EBD staff.);
- 5.2.7 Support the Department by providing comparative analyses, as requested, using data of other large employers;
- 5.2.8 Submit a final written report with recommendations on the proposed rates (i.e., the final "Benefits Management Consultant Final Report and Recommendations" report);
- 5.2.9 Ensure that principal project staff is available to EBD management for ad hoc discussion of any aspect of Task # 1 throughout the Rate Renewal process; and
- 5.2.10 Participate in and adhere to the following Rate Renewal process and cycle:

Date (Note: All dates shown are on or about)	Rate Renewal Process activity
July 1	The Contractor submits its Task #1 work plan for the upcoming Plan Year.
Early-August	The Department sends each Benefit Provider a rate renewal call letter which outlines the minimum documentation required to support the rate requests and anticipated rate adjustments. See Appendix R, entitled "Sample Call Letter" of the RFP for a sample call letter.
August 31	Contractor develops and submits independent rate requirement estimates (i.e., "Benefits Management Consultant

	Independent Experience Projections and Premium Requirements" report).
August 31	The Benefit Providers submit rate renewal proposals and supporting documentation to the Department and the Contractor.
Beginning in the 1st week of September and continuing throughout the Rate Renewal process	The Department and the Contractor work together to ensure consistent understanding of the Benefit Providers' rate renewal proposals and discuss and identify issues and questions which may need further clarification by the Benefit Providers.
2nd week of September	Benefit Providers brief the Health Insurance Council staff and Contractor on their rate renewal proposals.
2nd and/or 3rd weeks of September	Contractor provides comment to the Department in regard to the Benefit Providers' rate renewal proposals.
3rd week of September through period prior to finalization of rate recommendations	The Department, with the assistance of the Contractor, negotiates any adjustments to the proposed rates.
1st week of October	The Department and the Contractor brief the Joint Labor Management Committee regarding the Benefit Providers' rate renewal proposals (During this same meeting, the Benefit Providers also brief the committee on their respective proposals).
1st and/or 2nd weeks of October	Contractor submits its final written report and recommendations to the Department (i.e., final "Benefits Management Consultant Final Report and Recommendations" report).
October 15	The Department submits health insurance rates to the Division of the Budget for approval.
October 23	The Division of the Budget approves rates.
November	Benefits Option Transfer Period*
November 15	The Department loads approved rates into its computerized accounting system (i.e., NYBEAS) and notifies all participants of rate change.
January 1	Effective date of approved rates.

* The Contractor has no role in NYS' annual option transfer activities, nor will the Contractor be called upon to develop or review associated employee communication materials as a Task #1 responsibility.

5.3.0 Task #2 – Quarterly Analysis. During the term of the Agreement, the Contractor shall:

5.3.1 Review and prepare comments on the Empire Plan Benefit Providers first and fourth quarter reports. Said quarterly reports are based on the calendar year; the 1st quarter

is January through March and the 4th quarter is October through December. The required reviews will be conducted twice per calendar year, during April/May for the 1st quarter reports and January/February for the 4th quarter reports.

5.3.2 Provide a written report of its review of each of the Benefit Providers' reports. (The Benefit Provider reports are due no later than the 23rd day of the month following the last month of the quarter under review. It is anticipated that any TPA or PBM contract will have comparable reporting requirements.) The report shall include the Contractor's assessment of the reasonableness of the Benefit Providers' projected current year experience and projected rates for the subsequent year, the Contractor's projected annual claim amount by Benefit Provider for the calendar year (January 1 – December 31), and the Contractor's observed and projected trends, including any other factors that may impact the projected incurred claims experience. A final copy of the required report ("Quarterly Contractor Commentary Report") must be submitted to the Department within forty-five (45) calendar days from the end of the quarter under review. These reports must be acceptable to the Department.

5.4.0 Task #3 – GASB 45 Valuation. Governmental Accounting Standards Board Statement No. 45 ("GASB 45") addresses Other Postemployment Benefits ("OPEB") by state and local governments. In accordance with the requirements set forth in GASB 45, the Contractor shall perform an actuarial valuation and develop related reports for the benefit of the Department. In addition to the OPEB of State employees, the valuation must include the OPEB for employees of State University of New York ("SUNY") Campuses, Hospitals and Construction Fund for the various differing fiscal years that will ultimately roll up into the fiscal year financial statements of New York State for the year under review. The NYSHIP PEs and PAs are not included in the valuation; however, they each receive a report that presents the actuarial assumptions that were used in NYS' valuation as guidance to assist them in preparing their own valuations. The scope of the valuation is limited to post-retirement healthcare benefits. The State offers retiree-pay-all dental benefits and retiree-pay-all life insurance coverage (limited to a specific group of retirees); however, since there is no State contribution to either of these benefits, both are excluded from the valuation. The valuation must take into account factors and assumptions related to, but not limited to, the following:

- NYSHIP plan provisions, which may be impacted by negotiated changes and vary by bargaining group;
- Relationship of the health care benefits provided and the eligibility criteria under which those benefits are provided;
- Census data (data on both active enrollees as well as non-active enrollees, i.e. retirees, dependent survivors, and vestees) provided to the Contractor by the Department;
- Demographic assumptions based on experience under the New York State & Local Retirement System, Police and Fire Retirement System, and the New York State Teachers' Retirement System;
- Premium rates, provided by the Department;
- As provided for by NYS Civil Service Law, a reduction may be made to retiree premium contribution based on the value of the retiree's unused sick leave credit at the time of retirement (converted to a fixed monthly credit);
- Retiree claim and enrollment data provided by the Department and the Empire Plan carriers (Note: this is detailed claim data and related enrollment data specific to non-active enrollees).
- Medicare is assumed to be the primary payor for current and future retirees and dependents age 65 and over, and also for retirees and/or dependents under age 65 who are Medicare eligible due to qualifying disability;
- NYSHIP requires enrollment in Medicare Parts A and B when an individual first becomes eligible for Medicare coverage. NYSHIP reimburses enrollees for the cost of the

Medicare Part B premium (excluding any penalty for late enrollment) for Medicare eligible enrollees and their Medicare eligible dependents; and

- An Employee Group Waiver Plan (EGWP) plus Wrap will be implemented for Medicare primary enrollees and dependents effective January 1, 2013

5.4.1 Task #3 Activities Timelines/Due Dates. As described in further detail below, the Contractor shall produce, by May 15, 2013, a Year Two Roll Forward report. The first Valuation to be performed by the Contractor shall be as of April 1, 2014, and the resultant Valuation Report shall be due not later than October 31, 2014. The Valuation shall be performed in accordance with the Contractor's actuarial assumptions as set forth in the Contractor's NYS/SUNY Actuarial Assumptions Report which is due not later than June 30, 2014. During the term of the Contract, the Contractor shall perform, at a minimum, one (1) Valuation and two (2) Year Two Roll Forwards, and may be required to perform a second Valuation and a third Year Two Roll Forward, if the Contract is extended in accordance with the schedule set forth in the table (The two (2) Valuations and three (3) Year Two Roll Forwards are identified by their associated report names) as follows:

Report Name	Due Date	Deliverable During Contract Year
2013 Year Two Roll Forward Report	5/15/2013	Year 1
2014 Valuation Report	10/31/2014	Year 2
2015 Year Two Roll Forward Report	5/15/2015	Year 3
2016 Valuation Report (possible)	10/31/2016	Year 4
2017 Year Two Roll Forward (possible)	5/15/2017	Year 5

5.4.2 During the term of the Agreement, the Contractor shall:

5.4.2.1 Perform an actuarial valuation of NYS' and SUNY's OPEB every two (2) years and produce a comprehensive report by October 31 of the valuation year to present the results of the Valuation ("Valuation Report"). The first Valuation to be performed by the Contractor under the Contract ("2014 Valuation") shall be as of April 1, 2014 for employers' Financial Statement as follows:

Employer	Financial Statements for the year ending
NYS (excluding all of SUNY)	3/31/2016
SUNY Campus	6/30/2015
SUNY Stony Brook Hospital	6/30/2015
SUNY Brooklyn Hospital	6/30/2015
SUNY Syracuse Hospital	6/30/2015
SUNY Construction Fund	3/31/2015

The results of 2014 Valuation shall be set forth in the Contractor's 2014 Valuation Report.

5.4.2.2 The Contractor must produce a report that presents the actuarial assumptions the Contractor will use for the Valuation along with the rationale for those assumptions ("NYS/SUNY Actuarial Assumptions Report"). The NYS/SUNY Actuarial Assumptions Report associated with the 2014 Valuation is due not later than June 30, 2014.

5.4.2.3 Provide two (2) reports by November 15th of the Valuation year, that present the actuarial assumptions used for NYS' Valuation, one for distribution to PEs ("PE Actuarial Assumptions Report") and the other to PAs ("PA Actuarial Assumptions Report"), to provide assistance in performing their GASB 45. The

two reports associated with the 2014 Valuation are due no later than November 15, 2014.

5.4.2.4 In the year following a Valuation, produce, by May 15 of that year, a "Year Two Roll Forward" report that:

- (a) includes an exhibit that updates the net OPEB obligation as reported in the prior year's valuation report (net OPEB revised based on actual fiscal year employer contributions, data provided to the Contractor by the Department),
- (b) includes an exhibit that presents the calculation of the Annual Required Contribution of the year following the valuation (the prior year calculations are trended forward one year),
- (c) includes an exhibit that presents the development of the Annual OPEB Cost as well as projections of the net OPEB Obligation for Year Two.

The first Two Year Roll Forward report due under the Contact shall be the 2013 Year Two Roll Forward Report for employers' Financial Statement as follows:

Employer	Financial Statements for the year ending
NYS (excluding all of SUNY)	3/31/2015
SUNY Campus	6/30/2014
SUNY Stony Brook Hosp	6/30/2014
SUNY Brooklyn Hosp	6/30/2014
SUNY Syracuse Hosp	6/30/2014
SUNY Construction Fund	3/31/2014

5.4.2.5 Provide Task #3 related support to the Department, on an as needed basis, in areas including, but not limited to, assisting the Department in:

- (a) Responding to requests for information from DOB and/or OSC;
- (b) Preparation for legislative testimony; and
- (c) Responding to questions on completed valuation(s) posed by auditors contracted to audit NYS' financial records.

5.5.0 Task #4 – Ad Hoc Consulting Services. During the term of the Agreement, the Contractor shall:

5.5.1 Provide the Department with a full range of ad hoc benefit consulting services. In its delivery of ad hoc services, the Contractor's analysis should consider and make use of the most current employee benefit data and information in the marketplace. The Contractor shall be expected to possess and/or obtain and make available to the Department a full breadth of benefit consulting services, including such areas as:

- o plan design consulting,
- o provider network access analysis,
- o consulting on selection of vendors,
- o regulatory monitoring and compliance guidance,
- o risk management,
- o wellness programs, and
- o disease management.

5.5.2 As requested by the Department on a case-by-case basis, analyze and prepare comprehensive cost and benefit analysis ("Ad Hoc Projects"), often undertaken and completed within very limited timeframes; frequently within 2-3 days of the request and, on occasion, within a twenty-four (24) hour period for certain high priority tasks. The

Contractor shall be required to submit final deliverable(s) required for completion of an Ad Hoc Project within timeframes mutually agreed upon by the Department and the Contractor.

5.5.3 Provide a full range of benefit consulting services, including, but are not limited to:

- 5.5.3.1 Assisting the Department with the analysis, design and/or review of solicitation instruments (e.g., requests for proposals) and their associated evaluation criteria developed by the Department for any of the benefit programs administered by the Department and/or the evaluation of specified proposals received in regard thereto;
- 5.5.3.2 Performing an actuarial equivalence comparison of the NYSHIP drug plan to Medicare Part D benefits for the same period and file the resultant attestation of such equivalence with the Centers for Medicare and Medicaid Services (CMS);
- 5.5.3.3 Providing the Department with analysis of federal and state legislative proposals, including advice on compliance with such legislation;
- 5.5.3.4 In addition to those services required by Task #1 for Empire Plan Rate Renewal activities, assisting the Department with benefit and premium renewal activities for any of the other benefit programs administered by the Department;
- 5.5.3.5 In addition to those services required by Task #3 for GASB 45 Valuation, assisting the Department with any actuarial valuations;
- 5.5.3.6 Providing recommendations regarding proposed benefit/plan design changes;
- 5.5.3.7 Performing cost/savings analyses of collectively bargained plan changes; and
- 5.5.3.8 Reviewing Benefit Providers contract provisions and provide recommendations.

ARTICLE VI: PERFORMANCE GUARANTEES

6.1.0 The Parties agree that the following guarantees and the corresponding penalty(ies) for failure to meet the guarantee shall be implemented effective January 1, 2013. The Contractor acknowledges and agrees that failure to perform a task(s) in such a manner which either meets or exceeds any and/or all of the associated Performance Guarantee(s) as set forth in Article VI of the Agreement and/or fails to make any payment(s) of any such penalty(ies) for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties and obligations as otherwise set forth in the Agreement. Payment for failure to meet the Turnaround Guarantees shall take the form of a credit against the associated task for which payment was due.

6.1.1 Turnaround Time Guarantees – Task #1.

The Contractor guarantees to support the Department during the Premium Renewal Negotiation Process, including performing the timely completion and submittal of reports and final deliverables as specified in RFP §3.01.1. The Contractor guarantees it will adhere to the timeline included in the final work plan, provided that the required electronic data is received by the Contractor from all carriers by July 15th of each renewal cycle and the carrier renewals are received by no later than the first week in September. If the Contractor does not receive the data and/or renewals by the specified dates, different due dates shall be agreed upon in writing by the Parties and guaranteed by the Contractor. If the Contractor fails to meet this guarantee, then for each twenty-four (24) hour period, or part thereof, that a Task #1 report or final deliverable is not provided to the Department by the report(s)/deliverable(s)' due date, the Contractor shall pay the Department three thousand dollars (\$3,000.00) per day,

until such time that the report(s)/deliverable(s) is provided to the Department. The aggregate total penalty amount shall not exceed the actual cost incurred by the Contractor in its performance of the associated Task #1 activity.

6.1.2 Turnaround Time Guarantees – Task #2.

The Contractor guarantees that Quarterly Contractor Commentary Reports will be provided in accordance with the requirements set forth in RFP §3.01.2, not later than forty-five (45) calendar days from the end of the quarter under review, provided that the required electronic data is received by the Contractor from all carriers within fifteen (15) days of the close of the quarter, and the carrier reports within twenty-three (23) days of the close of the quarter. If the Contractor does not receive the data and/or carrier reports by the specified dates, the due date shall be extended by one day for each day the data and/or carrier reports are late. If the Contractor fails to meet this guarantee, then for each twenty-four (24) hour period, or part thereof, beyond a given Quarterly Contractor Commentary Reports' due date that the final Quarterly Contractor Commentary Reports is not provided to the Department by the Contractor, the Contractor shall pay the Department two thousand dollars (\$2,000.00) per day, until such time as the required final Quarterly Contractor Commentary Reports are provided to the Department. The aggregate total penalty amount shall not exceed the actual cost incurred by the Contractor in its performance of the associated Task #2 activity.

6.1.3 Turnaround Time Guarantees – Task #3.

The Contractor guarantees that GASB 45 valuation services and the five (5) required reports will be provided in accordance with the requirement set forth in RFP §3.01.3 and that other specified deliverables as requested by the Department in fulfillment of GASB obligations will be provided in accordance with due dates specified in the annual Task #4 task order negotiated by the Parties, as may be amended by a Department approved Change Order Request(s). If the Contractor fails to meet this guarantee, then for each twenty-four (24) hour period, or part thereof, beyond the due date for a given Task #3 report, as specified in the annual Task #4 task order negotiated by the Parties, as may be amended by a Department approved Change Order Request, is not provided to the Department by the Contractor, the Contractor shall pay the Department three percent (3%) of the negotiated Task #3 task order Total Project Cost amount, until such time as the report(s) is/are provided to the Department. The aggregate total penalty amount shall not exceed the actual cost incurred by the Contractor in its performance of the associated Task #3 activity.

6.1.4 Turnaround Time Guarantees – Task #4.

The Contractor guarantees that, in accordance with the requirements of RFP §3.01.4, analysis provided for a given Ad Hoc Project will be 1) based on the most current information available, 2) comprehensive, and 3) actuarially sound and reasonable, and that an Ad Hoc Project's final deliverables will be provided to the Department not later than due date agreed upon by the Department and the Contractor. If the Contractor fails to meet this guarantee for an Ad Hoc project(s) whose Not-To-Exceed Total Cost is equal to or greater than fifty thousand dollars (\$50,000), then for each twenty-four (24) hour period, or part thereof, beyond the due date for the Ad Hoc Project's report or final deliverable as negotiated by the Parties on a case-by-case basis, that the report/deliverable is not provided to the Department by the Contractor, the Contractor shall pay the Department two percent (2%) percent of the Task #4 Ad Hoc Not-To-Exceed Total Cost amount, until such time as the report(s)/deliverable(s) is provided to the Department. The aggregate total penalty amount shall not exceed the actual cost incurred by the Contractor in its performance of the associated Task #4 Ad Hoc project.

6.2.0 Performance penalty amounts due from the Contractor to the DCS for failure to perform any task at its associated guarantee level as set forth above, and audit credit amounts, as determined pursuant to Section 27 of Appendix B, entitled "Audit Authority", shall be made at the time and in such amounts as determined by the DCS to be final. Upon such determination, the DCS shall notify the Contractor, in writing, and the Contractor shall apply a credit for such amounts against the next subsequent invoice(s), or if such amounts exceed subsequent invoices amounts, pay such amounts to DCS.

ARTICLE VII: PAYMENT FOR SERVICES

7.1.0 The DCS agrees to reimburse the Contractor in accordance with the provisions of the RFP, in particular §4.04 and Exhibit R, at the Fixed Hourly Rates as proposed by the Contractor in its Financial Proposal and as corrected in Exhibit #1 to the Agreement, subject to any not-to-exceed or total project cost amounts, as applicable, plus Department approved travel expenses and less any credits due to the Department for Contractor non-performance. The Contractor's proposed Fixed Hourly Rates, and associated not-to-exceed or total project cost amounts, as and if applicable, are attached hereto the Agreement as Exhibit #1 – Contractor's Fee Schedules. The Contractor shall invoice the Department, in the format required by the Department, monthly in arrears, for Project Services rendered during the preceding month, together with full supporting detail(s) to the Department's satisfaction. Charges for Project Services rendered shall be based on the Contractor's Fixed Hourly Rates for actual hours worked by Contractor personnel. Said invoicing will include, as supporting detail, at a minimum the name(s) of individual(s) for whom the Department is being billed along with his/her Position Title, Fixed Hourly Rate and total hours worked by the individual(s) for the given billing. Charges for Project Services rendered by a Contractor shall be based on the Fixed Hourly Rates set forth in the Contractor's Financial Proposal for actual hours worked by Contractor personnel with such time summarized and billed daily in fifteen (15) minute increments (e.g., 1 minute to 15 minutes = .25 of an hour; 16 minutes to 30 minutes = .50 of an hour; 31 minutes to 45 minutes = .75 of an hour and 46 minutes to 60 minutes = 1 hour) in the aggregate. For example, during February 2013, Consultant A worked on Ad Hoc Project XYZ as follows:

Friday 2/1/2013:	Duration
From 9:00 am until 10:00 am	1 hour
From 10:30 am until 11:52 am	1 hour and 22 minutes
From 1:00 pm until 1:54 pm	0 hour and 54 minutes
Total Time Worked 2/1/2013	3 hours 16 minutes
1. Total Billable Hours for 2/1/2013	3.5 Hours
Monday 2/4/2013:	Duration
From 8:00 am until 5:13 pm with and an hour lunch break	8 hours and 13 minutes
Total Time Worked 2/4/2013	8 hours and 13 minutes
2. Total Billable Hours for 2/4/2013	8.25 Hours
Thursday 2/28/2013:	Duration
From 8:00 am until 1:00 pm	5 hours
Total Time Worked 2/28/2013	5 hours
3. Total Billable Hours for 2/28/2013	5 Hours
Total Billable Hours for Consultant A for worked performed on Ad Hoc Project XYZ during February 2013	16.75 hours
	(i.e., the sum of 1, 2 and 3 above)

7.2.0 After the Department has approved the Contractors invoice, the Department shall process the Contractor's invoice to OSC for payment. OSC shall render payment for invoices under the Agreement in accordance with ordinary State procedures and practices. The Contractor shall certify the accuracy of all Contractor invoices prior to their submission to the Department and the

Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law. Submission of an invoice and payment thereof shall not preclude the Department from reimbursement or demanding a price adjustment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Agreement.

- 7.3.0 The Contractor warrants that all of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being provided by the Contractor to other public sector customers under like or similar circumstances, including scope and volume of services including but not limited to the complexity of services, and length of engagement ("Superior Pricing"). If, during the course of this Agreement, the Contractor enters into arrangements with any other public sector customers with whom in the opinion of DCS said customer(s) are provided Superior Pricing, DCS must provide written notice regarding an adjustment to the pricing to become effective prospectively.
- 7.4.0 The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the OAG and OSC.

ARTICLE VIII: RECORDS AND INFORMATION TO BE FURNISHED

- 8.1.0 The DCS and the Carriers shall furnish to the Contractor all information which the Contractor may reasonably require with regard to any matters pertaining to the delivery of Project Services under this Agreement.
- 8.2.0 DCS is responsible for the accuracy and completeness of all DCS information submitted by DCS to the Contractor. DCS agrees to notify Contractor as soon as possible of any known problems or errors in DCS information submitted by DCS to the Contractor.

ARTICLE IX: MODIFICATION OF REQUIRED SERVICES

- 9.1.0 In the event that laws or regulations enacted by the federal government and/or the State of New York have an impact upon the conduct of this Agreement in such a manner that the DCS determines that any requirements of the Agreement must be revised, the DCS shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.
- 9.2.0 In the event that NYS and its public employee unions enter into collective bargaining agreements that have an impact upon the conduct of this Agreement in such a manner that the DCS determines that any requirements of the Agreement must be revised, the DCS shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.
- 9.3.0 To the extent that any of the events as set forth in Article IX of the Agreement shall take place, and constitute a material and substantial change in the scope of Project Services which the Contractor is required to perform or deliver under the Agreement, the Contractor may submit a written request to the DCS to initiate review of the fee(s) received by the Contractor for Project Services provided under the terms of the Agreement, accompanied by appropriate documentation as may be required by the DCS. The DCS reserves the right to review such request within a reasonable period of time, and, in its sole discretion, make a written determination as to whether such request shall be approved or rejected. DCS' approval shall not be unreasonably withheld. Should the DCS approve the Contractor's request to modify the fee(s), such approval shall be subject to written amendment and approval by the OSC.
- 9.4.0 During the term of a given Task #1 project, Task #2 project, Task #3 task order or Task #4 Ad Hoc Project ("Activity"), should an event(s), outside the control of the Contractor occur that result(s) in a material or substantial change in the effort required of the Contractor to complete the Activity, but not its scope, the Contractor may submit a written request to the DCS requesting an

increase to the Total Projected Cost or the Not-To-Exceed Total Cost amount of the Activity, as applicable, accompanied by appropriate documentation as may be required by the DCS (Change Order Request). The DCS reserves the right to review such Change Order Request(s) within a reasonable period of time and, in its sole discretion, make a written determination as to whether the Change Order Request shall be approved or rejected. DCS' approval shall not be unreasonably withheld. Should the DCS approve the Contractor's Change Order Request, the Contractor agrees that the Department is not obligated to reimburse the Contractor for costs incurred in excess of the Activity's Total Project Cost or Total Not-To-Exceed Total Cost amount, as modified by the Department approved Change Order(s). The Change Order Request, if approved by the Department, shall not constitute a formal written amendment to the Agreement and the approved Change Order Request shall not be subject to the approval of the OSC.

ARTICLE X: BUSINESS ASSOCIATE AGREEMENT

- 10.1.0 For purposes of this Article, the term "Protected Health Information" ("PHI") means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein collectively as "Department's PHI."
- 10.2.0 The Contractor acknowledges that the Department administers on behalf of New York State several group health plans as that term is defined in the Health Insurance Portability and Accountability Act's (HIPAA) implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a "covered entity" under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these "covered entities" under HIPAA. The Contractor further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA), respectively. The Contractor further acknowledges that the Contractor is a HIPAA "business associate" of the Department as a consequence of the Contractor's provision of services to and/or on behalf of the Department within the context of the Contractor's performance under this Agreement, and that the Contractor's provision of such services may involve the disclosure to the Contractor of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Contractor's disclosure to the Department of individually identifiable health information as a consequence of the services performed under this Agreement.
- 10.3.0 **Permitted Uses and Disclosures of the Department's PHI:** The Contractor may use and/or disclose the Department's PHI solely in accordance with the terms of this Agreement. In addition, the Contractor may use the Department's PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Contractor may use and disclose the Department's PHI for the proper management and administration of the Contractor if such use is necessary for the Contractor's proper management and administration or to carry out the Contractor's legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.
- 10.4.0 **Nondisclosure of the Department's PHI:** The Contractor shall not use or further disclose the Department's PHI otherwise than as permitted or required by this Agreement or as otherwise

required by law. The Contractor shall limit its uses and disclosures of PHI when practical to the information comprising a Limited Data Set, and in all other cases to the minimum necessary to accomplish the intended purpose of the PHI's access, use, or disclosure.

10.5.0 **Safeguards:** The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of the Department's PHI otherwise than as provided for by this Agreement. The Contractor shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, to reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that it creates, receives, maintains, or that it transmits on behalf of the Department pursuant to this Agreement.

10.6.0 **Breach Notification:**

10.6.1 *Reporting.* The Contractor shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. Further, the Contractor shall report to the Department any security incident of which it becomes aware. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the Department within five (5) business days of the date the Contractor becomes aware of the event.

10.6.2 *Required Information.* The Contractor shall provide the following information to the Department within ten (10) business days of discovery except when, despite all reasonable efforts by the Contractor to obtain the information required, circumstances beyond the control of the Contractor necessitate additional time. Under such circumstances, the Contractor shall provide to the Department the following information as soon as possible and without unreasonable delay, but in no event later than thirty (30) calendar days from the date of discovery:

- i. the date of the breach incident;
- ii. the date of the discovery of the breach;
- iii. a brief description of what happened;
- iv. a description of the types of unsecured PHI that were involved;
- v. identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
- vi. A brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals and to protect against any further breaches; and
- vii. any other details necessary to complete an assessment of the risk of harm to the individual.

10.6.3 The Department will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a breach, as well as the Secretary and the media, as required by 45 CFR Part 164.

10.6.4 The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.

10.6.5 For purposes of this Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans,

unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of electronic PHI.

- 10.6.6 The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by this Agreement.
- 10.7.0 **Associate's Agents:** The Contractor shall require all of its agents or sub-contractors to whom it provides the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, agree to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Contractor with respect to the Department's PHI under this Agreement.
- 10.8.0 **Availability of Information to the Department:** The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department's obligations to provide access to, to provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department.
- 10.9.0 **Amendment of the Department's PHI:** The Contractor shall make the Department's PHI available to the Department as the Department may require to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Contractor shall, as directed by the Department, incorporate any amendments to the Department's PHI into copies of the Department's PHI as maintained by the Contractor.
- 10.10.0 **Internal Practices:** The Contractor shall make its internal practices, policies and procedures, books, records, and agreements relating to the use and disclosure of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, available to Department and/or the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Department and/or the Secretary for purposes of determining the Department's compliance with HIPAA and its implementing regulations.
- 10.11.0 **Termination:**
- 10.11.1 This Agreement may be terminated by the Department at the Department's discretion if the Department determines that the Contractor, as a business associate, has violated a material term of this Article or of the Agreement with respect to the Contractor's obligations under this Article.
- 10.11.2 *Disposition of the Department's PHI:* At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, that the Contractor still maintains in any form and retain no copies of such information. Alternatively, if such return or destruction is not feasible, the Contractor shall extend indefinitely the protections of this Agreement to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of the Department's PHI infeasible.
- 10.12.0 **Indemnification:** The Contractor agrees to indemnify, defend and hold harmless the State and the Department and its respective employees, officers, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of Article X of this Agreement or from any acts or omissions related to Article X of this Agreement by the Contractor or its employees, officers, subcontractors, agents or other members of its workforce, without limitation. Accordingly, the Contractor shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines,

penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Contractor's acts or omissions related to Article X of this Agreement. The Contractor's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

10.13.0 Miscellaneous:

10.13.1 *Amendments.* This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of the Regulations.

10.13.2 *Survival.* The respective rights and obligations of Business Associate and Covered Entity under HIPAA as set forth in this Business Associate Agreement shall survive termination of this Agreement.

10.13.3 *Regulatory References.* Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended or modified.

10.13.4 *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit covered entities to comply with HIPAA.

ARTICLE XI: NOTICE TO STATE

11.1.0 The Contractor shall immediately notify DCS upon learning of any situation that can reasonably be expected to adversely affect the delivery of Project Services under the Agreement. If such notification is verbal, the Contractor shall submit to DCS a written description of the situation and a recommendation for its resolution within seven (7) Business Days of learning of the situation.

ARTICLE XII: SUSPENSION OF WORK

12.1.0 DCS reserves the right to suspend any or all activities under the Agreement, at any time, in the best interests of NYS or DCS. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as DCS issues a formal written notice authorizing a resumption of work.

ARTICLE XIII: GENERAL PROVISION AS TO REMEDIES

13.1.0 The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, an event otherwise constituting a breach or default under the Agreement.

13.2.0 In the event of Contractor's default, 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:

- withhold payment of some or all of the amounts due and owed under the Agreement until Contractor's performance is brought within the specified parameters;
- terminate the Agreement, in whole or in part;
- suspend, in whole or in part, payments due Contractor under this or any other New York State contract;

- pursue equitable remedies to compel Contractor to perform.

ARTICLE XIV: COOPERATION WITH INVESTIGATIONS AND AUDITS

14.1.0 The Contractor agrees to cooperate with DCS, any other authorized State or Federal Department, and any law enforcement authority, in the investigation, documentation and litigation of any alleged illegal act, misconduct or unethical behavior related to the RFP and/or Agreement, or in connection with any audit of the Contractor, as contemplated per Appendices A and B of the Contract.

ARTICLE XV: WARRANTIES

15.1.0 Where Contractor generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to NYS. A breach of any provision of this Article XV shall be deemed a "material breach" for purposes of default under the Agreement. Contractor hereby warrants and represents:

15.1.1 **Representations and Warranties.** That Contractor assumes responsibility for the cost and timely accomplishment of all obligations and duties required by the Agreement whether or not the Contractor, or subcontractors, performs such obligations or duties. Project Services rendered by the Contractor shall be performed in accordance with all the terms and conditions, covenants, statements and representations contained in the Agreement, including all appendices.

15.1.2 **Workmanship Warranty.** That during the term of the Agreement, Contractor will provide the necessary levels of qualified personnel to ensure proper performance by Contractor of its obligations and responsibilities under the Agreement. Contractor warrants that it performs Project Services using a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing expertise in the subject area and acting in a like capacity would exercise in similar circumstances.

15.1.3 **Contractor Compliance.** To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Agreement. Prior to award and during the Agreement term and any extension thereof, Contractor must establish to the satisfaction of DCS that it meets or exceeds all requirements of the Agreement and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by DCS. Failure to do so may constitute grounds for DCS to cancel or suspend the Agreement, in whole or in part, or to take any other action deemed necessary by DCS.

15.2.0 **Survival of Warranties.** All warranties contained in the Agreement shall survive the termination of the Agreement.

15.3.0 **Limitations.** THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE XVI: REPORTS OWNERSHIP & ERROR CORRECTIONS

16.1.0 In addition to ownership provisions set forth elsewhere in Appendices A and B, the Contractor agrees that information and documents developed pursuant to the Agreement are the property of the State of New York and that the Contractor will not discuss such information, documents and systems with a third party without the express written authorization of DCS, other than as required by court order, law, rule or regulation.

16.2.0 The Contractor shall correct any and all errors in any reports, materials and/or documents provided or prepared by the Contractor pursuant to this Agreement provided the Department notifies the Contractor of such errors and, if required, furnishes to the Contractor data and information the Department may be required to provide in order for the Contractor to make such corrections after delivery of any such report, material, document or service. This Contractor requirement shall survive the expiration or termination of the Agreement. In regard to corrections required due solely to an error made by the Contractor, the Contractor will correct such errors at no cost to the Department. The correction of errors which are caused by the Department or NYS or another third party under contract to the NYS will be subject to reimbursement by the Department though the issuance of an *Error Correction Change Order* negotiated between the Parties; the pricing of which shall be based on the Contractor's Fixed Hourly Rates. The actual costs incurred under the *Error Correction Change Order* will not apply to the task's original not-to-exceed amount, however, Task #1, #2, and #4 (if applicable) *Error Correction Change Orders* shall be subject to not-to-exceed payment amounts. The scope of such *Error Correction Change Orders* shall be limited to the correction of errors and the *Error Correction Change Order* shall not be subject to the prior approval of OSC before becoming effective.

ARTICLE XVII: TERMINATION

In addition to the Termination of Agreement requirements specified in Appendices A and B to this Agreement, the following provisions shall apply:

- 17.1.0 The State retains the right to cancel the Agreement without cause and in its sole discretion, provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not be understood as waiving NYS' right to terminate the Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision. In the event of cancellation without cause by NYS, NYS agrees to negotiate a payment based on time, materials and other documented expenses directly attributable to the Agreement actually expended by Contractor;
- 17.2.0 If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, NYS, in its sole discretion, may terminate the Agreement or may exercise such other remedies as shall be available under the Agreement, at law and/or equity;
- 17.3.0 No delay or omission to exercise any right, power or remedy accruing to NYS or DCS upon breach or default by the Contractor under the Agreement shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing;
- 17.4.0 If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under the Agreement, NYS shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that NYS shall continue to be obliged to pay for any and all Project Services provided prior to any such date. If NYS employs a third party to perform Contractor's obligations under the Agreement, Contractor shall be liable for the payment of any cost differential that NYS incurs as a result of having to employ such third party to cure or resolve the issue;
- 17.5.0 In the event of the Contractor's default, in addition to availing itself of specific remedies set forth in the Agreement, NYS may pursue all legal and equitable remedies for breach. In addition to

pursuing any other legal or equitable remedies, NYS shall have the right to take one or more of the following actions:

- 1) terminate the Agreement in whole or in part;
- 2) suspend, in whole or in part, payments due Contractor under the Agreement; and
- 3) pursue equitable remedies to compel Contractor to perform.

The Contractor shall be liable for any and all excess costs for remedies pursued by NYS, and for costs incurred by NYS in procuring alternate Services;

- 17.6.0 **For Violation of Procurement Lobbying Law.** DCS reserves the right to terminate the Agreement in the event it is determined by DCS in its sole discretion that the certification filed by the Contractor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, DCS may, at its sole option, exercise its termination right by providing ten (10) days written notification to the Contractor, or providing notice in accordance with other written notification terms in the Agreement;
- 17.7.0 **For Violation of Section 5-a of the Tax Law.** DCS reserves the right to terminate the Agreement in the event that Contractor fails to file a certification pursuant to section 5-a of the Tax Law or the Tax Department or OFT discovers that the certification(s) filed by the Contractor pursuant to section 5-a of the Tax Law is/are false. Upon such finding(s), DCS may exercise its termination right by providing written notification to the Contractor;
- 17.8.0 **Termination Notice.** Notices required by this section shall be provided consistent with Appendix B, Section 9 of this Agreement; and
- 17.9.0 **Mitigation of Costs.** The Contractor shall not undertake any additional or new contractual obligations on or after the date of return receipt notice without the prior written approval of NYS. On or after the date of return receipt notice and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for NYS.

ARTICLE XVIII: TRANSITION

- 18.1.0 The State may require the Contractor to provide uninterrupted Project Services after Agreement termination/expiration as NYS deems reasonable and necessary and/or as necessary for NYS to comply with all legal requirements for establishing a new contract to continue the provision of Project Services ("Transition Period"). Transition Services, as defined in 18.5.0 shall be governed as follows:
- 18.2.0 **Transition Period.** The transition period shall be determined by NYS, and Contractor will be notified of the period in writing. The State shall consult with the Contractor prior to making such determination. The State reserves the right to subsequently amend the transition period upon thirty (30) days advance written notice to the Contractor.
- 18.3.0 **No Interruption in Service.** At all times during the transition period and unless directed otherwise in writing by NYS, the Contractor shall continue all contractual obligations set forth in the Agreement until such time as NYS (i) has approved the Contractor's proposed transition plan, and (ii) an orderly transition to NYS, a third party, or the successor contractor has been completed pursuant to the approved transition plan. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by NYS.
- 18.4.0 **Transition Plan.** Within fifteen (15) days of receipt of a notice of termination or three (3) months prior to the end of the term of the Agreement, whichever event occurs first, the Contractor shall provide for approval by NYS a detailed written plan for Transition ("Transition Plan") which outlines, at a minimum, the tasks, milestones and deliverables associated with the smooth transition of Services to NYS, a third party or the successor contractor. Contractor agrees to amend the Transition Plan to include all other information deemed necessary by NYS.

- 18.5.0 Contractor Transition Services. "Transition Services" shall be deemed to include the Contractor's responsibility for all tasks and services outlined in the Agreement, including Task #3 GASB 45 Valuation and any Task #4 Ad Hoc project(s) requested at the sole discretion of the Department and commenced prior to the scheduled termination of the Agreement. Transition Services shall also include the Contractor transferring, in a planned manner specified in the Transition Plan, all tasks and services to the State, a third party or the successor contractor. To the extent possible, the Department agrees not to initiate a Task #4 Ad Hoc project prior to the scheduled termination of the Agreement, if it cannot reasonably be completed prior to termination, and not to initiate a new Task #4 Ad Hoc project during the Transition Period. It is expressly agreed between the Parties that the level of service during the Transition Period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Agreement, provided, however, that where, during the Transition Period, tasks or services are transitioned to or assumed by the State, a third party or the successor contractor, Contractor shall not be held responsible for the negligent acts or negligent omissions of the State, a third party or the successor contractor or for service degradation resulting from the negligent acts or negligent omissions of the State, a third party or the successor contractor.
- 18.6.0 Compensation for Transition Services. Contractor shall be reimbursed for Transition Services performed during the Transition Period at the rates set forth in the Agreement.
- 18.7.0 State Responsibilities for Transition. The State shall assume responsibility for Transition project management. A project manager responsible for coordinating Transition activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed.

ARTICLE XIX: CONTRACTOR QUALIFICATIONS AND KEY PERSONNEL

- 19.1.0 The Contractor warrants that all employees, subcontractors or agents performing work under the Agreement shall meet or exceed the technical or other qualifications set forth in the Agreement. Contractor acknowledges that the skill and experience of Contractor personnel proposed to be assigned to the scope of work set forth in the Agreement is a material element in executing the Agreement. Therefore, in order to ensure timely and cohesive completion of the services, both Parties intend that key personnel initially assigned to the scope of work will continue through work completion. Key personnel will be identified in writing.
- 19.2.0 Once an individual designated as key personnel has been approved by NYS and assigned to provide services under the Agreement, such individual will not thereafter, absent written approval by the Department, be removed by Contractor, or reassigned by Contractor to other duties involving comparable employment by Contractor while the services are in progress and for so long as there has been no voluntary suspension of services due to force majeure lasting for a period of longer than ten (10) Business Days.
- 19.3.0 Circumstances may arise, however, which necessitate personnel to be substituted during the provision of services due to delays in awarding the contract, suspensions for force majeure, or lack of funding, or other such State causes, or due to promotions, termination, sickness, vacation or other similar material change in the employment circumstance of the employee, at which time a replacement of comparable background and experience may be substituted by the Contractor, subject to approval of NYS.
- 19.4.0 The State may refuse access to or require replacement of any individual if such individual renders, in the sole judgment of NYS, inadequate or unacceptable performance of services, or for any other reason NYS finds such individual does not meet its security or responsibility requirements of NYS.

ARTICLE XX: SECURITY RESPONSIBILITIES AND FEDERAL OR STATE DISCLOSURE PROHIBITIONS

- 20.1.0 The Contractor shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in performance of its activities under the Agreement. Contractor shall ensure that its personnel, agents, officers and subcontractors, if any are fully aware of the obligations arising under this section and shall take all commercially reasonable steps to ensure compliance. The Agreement may be terminated for cause by the Department for a material breach of this Article XX.

20.1.1 Security Responsibilities:

Contractor warrants, covenants and represents that it shall comply fully with all security procedures and policies of NYS, which procedures and policies are communicated to the Contractor by DCS during the performance of the Agreement, including but not limited to Article X of this Agreement and Department's Information Security Policy (See RFP Appendix O). To the extent such procedures and policies are unique to NYS and DCS and do not generally address the security of information (such as internal reporting), Contractor warrants, covenants and represents that it has adopted equivalent procedures and policies with respect to such matters and shall comply with such policies and procedures in Contractor's performance of this Agreement. Contractor shall hold NYS harmless from any loss or damage to NYS resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, while performing services under the Agreement.

20.1.2 Federal or State Disclosure Prohibitions:

In the event that it becomes necessary for Contractor to receive Confidential Information, which Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees to return or destroy all such Confidential Information that has been received from NYS when the purpose that necessitated its receipt by Contractor has been completed. In addition, Contractor agrees not to retain any Confidential Information which Federal or State statute or regulation prohibits from disclosure after termination of the Agreement.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of the Agreement for as long as necessary to protect the Confidential Information and to limit any further use of disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify NYS accordingly. Contractor agrees that it will use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information, which Federal or State statute or regulation prohibits from disclosure.

Contractor agrees that it shall immediately report to the Department the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information. The State may terminate the Agreement if it determines that Contractor has violated a material term of this Article XX. The terms of this Article XX shall apply equally to Contractor, its agents and subcontractors, if any. Contractor agrees that all subcontractors, if any and agents shall be made aware of and shall agree to the terms of this Article XX.

ARTICLE XXI: DEPARTMENT ACCEPTANCE OF DELIVERABLES

21.1.0 Each final deliverable prepared by the Contractor associated with a given task is subject to Department review and acceptance. The Department will evaluate each final deliverable submitted by the Contractor for conformity and compliance to its stated scope, functionality or purpose. The Department shall have the right to accept or reject each final deliverable. If the Department rejects a final deliverable, the Department's Contract Manager will so notify the Contractor within five (5) Business Days of the Department's receipt of the final deliverable and forward its comments to the Contractor outlining deficiencies noted. The Contractor will be provided with an opportunity to correct the deficiency(ies) cited by the Department, and resubmit the final deliverable for Department acceptance within a reasonable timeframe as established by the Department, given the nature and exigencies of the deliverables. Any resubmission of a rejected final deliverable shall include responses to all Department comments, in addition to corrections for the noted deficiencies. Resubmitted final deliverables will likewise be subject to Department acceptance of rejection. The Department will evaluate each correction made by the

Contractor and either accept or reject the resubmitted final deliverable. If the Department rejects a resubmitted final deliverable, the Department's Contract Manager will so notify the Contractor within five (5) Business Days of the Department's receipt of the resubmitted final deliverable and forward its comments to the Contractor outlining deficiencies noted. The Department may provide verbal comments to the Contractor, during, and in addition to, the formal deliverable review process described above. If the Contractor does not receive Department approval of a final deliverable or resubmitted final deliverable, if applicable, the Contractor will return any monies paid associated with the task for which the deliverable was prepared. If the Department does not notify the Contractor within five (5) Business Days of its acceptance or rejection of a final deliverable or resubmitted final deliverable, if applicable, then the final deliverable or resubmitted deliverable, if applicable shall be deemed to have been accepted by the Department.

ARTICLE XXII: NOTICES

22.1.0 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:

State of New York Department of Civil Service

Name: Robert DuBois
Title: Director, Employee Benefits Division
Address: Albany, NY 12239
Telephone Number: [REDACTED]
Facsimile Number: [REDACTED]
E-Mail Address: [REDACTED]

Aon Consulting, Inc. operating as Aon Hewitt

Name: James A. Christ
Title: Vice President
Address: Aon Hewitt
Health & Benefits
400 Atrium Drive
5th Floor South
Somerset, NJ 08873

Telephone Number: [REDACTED]
Facsimile Number: [REDACTED]
E-Mail Address: [REDACTED]

22.2.0 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.

22.3.0 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) 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.

ARTICLE XXIII: DATA SHARING AND OWNERSHIP

23.1.0 All claims, enrollment and other data (i.e., materials) provided to the Contractor by the Department or a third party under contract with Department is being provided to the Contractor solely for the purposes of allowing the Contractor to fulfill its duties and responsibilities under the Agreement and said materials are the sole property of the NYS. Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law, the Contractor shall not share, sell, release, or make the materials available to third parties in any manner without the prior consent of the Department. This provision shall survive the expiration or termination of the Agreement.

23.2.0 Within thirty (30) days after the termination or expiration of the Agreement for any reason, the Contractor agrees to return to the Department all data provided to the Contractor by the Department or a third party under contract with Department or, if return is not feasible, destroy any and all such data. In the event returning or destroying such data is not feasible, the Contractor shall provide written notification to the Department of the conditions that make the return or destruction not feasible, in which case, the Contractor must continue to protect such data in perpetuity.

ARTICLE XXIV: MERGERS/ACQUISITIONS

24.1.0 The Contractor's obligations to perform under the Agreement shall not be affected or impaired by any reorganization, consolidation or merger to which the Contractor is, or may become, a party. In any such event, the Contractor shall continue to be bound by, and shall perform under, all terms and conditions set forth herein.

ARTICLE XXV: RESPONSIBILITY TERMS

25.1.0 The Contractor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed Contractor's Vendor Responsibility Questionnaire (hereinafter "Vendor Responsibility Questionnaire") provided to the Contractor by the Department prior to execution of the Agreement. The Contractor further covenants and represents that as of the date of execution of the Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Vendor Responsibility Questionnaire.

25.2.0 The Contractor shall provide to the Department updates to the Vendor Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Vendor Responsibility Questionnaire becomes available.

25.3.0 Notwithstanding 25.2.0 hereinabove, the Department reserves the right, in its sole discretion, at any time during the term of the Agreement, (i) to require updates or clarifications to the Vendor Responsibility Questionnaire upon written request, (ii) to inquire about information included in or require information omitted from the Vendor Responsibility Questionnaire, and (iii) to require Contractor to provide such information to the Department within a reasonable timeframe.

25.4.0 The Department reserves the right to make a final determination of Contractor's non-responsibility (hereinafter "Determination of Non-responsibility") at any time during the term of the Agreement based on (i) any information provided in the Vendor Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (iii) the Department's discovery of any other material information which pertains to Contractor's responsibility.

25.5.0 If the Department preliminarily determines Contractor to be non-responsible, the Department shall provide written notice to Contractor detailing the reason(s) for the preliminary determination, and shall provide Contractor with an opportunity to be heard.

25.6.0 Upon a Determination of non-responsibility of Contractor, the Department reserves the right to terminate the Agreement in accordance with Article XVII.

ARTICLE XXVI: ALL LEGAL PROVISIONS DEEMED INCLUDED

26.1.0 It is the intent and understanding of the Parties to the Agreement that each and every provision of law required to be inserted in the Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then the Agreement shall forthwith upon the application of either Party be amended by such insertion so as to comply strictly with the law without prejudice to the rights of either Party hereunder.

ARTICLE XXVII: ENTIRE AGREEMENT

27.1.0 The Agreement and the appendices, exhibits and attachments hereto constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. The Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the Parties hereto.

ARTICLE XXVIII: IRAN DIVESTMENT ACT OF 2012

28.1.0 As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

28.2.0 By entering into the Agreement, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on the Agreement any subcontractor that is identified on the prohibited entities list.

28.3.0 Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Agreement, it will be required to certify at the time the Agreement is renewed or extended that it is not included on the prohibited entities list. Contractor also agrees that any proposed Assignee of the Agreement will be required to certify that it is not on the prohibited entities list before the Department may approve a request for Assignment of the Agreement.

28.4.0 During the term of the Agreement, should the Department receive information that a person is in violation of the above-referenced certification, the Department will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within ninety (90) days after the determination of such violation, then the Department shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

28.5.0 The Department reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award 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.

ARTICLE XXIX: Appendix B Changes:

29.1.0 Section 10 of Appendix B is hereby deleted and replaced with a new Section 10 as follows:

"10. INDEMNIFICATION

The Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify, defend and save harmless the Department, the State, its officers, agents and employees, from any and all suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property

caused by any intentional or negligent act or omission of the Contractor, its agents, employees, partners or sub-contractors in performance of the Agreement, without limitation; provided, however, that the Contractor shall not indemnify or be liable for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Department and/or State.

The Contractor shall fully indemnify, defend and save harmless the Department, the State, its officers, agents and employees, without limitation, from any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs which may be fully assessed against the Department and/or the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any material, information or data furnished under the Agreement, or based on any libelous or otherwise unlawful matter contained in such material, information or data, except as otherwise provided in the Article entitled "Patent Copyright or Proprietary Rights Infringement" of this Appendix B.

The Contractor also shall provide indemnification against all losses, and/or cost expenses (including reasonable attorneys' fees) that may be incurred by reason of the Contractor's breach of any term, provision, covenant, warranty, or representation contained herein and/or in connection with the enforcement of the Agreement or any provision hereof.

For all claims against the Contractor where liability is not otherwise set forth in the Agreement as being "without limitation," and regardless of the basis on which the claim is made, Contractor's liability under the Agreement for direct damages shall be the greater of the following: (i) one million dollars (\$1,000,000), (ii) two (2) times the projected cost of the Agreement, or (iii) two (2) times the total amount the Contractor was reimbursed under the Agreement.

The Department does not agree to any indemnification provisions in any documents attached hereto that require the Department or the State of New York to indemnify or save harmless the Contractor or third parties.

Notwithstanding anything to the contrary in the Agreement, neither the Department nor the Contractor shall be liable to the other for any special, consequential, or punitive damages, or loss of profits or revenues, whether such damages are alleged as a result of tort (including strict liability), contract, warranty, or otherwise, arising out of or relating to either Party's acts or omissions under the Agreement."

29.2.0 Section 11 of Appendix B is hereby amended to add the following provision:

"Notwithstanding anything to the contrary in this Agreement, Contractor shall not be required to defend or indemnify the Department to the extent a claim of misappropriation or infringement arises from software, equipment, materials and/or information provided or made available by the Department."

29.3.0 Section 16 of Appendix B is hereby amended to add the following provision:

"Contractor has intellectual property rights in existing technology, and may, in connection with the performance of Services hereunder, utilize this existing technology, including various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques, data, documentation, and proprietary information and processes ("Existing Contractor Technology"), to

perform the Services for DCS hereunder. To the extent that any Existing Contractor Technology is contained in any of the Products, Contractor hereby grants to DCS a perpetual, worldwide, paid-up, royalty-free, nonexclusive license to use such Existing Contractor Technology solely for DCS's use in connection with the Products."

ARTICLE XXX: Business Participation Opportunities for MWBEs:

30.1.0 Section 2.02.3 of the RFP, established an overall goal of 20% for MWBE participation, 12% for Minority-Owned Business Enterprises ("MBE") participation and 8% for Women-Owned Business Enterprises ("WBE") participation for the Project which is the subject matter of the Agreement. In its Proposal, the Contractor requested a total waiver from these goals. On September 21, 2012, the Contractor indicated that the Contractor would seek to utilize the services of appropriate Cornerstone MBE and WBE partners for certain Ad-Hoc services (see Exhibit #2). Based upon the Contractor's representations as set forth in Exhibit #2, the Department is willing to grant and the Contractor agrees to a partial waiver from said goals. The Parties agree that the goals set forth herein above shall not apply to Tasks #1, #2 or Task #3; nor shall the goals apply to any Task #4 Ad Hoc project of a short duration (i.e., expecting to last no more than three weeks), exigent in nature, or where the expected cost to the Department is less than twenty thousand dollars (\$20,000) in total.

IN WITNESS WHEREOF, the Parties hereto have hereunto signed this AGREEMENT on the day and year appearing opposite their respective signatures.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)

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 the _____ 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 the purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

Notary Public

Approved as to form:

Eric T. Schneiderman
ATTORNEY GENERAL

By: _____

Date: _____

Approved:

Thomas P. DiNapoli
STATE COMPTROLLER

By: _____

Date: _____

Appendix A

Placeholder for hardcopy of Appendix A, dated December 2012

A PDF version of the document is embedded below:



Appendix A Dec
2012.pdf

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**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, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital 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
<http://esd.ny.gov/MWBE/directorySearch.html>

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.

Appendix B

Placeholder for hardcopy of Appendix B, dated May 2011

A PDF version of the document is embedded below:



APPENDIX B May
2011.pdf

APPENDIX B
STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

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1. INTEGRATION

The contract executed between the Department and the Contractor (or Purchase Order issued by the Department) is hereinafter referred to as the Agreement. The Agreement, including all Exhibits and Appendices, including this Appendix B, copies of which are attached thereto, and incorporated therein by reference, constitutes the entire agreement between the Parties for the purpose of the fulfillment of Program Services or Project Services. All prior agreements, representations, statements, negotiations and undertakings are superseded hereby.

All statements made by the Department shall be deemed to be representations and not warranties.

2. EXECUTORY PROVISION

Section 112 of the State Finance Law requires that any contract made by a State department which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The Parties recognize that, if the Agreement is for fifty thousand dollars or more, it is wholly executory until and unless approved by the Comptroller of the State of New York.

3. CHOICE OF LAW

The Parties agree that the Agreement shall be interpreted according to the laws of the State of New York, except where the federal supremacy clause requires otherwise. The Contractor shall be required to bring any legal proceeding against the Department arising from the Agreement in New York State courts located in Albany County.

4. DISPUTE RESOLUTION

Except as otherwise provided in the Agreement, any dispute raised by the Contractor concerning any question of fact or law arising under the Agreement which is not disposed of by mutual agreement of the Parties shall be decided initially by the designee of the President of the Civil Service Commission (President). A copy of the written decision shall be furnished to the Contractor. The Parties shall proceed diligently with the performance of the Agreement and shall comply with the provisions of such decision and continue to comply pending further resolution of any such dispute as provided herein. The decision of the designee of the President shall be final and conclusive unless, within ten (10) Days from the receipt of such decision, the Contractor furnishes the President a written appeal. In the event of an appeal, the President shall promptly review the initial decision, and confirm, annul, or modify it. The decision of the President shall be final and conclusive unless, as determined by a court of competent jurisdiction, it violates one of the provisions of section 7803 of the Civil Practice Law and Rules. Pending final decision of any Article 78 proceeding hereunder, both Parties shall proceed diligently with the performance of the Agreement in accordance with the President's decision.

5. WAIVER OF BREACH

No term or provision of the Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by a Party to, or waiver of, a breach under the Agreement shall constitute a consent to, a waiver of, or excuse for any other, different or subsequent breach.

6. NEW YORK STATE REQUIREMENTS

The Contractor acknowledges that it is bound by the terms of Appendix A, Standard Clauses For All New York State Contracts, which is attached and incorporated by reference to the Agreement.

7. OUTSIDE OF SCOPE

The Contractor agrees that any and all work performed outside the scope of the Agreement shall be deemed to be gratuitous and not subject to any charge, cost or payment of any kind.

8. NON-ASSIGNABILITY

Neither the rights nor the obligations of the Contractor under the Agreement may be conveyed, assigned, delegated, or otherwise transferred in any manner whatsoever by the Contractor, either in whole or in part, without the prior written approval of the Department.

9. NOTIFICATION

All notices permitted or required by the Agreement to be given by one Party to the other shall be in writing and shall be transmitted either (1) via certified or registered mail, return receipt requested; (2) by facsimile transmission; (3) by personal delivery; (4) by expedited delivery service; or (5) by e-mail.

10. INDEMNIFICATION

The Contractor agrees to indemnify, defend and save harmless the Department, the State, its officers, agents and employees, for any claims or losses the Department, the State or any individuals may suffer when such claims or losses result from the claims of any person or organization for any and all injuries or damages caused by the negligent acts or omissions of the Contractor, its officers, employees, agents, consultants and/or sub-contractors in performance of the Agreement. Furthermore, the Contractor agrees to indemnify, defend and save harmless the Department and the State, its officers, agents, and employees from any and all claims or losses caused by the acts or omissions of any and all contractors, sub-contractors, consultants and any other persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of the Agreement and from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of the Agreement, and against any loss, damages or actions, including, but not limited to, costs and expenses, for violation of proprietary rights, copyrights, patents, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any material, information or data furnished under the Agreement, or based on any libelous or otherwise unlawful matter contained in such material, information or data, except as otherwise provided in the Article entitled "Patent Copyright or Proprietary Rights Infringement" of this Appendix B.

The Contractor also shall provide indemnification against all losses, and/or cost expenses (including reasonable counsel fees) that may be incurred by reason of the Contractor's breach of any term, provision, covenant, warranty, or representation contained herein and/or in connection with the enforcement of the Agreement or any provision hereof.

The Department does not agree to any indemnification provisions in any documents attached hereto that require the Department or the State of New York to indemnify or save harmless the Contractor or third parties.

Notwithstanding anything to the contrary in the Agreement, neither the Department nor the Contractor shall be liable to the other for any special, consequential, or punitive damages, or loss of profits or revenues, whether such damages are alleged as a result of tort

(including strict liability), contract, warranty, or otherwise, arising out of or relating to either Party's acts or omissions under the Agreement.

11. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT

The Contractor, solely at its expense, shall defend any claim or suit which may be brought against the Department or the State for the infringement of United States patents, copyrights or proprietary rights arising from the Contractor's or the Department's use of any software, equipment, data, materials and/or information of any kind prepared, developed or furnished by the Contractor in connection with performance of the Agreement and, in any such suit, shall satisfy any final judgment for such infringement. The Department shall give the Contractor written notice for such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.

If principles of governmental or public law are involved, the State of New York may participate in the defense of any action identified under this Article, but no costs or expenses shall be incurred upon the account of the Contractor without the Contractor's written consent.

If, in the Contractor's opinion, any software, equipment, data, materials and/or information prepared, developed or furnished by the Contractor is likely to or does become the subject of a claim of infringement of a United States patent, copyright or proprietary right, then, without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Department's prior written approval, substitute other equally suitable software, equipment, materials, data and/or information. In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any software, equipment, materials and/or information under the Agreement infringes on any patent, copyright, or proprietary right, such action shall be forwarded by the Department to the Contractor for defense and indemnification under this Article and to the Office of the Attorney General of the State of New York together with a copy of the Agreement. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the defense and indemnification set forth herein, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York, in writing, and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of the Agreement. The Contractor shall in such event protect the interests of the State of New York and shall take the steps necessary to secure a continuance to permit the State of New York to appear and defend its interest in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses which the State shall have.

12. DATE/TIME WARRANTY

The Contractor warrants that products furnished pursuant to the Agreement shall be able to accurately process, date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific products and/or services must perform as a package or system, this warranty shall apply to the products and/or services as a system.

Where the Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), the Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure, or error due to the inaccuracy of the Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. The Contractor shall be responsible for damages resulting from any delays,

errors, or untimely performance resulting there from, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of the Agreement through a) ninety (90) days or b) the Contractor's or product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under the Agreement for breach of warranty.

13. VIRUS WARRANTY

Product contains no viruses, either known to the Contractor or which reasonably should have been known to the Contractor exercising due diligence. The Contractor is not responsible for viruses introduced at the Department's site.

14. TITLE AND OWNERSHIP WARRANTY

The Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Product(s) transferred to the Department under the Agreement. The Contractor shall be solely liable for any costs of acquisition associated therewith. The Department may require the Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The Department's request or failure to request such documentation shall not relieve the Contractor of liability under this warranty.

15. USE RESTRICTIONS AND INTELLECTUAL PROPERTY

The Parties agree that all work by the Contractor for the Department is intended as work for hire. The Parties agree that the Contractor's work is specifically ordered and commissioned for use as contributions to a collective work, or is other such work as specified by section 101(2) of the U.S. Copyright Act [17 U.S.C. 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York and the Department. Furthermore, the Department and the Contractor agree that the State of New York and the Department are the owners of all copyrights regarding the work. The Contractor warrants to the State of New York and the Department that the Contractor, and all of its subcontractors and their employees, who have been, or may be used in regard to the Agreement, forfeits all past or future claims of title or ownership to the work produced.

Materials such as forms and publications used by the Contractor in the course of its performance under the Agreement which have been agreed upon by the Parties as generic materials are specifically excluded from this provision.

16. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES

For purposes of this Article, the term "Department" is understood to mean the Department acting on behalf of the State.

(A) Definitions

1. Product(s):

A deliverable furnished under the Agreement by or through the Contractor, including existing and custom Product(s), including, but not limited to: a) components of the hardware environment; b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); c) third party software; d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

2. Existing Product(s):
Tangible Product(s) and intangible licensed Product(s) which exist prior to the commencement of work under the Agreement. The Contractor retains the burden of proving that a particular product existed before commencement of the Agreement.
3. Custom Product(s):
Product(s), preliminary, final or otherwise, which are created or developed by the Contractor, or its subcontractors, partners, employees, or agents under the Agreement for the benefit of the Department.

(B) Title to Project Deliverables

The Contractor acknowledges that it is commissioned by the Department to perform services detailed in the Agreement. Unless otherwise specified in writing in the Agreement, the Department shall have ownership and/or license rights as follows:

1. Existing Product(s):
 - a) Hardware - Title and ownership of Existing Hardware Product shall pass to Department upon acceptance.
 - b) Software - Title and ownership to Existing Software Product(s) delivered by the Contractor under the Agreement which is normally commercially distributed on a license basis by the Contractor or other independent software vendor/proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or other independent software vendor/proprietary owner ("ISV"). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless the Contractor advises the Department as part of the Contractor's bid proposal that adaptation will violate existing agreements or statutes and the Contractor demonstrates such to the Department's satisfaction) and distribute Existing Licensed Product to the Department up to the license capacity stated in the work order with all license rights necessary to fully effect the general business purpose(s) stated in the Agreement and (b) recognize the State of New York as the licensee. Where these rights are not otherwise covered by the ISV's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Department shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.
2. Custom Product(s):
Effective upon creation of Custom Product(s), the Contractor hereby conveys, assigns and transfers to State the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Product(s) are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under the Agreement in the course of the Contractor's business.

Where payment for Custom Product does not involve Certificates of Participation (COPS) pursuant to Article 5-A of the State Finance Law or other third party financing, the Department may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of State taking exclusive ownership and title to such Products. In such case, the Department shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated herein.

In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value as determined by the Parties at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the State which complies with the terms of this paragraph.

3. **Documentation, Data & Reports**

The Department shall own title to all documentation, drawings, (e.g., engineering drawings, system diagrams, logic/schematics, plans, reports, training, maintenance or operating manuals), including network design, equipment configurations and other documentation prepared or developed pursuant to the Agreement, whether preliminary, final or otherwise. The Contractor shall deliver to the possession of the Department all work-in-progress documentation as it becomes available, but in no case longer than thirty (30) days after creation.

17. FORCE MAJEURE

Neither Party to the Agreement shall be liable or deemed to be in default for any delay or failure in performance under the Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accident, fire, explosions, earthquakes, floods, the elements, acts or omissions of public utilities or strikes, work stoppages, slowdowns or other labor interruptions due to labor/management disputes involving entities other than the Parties to the Agreement, or any other causes not reasonably foreseeable or beyond the control of a Party. The Parties are required to use best efforts to eliminate or minimize the effect of such events during performance of the Agreement and to resume performance of the Agreement upon termination or cessation of such events.

18. TIME OF THE ESSENCE

The Department and the Contractor acknowledge and agree that time is of the essence for the Contractor's performance under the Agreement.

19. RIGHTS AND REMEDIES

The rights, duties and remedies set forth in the Agreement shall be in addition to, and not in limitation of, rights and obligations otherwise available at law.

20. FEDERAL AND STATE COMPLIANCE

The Contractor shall ensure that its employment practices comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

The Contractor shall ensure compliance with the Americans With Disabilities Act (42 USC §2101 et. seq.) such that programs and services provided during the course of performance of the Agreement shall be accessible under Title II of the Americans With Disabilities Act and as otherwise applicable under the Americans With Disabilities Act.

21. TAXES

It shall be understood that the Department, as an agency of the State of New York, is not liable for the payment of any sales, use, excise, or other form of tax however designated, levied or imposed, and shall agree to reimburse the Contractor for same only if taxes would have been incurred through the Department's normal business operations.

22. INDEPENDENT CONTRACTOR

The Parties agree that the Contractor is an independent contractor, and the Contractor, its officers, employees, agents, consultants and/or sub-contractors in the performance of the Agreement shall act in an independent capacity and not as agents, officers or employees of the State or the Department. Neither the Contractor nor any sub-contractor shall thereby be deemed an agent, officer, or employee of the State. The Contractor agrees, during the term of the Agreement, to maintain at the Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, State, and local taxes, and all FICA contributions.

23. NO THIRD PARTY BENEFICIARIES

Nothing contained in the Agreement, expressed or implied, is intended to confer upon any person, corporation, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Agreement.

24. HEADINGS OR CAPTIONS

The headings or captions contained within the Agreement are intended solely for convenience and reference purposes and shall in no way be deemed to define, limit or describe the scope or intent of the Agreement or any provisions thereof.

25. PARTIAL INVALIDITY

Each Party agrees that it shall perform its obligations under the Agreement in accordance with all applicable federal and State laws, rules, and regulations, policies and/or guidelines now or hereafter in effect. If any term or provision of the Agreement shall be found to be illegal or unenforceable, then, notwithstanding such term or provision, the Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken.

26. CONFLICT OF INTEREST

The Contractor shall ensure that its officers, employees, agents, consultants and/or sub-contractors comply with the requirements of the New York State Public Officers Law ("POL"), as amended, including but not limited to sections 73 and 74, as amended, with regard to ethical standards applicable to State employees, and particularly POL sections 73(8)(a)(i) and (ii) regarding post-employment restrictions affecting former State employees. Additionally, the Contractor shall ensure that no violation of these provisions will occur by reason of the Contractor's proposal for or negotiation and execution of the Agreement or in its delivery of services pursuant to the Agreement. If, during the term of the Agreement, the Contractor becomes aware of a relationship, actual or potential, which may be considered a violation of the POL or which may otherwise be considered a conflict of interest, the Contractor shall notify the Department in writing immediately. Should the Department thereafter determine that such employment is inconsistent with State law; the Department shall so advise the Contractor in writing, specifying its basis for so determining, and may require that the contractual or employment relationship be canceled. Failure to comply with these provisions may result in suspension or cancellation of the Agreement and criminal proceedings as may be required by law.

The Contractor is required to make full disclosure of any circumstances that could affect its ability to perform in complete compliance with the POL. Any questions as to the applicability of these provisions should be addressed by the Contractor to the New York State Ethics Commission, 540 Broadway, Albany, NY 12207 (518) 408-3976.

27. AUDIT AUTHORITY

The Contractor acknowledges that the Department and the Office of the State Comptroller have the authority to conduct financial and performance audits of the Contractor's delivery of Program Services (or Project Services) in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities. Such audit activity may include, but not necessarily be limited to, the review of documentary evidence to determine the accuracy and fairness of all items on the Contractor's submission of claims for payment under the Agreement, and the review of any and all activities relating to the Contractor's performance and administration of the Agreement.

The Contractor shall make available documentary evidence necessary to perform such reviews. Documentation made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation and pertinent contracts and correspondence.

The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the State Comptroller as set forth in Appendix A of the Agreement - Standards Clauses for All New York State Contracts.

28. CONFIDENTIALITY

All records maintained by the Contractor and relating to the Agreement are confidential and shall be used by the Contractor and its officers, employees, and subcontractors or agents solely for the purpose of carrying out its obligations under the Agreement. Except as directed by a court of competent jurisdiction or as may be permitted or required by applicable New York State or federal law or regulations, no such records may be otherwise used or released to any person by the Contractor, its employees, subcontractors or agents, either during the term of the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement.

The Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of services under the Agreement, including any information provided by the Department, except as required by subcontractors or agents solely for the purpose of carrying out obligations under the Agreement or as required by law.

The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or applicable subcontractors contains a provision that conforms strictly to the provisions of this Article.

29. INFORMATION SECURITY REQUIREMENTS

In accordance with the Information Security Breach and Notification Act (ISBNA) (General Business Law §889-aa, State Technology Law §208), Contractor shall be responsible for complying with provisions of the ISBNA and the following terms contained herein with respect to any private information (as defined in ISBNA) received by Contractor under the Agreement (Private Information) that is within the control of the Contractor either on the Department's information security systems or the Contractor's information security system (System). In the event of a breach of the security of the System (as defined by ISBNA),

Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and restore security of the System to prevent any further breaches. Contractor shall also notify the Department of any breach of the security of the System immediately following discovery of such breach.

Except as otherwise instructed by the Department, Contractor shall, to the fullest extent possible, first consult with and receive authorization from the Department prior to notifying any individuals, the State Office of Cyber Security and Critical Infrastructure Coordination (CSCIC), the State Consumer Protection Board and the Office of the Attorney General (OAG) or any consumer reporting agencies of a breach of the security of the System or concerning any determination to delay notification due to law enforcement investigations. Contractor shall be responsible for providing the notice to all such required recipients and for all the costs associated with providing such notice. Contractor shall be liable for any other costs associated with noncompliance of ISBNA if caused by the Contractor or Contractor's agents, officers, employees, or subcontractors. Nothing herein shall in any way impair the authority of the OAG to bring an action against the Contractor to enforce the provisions of ISBNA or limit Contractor's liability for any violation of the ISBNA. Additional information relative to the law and the notification process is available at:
<http://www.cscic.state.ny.us/security/securitybreach>

Contemporaneous with the execution of the Agreement, the Contractor and its designees shall execute the Department's Third Party Connection and Data Exchange Agreement and any other protocol required by the Department, and shall ensure its employees, agents and designees complete the related Third Party Acceptable Use Policy and Agreement if applicable, to ensure the security of data transmissions and other information related to the administration of the Agreement. This request may be waived by the Department in its sole discretion.

30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors have access in the course of the Contractor's performance under the Agreement. For purposes of the Agreement, all State information of which the Contractor, its officers, agents, employees and subcontractors becomes aware during the course of performing services for the Department shall be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

- (a) information that is previously rightfully known to the receiving party without restriction on disclosure;
- (b) information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and
- (c) information that is independently developed by the Contractor without use of confidential information of the State.

The Contractor shall hold the State and the Department harmless from any loss or damage to the State or the Department resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such Confidential Information.

The Contractor shall provide for its officers, agents, employees, and subcontractors to acknowledge and execute a nondisclosure agreement containing substantially the terms described in this Article, if requested to do so by the Department or the State.

This representation shall survive termination of the Agreement.

31. FREEDOM OF INFORMATION LAW

Disclosure of information and material provided to the Department by the Contractor in the course of the Contractor's performance under the Agreement shall be permitted consistent with the laws of the State of New York, and specifically the Freedom of Information Law (FOIL), Article 6 of the Public Officers Law. The Department shall take reasonable steps to protect from public disclosure any of the records relating to the Contractor's performance under the Agreement that otherwise are exempt from disclosure under FOIL.

If the Contractor believes that any information or material provided to the Department constitutes trade secret information that should be exempted from FOIL disclosure, the Contractor must, at the time of the materials' submission, request the exemption in writing, specifically identifying the material by page number, line, or other appropriate designation, and provide a particularized explanation as to why the material constitutes trade secret information and how the disclosure of the identified information would cause substantial injury to the Contractor's competitive position. The material sought to be protected from disclosure must be clearly marked in yellow highlighter, on a duplicate copy of the submission and may be provided in hardcopy or on a CD. Generically marking all material as "Confidential" will not be considered adequate for the purpose of this Article.

The Department's receipt of the Contractor's submission of material and the Contractor's request for protection of the material from FOIL disclosure does not constitute a determination that the information is exempt from disclosure under FOIL. In the event any information or material is requested pursuant to FOIL, the Department will address each party's interests fully in accordance with the procedures required by Article 6 of the Public Officers Law.

32. TERMINATION OF AGREEMENT

In addition to any termination provisions specified elsewhere in the Agreement, the following provisions also shall apply:

The Agreement may be terminated by mutual written agreement of the Parties.

The Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of the Agreement, including any exhibits incorporated herein, provided that the Department shall give the Contractor written notice via registered or certified mail, return receipt requested, or hand delivery, such written notice to specify the Contractor's failure and the termination of the Agreement. Termination shall be effective ten (10) Business Days after receipt of such notice unless the Contractor, in the opinion of the Department, has cured such failure. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination. Upon termination for cause, the Department shall have the right to award a new contract to another contractor. Termination for cause shall create a liability upon the Contractor for actual damages incurred and for all reasonable additional costs incurred in reassigning the Agreement.

The Agreement may be terminated if the Department deems that termination would be in the best interest of the State provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery.

The Agreement may be terminated immediately in the event the Department determines that funds are unavailable. The Department agrees to provide notice to the Contractor as soon as it becomes aware that funds are unavailable in the event of termination under this paragraph. If the initial notice is via oral notification, the Department shall provide written notice immediately thereafter. The Department shall be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination or received either orally or in writing by the Contractor from the Department.

In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion. The Contractor agrees, after consultation with the Department, to cancel such outstanding obligations as the Contractor deems appropriate in the exercise of sound business judgment.

Upon termination of the Agreement each Party shall, if applicable, return to the other all papers, materials, and other properties of the other Party held by each for purposes of performance under the Agreement. In addition, each Party shall assist the other Party in orderly termination of the Agreement and the transfer of all aspects hereof, tangible, and intangible, as may be necessary to ensure the orderly administration of the State program.

33. CONTRACTOR PERSONNEL

The Contractor shall designate an Account Executive, who shall be the contact person for all matters arising under the Agreement.

The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its personnel. These functions shall be carried out by the Contractor in accordance with the provisions of the Agreement and with all applicable federal and State laws and regulations.

The Contractor is required to commit key personnel for the administration of all aspects of the Agreement. In the event that any of the key personnel will be or are unavailable for the performance of their duties, the Contractor will designate and propose to the Department an equally qualified alternate with full authority to act for the unavailable key person.

The Contractor shall notify the Department in writing of any changes in the key personnel designated for performance of the Agreement. This shall include any changes in the personnel designated to bind the Contractor.

The Department reserves the right to demand the reassignment or cancellation of assignment to duties under the Agreement of any Contractor personnel so assigned. The Department shall not exercise the authority unreasonably. The Contractor agrees to replace any employees so reassigned or canceled with an employee of equal or better qualifications. If the Department exercises its right under this provision, it agrees to provide written notice to the Contractor setting forth its reasons with specificity.

34. OPERATIONAL CONTACTS

The Contractor shall maintain appropriate corporate and/or legal authority, which shall include, but not be limited to, the maintenance of an organization capable of delivering Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which Program Services are to be delivered pursuant to the Agreement. The Contractor also shall maintain operations, financial and legal staff that shall be directly available to the Department's operations, financial and legal staff, respectively. For purposes of the Agreement, maintenance of such staff and staff availability by the Contractor shall in no way create any agency relationship between the Department and the Contractor.

The Contractor acknowledges and agrees that no aspect of the Contractor's performance under the Agreement is contingent upon Department personnel or the availability of Department resources, with the exception of all proposed actions of the Contractor specifically identified in the Agreement as requiring the Department approval. With respect to such approval, the Department shall act promptly and in good faith.

The Contractor must cooperate fully with any other contractors who may be engaged by the Department relative to the the Agreement.

The Contractor must ensure that all contacts by the Contractor personnel with other New York State agencies, external organizations (Federal Agencies, Unions, etc.) which result in any charge, cost or payment of any kind, must receive prior written authorization from the Department's Contract Manager.

35. SUBCONTRACTING

If allowed in the solicitation instrument (e.g., Request for Proposal, Invitation for Bids, etc.) that results in the Agreement, the Contractor may arrange for specified portion(s) of its responsibilities under the Agreement to be subcontracted to a Key Subcontractor(s). A "Key Subcontractor" means that vendor(s) with whom the Contractor subcontracts to provide any portion of Program Services. If the Contractor determines to subcontract a portion(s) of Program Services, the Key Subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under the Agreement must be fully explained by the Contractor to the Department. The Contractor retains ultimate responsibility for all Program Services performed under the Agreement.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of the Agreement including, but not be limited to, the body of the Agreement, Appendix A - Standard Clauses For All New York State Contracts, Appendix B - Standard Clauses for All Department Contracts and if applicable as determined by the Department, Appendix C - Third Party Connection and Data Exchange Agreement. Unless waived in writing by the Department, all subcontracts between the Contractor and a Key Subcontractor shall expressly name the State of New York, through the Department, as the sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract with a Key Subcontractor, as well as any amendments to said subcontract(s), and this right shall not make the Department or the State of New York a party to any subcontract or create any right, claim, or interest in the Key Subcontractor or proposed Key Subcontractor against the Department.

The Department reserves the right, at any time during the term of the Agreement, to verify that the written subcontract between the Contractor and Key Subcontractor(s) is in compliance with all of the provision of this Article and any subcontract provisions contained in the Agreement. In addition to other remedies allowed by law, the Department reserves the right to terminate the Agreement for cause if an executed subcontract does not contain all of the provisions/statements stipulated above. If during the term of the Agreement, any executed subcontract between the Contractor and a Key Subcontractor is amended, the Contractor shall, within 30 calendar days of such amendment, provide a copy to the Department.

The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a Key Subcontractor or which may affect the performance of the Contractor's duties under the Agreement. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the Agreement.

36. PUBLICITY AND COMMUNICATIONS

The Contractor shall ensure that all requests for the Contractor's participation in events where the Contractor will be participating on behalf of the Department receive prior written authorization from the Department.

No public discussion or news releases relating to the Agreement shall be made or authorized by the Contractor or the Contractor's agent without the prior written approval of the Department, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Agreement 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.

37. CONSULTANT DISCLOSURE REQUIREMENTS

Unless directed otherwise by the Department, the Contractor shall demonstrate its compliance with Chapter 10 of the Laws of 2006 throughout the term of the Agreement by submitting to the Department and to the Office of the State Comptroller a "State Consultant Services - Contractor's Annual Employment Report" for each State Fiscal Year. Such report shall be due no later than May 15th of each year following the end of the State Fiscal Year being reported. Such report shall be required of any contract that includes services for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health and mental health services, accounting, auditing, paralegal, legal, or similar services. Such report shall conform with Bulletin No. G-226 - Form B as issued by the Office of the State Comptroller. The report must be submitted to the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th floor, Albany, NY 12236, ATTN: Consultant Reporting; and to the Department's Contract Manager.

38. PROCUREMENT LOBBYING RESTRICTIONS UNDER STATE FINANCE LAW SECTIONS 139-j AND 139-k

The Contractor certifies that all information that it has provided or will provide to the Department pursuant to State Finance Law sections 139-j and 139-k is complete, true, and accurate, including but not limited to information regarding prior determinations of non-responsibility within the past four years based upon (i) impermissible contacts of other violations of SFL section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity.

The Department reserves the right to terminate the Agreement in the event it is found that the Contractor's certification of its compliance with SFL sections 139-j or 139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its right to terminate the Agreement by providing written notification to the Contractor in accordance with Article 9 of this Appendix B.

39. VENDOR RESPONSIBILITY

The Contractor is required to provide the Department with an updated Vendor Responsibility Questionnaire when requested to do so by the Department throughout the term of the Agreement. Regardless, the Contractor is required to report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.

40. TAX LAW SECTION 5-A - CERTIFICATION REGARDING SALES AND COMPENSATING USE TAXES

In the event the value of the Agreement exceeds \$100,000, the Contractor must file a properly completed Form ST-220-CA with the Department and a properly completed Form ST-220-TD with the Department of Taxation & Finance before the Agreement may take effect.

In addition, after the Agreement has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if the Agreement's term is renewed; further, a new Form ST-220-TD must be filed with the Department of Taxation & Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete.

41. CONTRACT PAYMENT

Contractor shall provide complete and accurate billing invoices to the Department in order to receive payment. Billing invoices submitted to the Department must contain all information and supporting documentation required by the Agreement, the Department and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under the Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

May 2011

Appendix C

Placeholder for hardcopy of Appendix C, dated April 2006.



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

THIS AGREEMENT (the "Agreement") by and between the NYS Department of Civil Service ("DCS"), with principal offices in Albany, NY 12239, and

Aon Consulting, Inc.

with principal offices at

200 East Randolph, Chicago, IL 60601

(hereinafter "Third Party"), is entered into as of the date last written below ("the Effective Date").

This Agreement consists of this signature page and the following attachments incorporated by reference:

1. Attachment 1: Third Party Connection and Data Exchange Agreement Terms and Conditions
2. Attachment 2: Third Party Connection and Data Exchange Request Requirements Document
3. Attachment 3: Third Party Acceptable Use Policy and Agreement
4. Attachment 4: DCS Equipment Loan Agreement (Applicable: Yes No)

This Agreement may only be modified by a written document executed by the parties hereto. Any disputes arising out of or in connection with this Agreement shall be governed by New York State law without regard to choice of law provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Agreement.

Third Party Name: Aon Consulting, Inc.	NYS Department of Civil Service (DCS)
Authorized Signature 	Authorized Signature
Name (Print) John A. Mikowski	Name (Print) DEIRDREA TAYLOR
Date 12/19/12	Date 3.1.13



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 1 – SECURITY REQUIREMENTS

1. *Right to Use Connection*

Third Party may only use the connection and the information obtained from DCS for business purposes as outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2).

2. *Data Exchange*

2.1 Third Party may only use the data obtained for purposes outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2) and the contract or Memoranda of Understanding, if any, that exists between DCS and Third Party for the provision of goods or services or governing conduct between DCS and Third Party with respect to the access to and use of DCS data.

2.2 Data exchange may be conducted only by methods and/or services outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2). Third Party should expect that access to information and services may be limited, as determined or required by DCS.

3. *Network Security*

3.1 Third Party will allow only its own employees approved in advance by DCS (“Third Party Users”) to access the Network Connection or any DCS-owned equipment. Third Party shall be solely responsible for ensuring that Third Party Users are not security risks, and upon DCS’ request, Third Party will provide DCS with any information reasonably necessary for DCS to evaluate security issues relating to any Third Party User.

3.2 Third Party will promptly notify DCS whenever any Third Party User leaves Third Party’s employ or no longer requires access to the connection or DCS-owned Equipment.

3.3 Each Party will be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (a) such party’s use of the connection (and Third Party’s use of DCS-owned Equipment) is secure and is used only for authorized purposes, and (b) such Party’s business records and data are protected against improper access, use, loss alteration or destruction.

3.4 The preferred connectivity method is via the Internet to a DCS-approved or DCS-provided Virtual Private Network (VPN) device. If the device is DCS-provided, DCS will loan the Third Party, in accordance with the DCS Equipment Loan Agreement, the required client software for establishing VPN connections with DCS. Normal DCS perimeter security measures will control access to the internal network.

3.5 Extranet – Designated routers are used in combination with firewall rules to allow access to be managed. A second authentication may be required.



- 3.6 Remote Access - Using the DCS-provided remote access software, Third Party will connect via an Internet browser. The account may be disabled until usage is required and controls are placed and managed by DCS. Third Party will be required to follow procedures to enable the account for each use.
- 3.7 Third Party Connections will be audited. All remote access user accounts for Third Parties will be given an expiration time. Renewals must be requested by Third Party and approved by the Department Sponsor. Obsolete Third Party connections will be terminated.
- 3.8 Software versions on all Third Party computers that connect to the DCS network must be versions that are currently supported by the software manufacturer, and all available security updates and hot fixes for that software must be applied in a timely fashion. Software and firmware for all Third Party networking equipment that is part of the connection to the DCS network must be kept up to date, especially with patches that fix security vulnerabilities.
- 3.9 Anti-virus software and firewalls must be installed and enabled at all times on DCS-owned computers and on Third Party computers that connect to the DCS network. Additionally, virus definition files must be kept up to date.
- 3.10 In no case may a Third Party Connection to DCS be used as an Internet Connection for Third Party or for a Third Party User.

4. Notifications

- 4.1 Third Party shall notify DCS in writing promptly of any change in its Users for the work performed over the Network Connection or whenever Third Party believes a change in the connection and/or functional requirements of the connection is necessary.
- 4.2 Any notices required by this Agreement shall be given in hand, sent by first class mail, or via facsimile to the applicable address set forth below.

Third Party Name:	NYS Department of Civil Service Albany, New York 12239
Address:	
Attention:	Attention: Anne Hopko



5. *Citizen Notifications*

If Third Party maintains "identifying personal information" on behalf of the Department and such information is compromised, Third Party shall notify the Department immediately that the information has been compromised, the circumstances under which the information was compromised, and the measures undertaken by Third Party to address those circumstances and to otherwise mitigate the effects of the compromise. If encrypted data is compromised along with the corresponding encryption key and encryption software, the data shall be considered unencrypted and the information will be considered compromised through unauthorized access. If the Department requests Third Party to do so, Third Party shall notify the persons whose identifying information was compromised. Such notification shall be communicated via postal service or email, as directed by the Department, and shall otherwise be executed in accordance with the Department's direction. Notification shall be delayed if a law enforcement agency determines that such notification may impede a criminal investigation. For the purpose of this section, "identifying personal information" shall be any information concerning an individual which, because of name, number, symbol, mark or other identifier in combination with any of the following, is unencrypted: (1) Social Security Number; or (2) driver's license number; or (3) financial account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual's financial account; or (4) password which would permit access to the individual's account.

6. *Payment of Costs*

Each Party will be responsible for all costs incurred by that Party under this Agreement, including, without limitation, costs for phone charges, telecommunications equipment and personnel for maintaining the connection.

7. *Confidentiality*

- 7.1 Information exchanged for the business purposes outlined in Attachment 2 will be held confidential by the Parties to the maximum extent permitted by law. Each Party may internally use the information received from the other Party hereunder in connection with and as specifically necessary to accomplish the Business Purpose set forth in Attachment 2 and for no other purposes. Each Party may otherwise share such information with other third parties (e.g. consultants, subcontractors, control agencies) as required or permitted by law in order to effect the business purposes outlined in Attachment 2 and for no other purposes, provided that such third parties agree to the confidentiality restrictions set forth herein and as may be required otherwise by State and federal law.
- 7.2 Third Party must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the sensitive information that it creates, receives, maintains, or transmits on behalf of DCS.
- 7.3 Unencrypted DCS information must not be transmitted over email.
- 7.4 Third Party must ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it and report to the DCS Help Desk any security incident of which it becomes aware.



8. *Third Party Users*

- 8.1 Third Party must require that each Third Party User executes a Third Party Acceptable Use Policy and Agreement (Attachment 3). Third Party must ensure that DCS is notified by fax or mail when the user base changes, following the specifications in the Third Party Connection & Data Exchange Agreement.
- 8.2 All aspects of Third Party connections within DCS control may be monitored by the appropriate DCS support group and/or the DCS Information Security Officer. Any unauthorized use or change to devices will be investigated immediately.
- 8.3 All Third Party Connections will be reviewed on a regular basis and information regarding specific Third Party connection will be updated as necessary. Obsolete Third Party connections will be terminated.

9. *DCS-owned Equipment*

- 9.1 DCS may, in DCS' sole discretion, loan to Third Party certain equipment and/or software for use on Third Party premises (the DCS-owned Equipment) under the terms of the DCS Equipment Loan Agreement set forth in Attachment 4. DCS-owned equipment will only be configured for TCP/IP, and will be used solely by Third Party on Third Party's premises or other locations authorized by DCS for the purposes set forth in this Agreement. DCS is responsible for ensuring that it has the right under applicable software licenses to permit third party use.
- 9.2 Third Party may modify the configuration of the DCS-owned equipment only after notification and approval in writing by authorized DCS personnel.
- 9.3 Third Party will not change or delete any passwords set on DCS-owned equipment without prior approval by authorized DCS personnel. Promptly upon any such change, Third Party shall provide DCS with such changed password.

10. *Term, Termination and Survival*

- 10.1 This Agreement will remain in effect until terminated by either Party, but in no event prior to the termination or expiration of any contract or agreement between the Parties for the purchase of goods or services that provides the business purpose for the exchange of data between the Parties, unless both Parties mutually agree to so terminate this Agreement.
- 10.2 Upon termination, Third Party shall return all tangible DCS data to DCS within a timeframe specified by DCS for that purpose, and further shall certify in writing to DCS that all other DCS data in whatever form has been destroyed. Additionally, any DCS-owned equipment and/or software shall be promptly returned to DCS at Third Party's expense.
- 10.3 Notwithstanding the above, the Parties' obligations to safeguard the confidentiality of the data subject to this Agreement shall survive the termination of this Agreement, and shall bind the Parties' employees, subcontractors, agents, heirs, successors and assigns.



11. Severability

If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect.

12. Waiver

The failure of any Party to enforce any of the provisions of this Agreement will not be construed to be a waiver of the right of such Party thereafter to enforce such provisions.

13. Assignment

Third Party may not assign this Agreement, in whole or in part, without the prior written consent from DCS. Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement is for the benefit of and will be binding upon the parties' respective successors and permitted assigns.

14. Force Majeure

Neither Party will be liable for any failure to perform its obligations if such failure results from any act of God or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents such party from transmitting or receiving any data.

15. Partial Invalidity

If this Agreement is entered into as a consequence of Third Party's provision of goods or services to DCS pursuant to a contract or other written agreement, that Agreement supersedes this Agreement to the extent the agreements' provisions may be inconsistent.

July 2005



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 2 – REQUEST REQUIREMENTS

In accordance with the DCS *Third Party Connection and Data Exchange Policy*, all requests for Third Party connections and data exchanges must be accompanied by this completed requirements document. This document should be completed by the DCS person or group requesting the Third Party connection and/or data exchange. The DCS Department Sponsor must be the Director of the Division whose business requires the Third Party connection and/or data exchange. DCS Divisions are encouraged to work with their IRM Liaison to complete the information in this document.

Part 1 – Business Justification

A. DCS Sponsor (*Division Director*)

Name:

Robert DuBois

Office Location:

Albany, NY 12239

Email Address:

[Redacted]

Division:

Employee Benefits Division

Phone Number:

[Redacted]

Back-up Point of Contact: (Data Custodian)

Name:

Barbara Vaughn

Office Location:

Albany, NY 12239

Email Address:

[Redacted]

Division:

Employee Benefits Division

Phone Number:

[Redacted]

B. Business Reason for Connection (*To be completed by Sponsor*)

State the purpose of establishing the connection and the purpose of the data transmission. Specify the business needs of the proposed connection. Use additional sheets of paper if needed.

Aon Consulting will provide benefit management and actuarial services to be used by the Department of Civil Service in support of the Department’s the administration, management and oversight of the NYS Health Insurance Program (NYSHIP) components.

C. Specify the details of the work to be accomplished via the connection. What applications will be used? What information will be used? What transactions will be accomplished?

Exchange of claims and financial data related to the benefits provided through the New York State Health Insurance Program (NYSHIP):



D. Specify the Third Party Controls to be Implemented for Safeguarding DCS Data:
Access Controls:

Audit Controls:

Working procedures or practices for handling printed material and verbal exchanges:

Method of Disposal of media and paper:

User Account Management, including review of accounts:

Physical Security:

Other:

E. Estimated number of hours of use each week?

1 – 20

21 – 40

More than 40 hours per week

F. Anticipated normal hours of use?

M – F, 8:00 – 5:00 pm Eastern time

Other (specify):

G. What is the requested installation date? (Minimum lead-time is 30 days)

H. Approximately how long will the connection be needed?

Up to 6 months

6 – 12 months

More than 12 months

Specific time period:



Note: If a connection is needed for more than a year, the Connection Agreement must be renewed annually.

I. Other useful information

J. Third Party Information

Name of Third Party:

Main Phone Number:

Main Office Address:

Management Contact

Name:

Department:

Address:

Email Address:

Phone Number:

Manager's Name:

Manager's Phone:

Backup Contact

Name:

Department:

Address:

Email Address:

Phone Number:

Manager's Name:

Manager's Phone:

Technical Contact

Name:

Department:

Address:

Email Address:

Phone Number:

Manager's Name:

Manager's Phone:

Technical Support Hours:

Escalation List:

Domain name(s):

Host name(s):



User Names and Contact Information. (*List all employees of the Third Party who will use this access.*)

User 1 (*name, phone, email*):

User 2 (*name, phone, email*):

User 3 (*name, phone, email*):

User 4 (*name, phone, email*):

User 5 (*name, phone, email*):

User 6 (*name, phone, email*):

User 7 (*name, phone, email*):

User 8 (*name, phone, email*):

User 9 (*name, phone, email*):

User 10 (*name, phone, email*):

K. Other information

July 2005



State of New York
 Department of Civil Service
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 3 – Third Party Acceptable Use Policy and Agreement
 ADM-125 (4/06)

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):			
Organization:			
Telephone Number:	Area code	Number	Extension
Office Address:			

The undersigned acknowledges that he or she has read, understands, and agrees to comply with this Third Party Acceptable Use Policy and Agreement governing the use of DCS computing resources.

User Signature:	Date:
-----------------	-------

You must sign this signature page and send it to DCS. Retain a copy of the signature page and the attached Policy for your records. This form must be delivered either by fax or mail to:

MAIL: NYS Department of Civil Service, Albany, NY 12239
 Attention: Help Desk

FAX: [Redacted]



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

I. *Protection of DCS Information*

All records and information maintained in DCS systems accessed by the User are confidential and shall be used by the User solely for the purpose of carrying out the User's official duties. Users may not use any such records and information for any other purpose. No such records or information may otherwise be used or released to any person by the User or by the User's employer or agent, except as may be required by applicable State or federal law or by a court of competent jurisdiction. All accounts and connections will be regularly reviewed.

II. *DCS Log-on Banner*

All users will follow the guidelines of the DCS Log-on Banner as stated below.

NOTICE * The contents of this banner have been recommended to all State agencies by the Office for Technology in the NYS Preferred Standards and Procedures for Information Security. * This electronic system, which includes hardware, software and network components and all data contained therein (the "system"), is the property of the New York State Department of Civil Service (DCS). * Unauthorized use or attempted unauthorized use of this system is not permitted and may constitute a federal or state crime. Such use may subject you to appropriate disciplinary and/or criminal action. Use of this system is only permitted to the extent authorized by DCS. * Use is limited to conducting official business of DCS. Under the Electronic Communications Privacy Act of 1986 (18 U.S.C. 2510, et seq.), notice is hereby given that there are NO facilities provided by this system for sending or receiving private confidential electronic communication. Any use, whether authorized or not, may be monitored, intercepted, recorded, read, copied, accessed or captured in any manner, and used or disclosed in any manner, by authorized DCS personnel without additional prior notice to users. In this regard, users have no legitimate expectation of privacy during any use of this system or in any data on this system. * Use, whether authorized or unauthorized, constitutes expressed consent for DCS to monitor, intercept, record, read, copy, access or capture and use or disclose such information. * DCS policy regarding this matter can be reviewed on the DCS internal website. Copies can also be obtained from the Office of Human Resources Management. Such policies are subject to revision. This notice is consistent with the Acceptable Use Policy issued to DCS employees regarding acceptable use, June 15, 2005. I have read and understand this notification and department policy.

III. *Passwords*

The User is not permitted to share his/her password with anyone. Passwords must never be written down. The User must not use the same password for multiple applications. The User must use passwords that are not easily guessed and must not use their email address as their password.



IV. *Shared Accounts*

All use of shared accounts must be authorized by DCS. Users of shared accounts must be identified to DCS via the completion and signing of this policy/agreement. Third Parties are responsible for notification to DCS when the user base changes. Passwords for shared accounts must not be provided to individuals who have not been identified by Third Party to DCS and who have not completed and signed this policy/agreement.

V. *Virus Protection*

Anti-virus software must be installed and enabled at all times on DCS-owned computers and on third party computers used to conduct DCS business. Virus definition files must be kept up to date. DCS Information Resource Management (IRM) provides anti-virus software and maintains the configuration of that software for all DCS-owned computers.

VI. *Acceptable Use*

DCS computers, computing systems and their associated communication systems are provided to support the official business of DCS. All uses inconsistent with DCS' business activities and administrative objectives are considered to be inappropriate use.

Examples of unacceptable behavior include, but are not limited to the following.

- Any illegal activities that could result in legal actions against and/or financial damage to DCS.
- Computer usage that reasonably harasses or offends other employees, users, or outsiders, or results in public embarrassment to DCS.
- Computer usage that is not specifically approved and which consumes significant amounts of computer resources not commensurate with its benefit to DCS' mission or which interferes with the performance of a worker's assigned job responsibilities.
- Use in connection with compensated outside work or unauthorized not-for-profit business activities.
- Use of sniffers, spyware, ad-ware or other related technology.

VII. *Software Protection*

The User is responsible for complying with copyright, licensing, trademark protection, and fair use restrictions.

VIII. *Reporting Incidents*

Users are required to report incidents of system errors, data discrepancies, application performance problems, to the DCS Help Desk, at 518-457-5406 phone; 518-485-5588 fax.



IX. *DCS Rights*

Pursuant to the Electronic Communications Privacy Act of 1986 (18 USC 2510 et seq.), notice is hereby given that there are no facilities provided by this system for sending or receiving private or confidential electronic communications. DCS has access to all access attempts, messages created and received, and information created or stored using DCS resources, and will monitor use as necessary to assure efficient performance and appropriate use. Information relating to or in support of illegal activities will be reported to the appropriate authorities.

DCS reserves the right to log and monitor use. DCS reserves the right to remove a user account from the network. DCS assumes no responsibility or liability for files or information deleted.

The DCS will not be responsible for any damages. This includes the loss of data resulting from delays, non-deliveries, or service interruptions caused by negligence, errors or omissions, or caused by the way the user chooses to use DCS computing facilities.

DCS reserves the right to change its policies and rules at any time.

X. *Penalties*

The User shall hold the State and DCS harmless from any loss or damage to the State and/or DCS resulting from the User's inappropriate disclosure of information covered by this User Agreement. Further, the User's non-compliance with this Agreement may result in the revocation of system privileges, termination of employment or contract with DCS, and/or criminal and/or civil penalties.

July 2005



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 4 –Equipment Loan Agreement
 ADM-125 (4/06)

Name And Address Of Borrower	DCS Business Unit (Loaning Organization)	
	Point Of Contact	
	Work Location	Telephone
Shipping Address (If different from borrower's)	Manager's Name	
	Date To Be Loaned	
	Date To Be Returned	
Equipment To Be Loaned		
Quantity	Description	Value
Purpose Of Loan		
CONDITIONS OF LOAN		
<ol style="list-style-type: none"> 1. The Borrower of the above equipment agrees to return same in like condition as received from DCS, normal wear and tear excepted, on or before the above return date, unless the loan period is formally extended. 2. Upon termination of this Agreement, Borrower shall uninstall all DCS software included in this Agreement from Borrower's computer and/or network equipment. 3. The Borrower shall not make any copies of DCS software included in this Agreement. 4. In case of loss or damage beyond repair, DCS shall be reimbursed by Borrower at the current price of replacement. 5. The equipment shall not be loaned or transferred to a third party without the written consent of DCS. 6. The right is reserved to cancel the loan or recall the equipment upon ____ days notice. 7. The Borrower shall assume all shipping and/or transportation costs involved. 8. Other conditions: 		



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 4 –Equipment Loan Agreement
 ADM-125 (4/06)

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Agreed (Borrower)	Approved (DCS)
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date
RECEIPT OF EQUIPMENT	
Borrower (Upon initial receipt)	DCS Lender (Upon termination of Agreement)
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date

July 2005

Appendix D

Placeholder for hardcopy of Appendix D

A PDF version of the document is embedded below:



Appendix D.pdf

Appendix D - Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures

The provisions stated herein this Appendix D, entitled "Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures" are required for all "State contracts", as defined in §310 of Article 15-A of the NYS Executive Law as set forth below, entered into by the Department:

"13. "State contract" shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars, whereby a contracting agency is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; (b) a written agreement in excess of one hundred thousand dollars 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; and (c) a written agreement in excess of one hundred thousand dollars 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."

Notwithstanding the above, per §317 of Article 15-A the NYS Executive Law, nothing contained in this Appendix D "shall be construed to limit, impair, or otherwise restrict any state agency's authority or discretionary power in effect prior to the enactment of this Article to establish or continue, by rule, regulation or resolution, an equal opportunity program or a program for securing participation of minority and women-owned business enterprises with regard to banking relationships, the issuance of insurance policies or contracts for the sale of bonds, notes or other securities; and, provided further, that nothing contained in the immediately preceding proviso shall be construed to create, impair, alter, limit, modify, enlarge, abrogate or restrict any agency's authority or discretionary power with respect to an equal opportunity program or a program for securing participation of minority and women-owned enterprises."

I. General Provisions

- A. The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("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.
- B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the "Department"), to fully comply and cooperate with the Department 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"). 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.
- C. 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 Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of the Procurement that results in the Contract, the Department established an overall goal for Minority and Women-Owned Business Enterprises ("MWBE") participation, and separate Minority-Owned Business Enterprises ("MBE") participation and Women-Owned Business Enterprises ("WBE") participation goals (based on the current availability of qualified MBEs and WBEs) as set forth in the Procurement solicitation document.

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in section II-A above, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:
<http://www.nylovesmwbe.ny.gov/cf/search.cfm>

Additionally, 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 this Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, 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 Contractor 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 the Department for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. 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. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and subcontractors 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 the Department within seventy two (72) hours after the date of the notice by Department of proposed award of the Contract to the Contractor.
 3. If Contractor or subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or subcontractor a model statement (see Form EEO-102 entitled "Minority and Women-Owned Business Enterprises M/WBE - Equal Employment Opportunity (EEO) 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 sections (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 EEO-100 – EEO Staffing Plan

To ensure compliance with this section III, the Contractor shall submit an EEO 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. The Contractor shall complete the EEO Staffing Plan form and submit it as part of its Proposal or within a reasonable time, but no later than the time of proposed award of the Contract.

D. Form EEO-101 - Workforce Utilization/Compliance Report ("Workforce Report")

- 1. Once proposed contract award has been made and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted EEO 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 performing work on the Contract.
- 3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, 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 Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.

- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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 Form (MWBE-100) and Certification of Good Faith Efforts (MWBE-104).

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (form MWBE-100) either prior to, or at the time of, the execution of the Contract. The Contractor shall ensure that enterprises have been identified within the MWBE Utilization Plan, and the Contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent indicated in the Contractor's MWBE Utilization Plan. The Contractor must document "good faith efforts" to provide meaningful participation by New York State Certified MWBE subcontractors or suppliers in the performance of the Contract. In support of such efforts, the Contractor will include with its MWBE-100 submission a Certification of Good Faith Efforts statement (form MWBE-104).

- B. 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 D.
- C. 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, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waiver Requests (MWBE-101)

- A. For Waiver Requests Contractor should use Form MWBE-101 – Request for Waiver Form.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver Form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the Waiver Request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Department, upon review of the MWBE Utilization Plan and updated Quarterly M/WBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department 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 M/WBE Contractor Compliance Report (Form MWBE-103)

Contractor is required to submit a Quarterly M/WBE Contractor Compliance Report (Form MWBE-103) to the Department 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 Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department 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 the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department 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 the Department.

VII. Further Information:

General questions concerning New York's MWBE program should be directed to:

New York State Department of Economic Development
633 Third Avenue
New York, NY 10017

[REDACTED]

New York State Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl Street
Albany, NY 12245

[REDACTED]

All of the EEO and M/WBE forms referenced herein this Appendix D are available for download at the Department's website at: <http://www.cs.ny.gov/pio/mwbe-eeo-forms.cfm>). These forms are to be submitted without change to the goals specified by Department in the Contract.

Attachments:

1. EEO Staffing Plan (form EEO-100)
2. Workforce Utilization/Compliance Report (form EEO-101)
3. Minority and Women-Owned Business Enterprises M/WBE - Equal Employment Opportunity (EEO) Policy Statement (EEO-102)
4. MWBE Utilization Plan (form MWBE-100)
5. Request for Waiver Form (form MWBE-101)
6. Quarterly M/WBE Contractor Compliance Reports (MWBE-103)
7. Certification of its Good Faith Efforts (form MWBE-104)

RFP and Department Official Responses to Offerors' Questions

Placeholder for hardcopy the RFP and the Department's Official Responses to Offerors' Questions dated April 18, 2012

PDF versions of the documents have not been embedded as each document contains embedded electronic copies themselves

Contractor's Proposal

Placeholder for hardcopy the Contractor's Proposal dated May 31, 2012 and the Contractor's Clarification Responses of June 25, 2012 Response to Clarification Request #1 dated June 21, 2012; and June 28, 2012 Response to Clarification Request #2 dated June 28, 2012.

Exhibit #1 – The Contractor’s Fee Schedules:

Task #1 – Premium Rate Renewals and Plan Funding Requirements

**Exhibit R, Form 1
Page 1 of 1**

Period	1/1/2013 – 12/31/2013 (Year 1)			1/1/2014 – 12/31/2014 (Year 2)			1/1/2015 – 12/31/2015 (Year 3)		
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost
Principal									
Lead Consultant									
Consultant									
Analyst									
Not-To-Exceed Total Cost									

Period	1/1/2016 – 12/31/2016 (Year 4)			1/1/2017 – 12/31/2017 (Year 5)			Task #1 Five Year Total
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	(=Sum of Years 1 – 5 Not-To-Exceed Total Cost amounts)
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

Task #2 – Quarterly Analysis

Exhibit R, Form 2
Page 1 of 2

Year 1 (1/1/2013 – 12/31/2013)	1 st Quarter 2013			4 th Quarter 2013			Year 1 Totals ⁽¹⁾
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	
Position Title							
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

⁽¹⁾ = Sum of 1st Quarter 2013 and 4th Quarter 2013 Not-To-Exceed Total Cost amounts.

Year 2 (1/1/2014 – 12/31/2014)	1 st Quarter 2014			4 th Quarter 2014			Year 2 Totals ⁽¹⁾
	Fixed Hourly Rate	# Hours	Total Projected Costs	Fixed Hourly Rate	# Hours	Total Projected Cost	
Position Title							
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

⁽¹⁾ = Sum of 1st and 4th Quarter Not-To-Exceed Total Cost amounts.

Year 3 (1/1/2015 – 12/31/2015)	1 st Quarter 2015			4 th Quarter 2015			Year 3 Totals ⁽¹⁾
	Fixed Hourly Rate	# Hours	Total Projected Costs	Fixed Hourly Rate	# Hours	Total Projected Cost	
Position Title							
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

⁽¹⁾ = Sum of 1st and 4th Quarter Not-To-Exceed Total Cost amounts.

Task #2 – Quarterly Analysis

Year 4 (1/1/2016 – 12/31/2016)	1 st Quarter 2016			4 th Quarter 2016			Year 4 Totals ⁽¹⁾
	Fixed Hourly Rate	# Hours	Total Projected Costs	Fixed Hourly Rate	# Hours	Total Projected Cost	
Position Title							
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

(1) = Sum of 1st and 4th Quarter Not-To-Exceed Total Cost amounts.

Year 5 (1/1/2017 – 12/31/2017)	1 st Quarter 2017			4 th Quarter 2017			Year 5 Totals ⁽¹⁾
	Fixed Hourly Rate	# Hours	Total Projected Costs	Fixed Hourly Rate	# Hours	Total Projected Cost	
Position Title							
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

(1) = Sum of 1st and 4th Quarter Not-To-Exceed Total Cost amounts.

Task #2 Five Year Total amount ⁽²⁾	
--	--

(2) = Sum of Year 1 Total amount through Year 5 Totals amount.

Tasks #3 and #4 – GASB 45 Valuation and Ad Hoc Projects Fixed Hourly Rates

**Exhibit R, Form 3
Page 1 of 1**

Fixed Hourly Rates					
Position Title	Year 1 (1/1/2013 - 12/31/2013)	Year 2 (1/1/2014 - 12/31/2014)	Year 3 (1/1/2015 - 12/31/2015)	Year 4 (1/1/2016 - 12/31/2016)	Year 5 (1/1/2017 - 12/31/2017)
Principal					
Lead Consultant					
Consultant					
Analyst					

Task #3 Projected Hours Per Position Per Activity

Projected Hours Per Position Task #3 Activity					
Position Title	2013 Year Two Roll Forward Report	2014 Valuation Report	2015 Year Two Roll Forward Report	2016 Valuation Report	2017 Year Two Roll Forward Report
Principal					
Lead Consultant					
Consultant					
Analyst					

Exhibit #2 – Business Participation Opportunities for MWBEs

DATE: September 21, 2012

TO: David Pettit, ABMC Procurement Manager, New York State Dept. of Civil Service

FROM: James Christ, Aon Hewitt

cc: Edward W. Fox, Aon Hewitt

RE: MWBE Participation Goals - Request for Proposals - ACTUARIAL AND BENEFITS MANAGEMENT CONSULTING SERVICES (2012ABMC-1) -- Aon's Request for a Total Waiver

NYS Comment

The above referenced RFP contained the following statements as regards MWBE subcontractor/supplier participation goals:

"For purposes of this Procurement, the Department hereby establishes an overall goal of 20% for MWBE participation, 12% for Minority-Owned Business Enterprises ("MBE") participation and 8% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that the Department may withhold payment pending receipt of the required MWBE documentation."

The RFP further stated, in part:

"By submitting a Proposal, the Offeror/Contractor agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. *Offerors are required to submit a MWBE Utilization Plan (form MWBE-100) (see Attachment A for a copy of Aon's MWBE-100 submission) and a Certification of Good Faith Efforts (form MWBE-104) (see Attachment B for a copy of Aon's MWBE -104 submission) with their Proposal."*

Appendix D of the RFP also states, as regards waiver requests the following:

"Waiver Requests (MWBE-101)

- A. *For Waiver Requests Contractor should use Form MWBE-101 – Request for Waiver Form (see Attachment C for a copy of Aon's MWBE-100 submission).*
- B. *If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver Form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the Waiver Request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt."*

Issue:

As set forth in its MWBE-101 submission, Aon is seeking a total waiver from compliance with the RFP MWBE participation goals. However, in its Proposal Aon stated the following:

"Aon understands the importance of diversity and inclusion and has made great contributions in the utilization of MWBE organizations across the nation for a number of years. In fact, our commitment runs deeper than simply checking a box. In February of 2009 Aon Corporation launched a dedicated business unit charged with going out into the market place and proactively developing/fostering relationships with diverse businesses to address the specific diversity and inclusion needs of our clients across the nation. This business unit operating under the name "Aon Cornerstone Innovative Solutions" brings together the global risk and human capital resources of Aon with the knowledge and experience of top diverse partners to deliver distinctive value for clients. Through this approach we:

- Create an established infrastructure to work with qualified fully vetted diverse insurance brokers and human capital consultants, ensuring that you along with our Aon affiliates are working with the top firms in the industry to achieve your diversity goals and objectives*
- Provide access to training and Aon conducted forums highlighting relative information that may impact our clients which enables our certified diverse partners and carriers to deliver the highest value for your organization while gaining invaluable industry insight*
- Provide innovative implementation options, products and services that can be adapted to meet your specific business needs*
- Deliver a best in class team of professionals (Both Aon and MWBE partners) that not only meet your risk and human capital needs but are representative of the client base you serve.*
- Assist our clients and customers in achieving their diversity goals and supplier diversity spend objectives.*
- Enhance the perpetuation of certified minority business enterprises in the insurance and consulting marketplace.*

While Aon Hewitt does not contemplate using subcontractors for core Tasks #1, #2 and #3, we would seek to use resources from our Cornerstone group for Ad Hoc (Task #4) consulting services for the State of New York."

In its MWBE-104 "Certification of Good Faith Efforts", Aon indicated that it had identified "economically feasible units of the project that could be contracted or subcontracted to minority and women small business enterprises in order to increase the likelihood of participation by such enterprises." It is assumed that this box was checked given the existence and purpose of the Cornerstone group. Please confirm.

Aon Hewitt Response:

Confirmed

NYS Comment

Additional Follow-up Information Sought:

1. Aon only checked item (b) on its MWBE-104 "Certification of Good Faith Efforts" submission. The Department understands that item (a) on the form is not applicable, however, could Aon comment on items (c) through (h) as set forth below and explain why it did not undertake the activities contemplated therein those items.

(c) The Contractor advertised in general circulation, trade association, and trade-oriented, minority and women-focused publications, if any, concerning the contracting or subcontracting opportunity;

Aon Hewitt Response:

As a part of Aon's Cornerstone Innovative Solutions ("Cornerstone") initiative, Aon Hewitt actively attempts to identify high-quality benefits and actuarial M/WBE organizations to partner with on our consulting assignments. Aon utilizes various means to identify potential partners. These include but are not limited to trade associations, networking events, client / colleague referrals, M/WBE focused organizations and M/WBE type economic development departments connected to state and local governmental agencies.

NYS Comment

(d) The Contractor solicited and provided written notice to a reasonable number of minority and women business enterprises identified from current certified lists of such business enterprises provided or maintained by the NYS Empire State Development's Division of Minority and Women Owned Business Development, or its designee, of the contracting or subcontracting opportunity in sufficient time to allow the enterprises to participate effectively;

(e) The Contractor followed up initial solicitations by contacting the enterprises to determine whether the enterprises were interested in such contracting or subcontracting opportunity;

Aon Hewitt Response:

As noted in c.), Aon Hewitt has an established process through Cornerstone for selecting M/WBE vendors in Aon Hewitt consulting opportunities.

NYS Comment

(f) The Contractor provided interested minority and women business enterprises with adequate information about the plans, specifications and requirements for the contracting or subcontracting opportunity (NOTE: On May 23, 2012, Financial Integrity Resources Management (FIRM) indicated that it was interested in participating in the procurement and self reported that it was a New York State certified Minority Business Enterprise. They requested that their information be shared with all the firms that were sent a copy of the RFP and further requested that they be provided with the contact information for each such firm so that we could contact them directly. To that end on May 24, FIRM's email was sent to all of the firms that were sent a copy and the contact information for those firms was sent to FIRM. Aon did not indicate in its proposal that it had contacted Firm. In responding to this item (f), please discuss Aon's outreach efforts in general and to FIRM in particular.

Aon Hewitt Response:

Aon Hewitt did not contact FIRM before the May 31, 2012 due date of the RFP response. As for "Aon's outreach efforts in general", please refer to our responses to (c) through (e) above. Finally, and as it relates to FIRM in particular, we are currently in discussions with FIRM about their inclusion in our Cornerstone panel of M/WBE vendors.

NYS Comment

- (g) *The Contractor used the services of community organizations, contractor groups, state and federal business assistance offices and other organizations identified by the NYS Department of Economic Development or its designee that provide assistance in the recruitment and placement of minority and women business enterprises; and*

Aon Hewitt Response:

As a part of our Cornerstone initiative, Aon Hewitt actively attempts to identify high-quality benefits and actuarial MWBE organizations to partner with on our consulting assignments. Aon identifies potential Cornerstone partners by various means, including the type of broad-based process outlined in (c) above.

NYS Comment

- (h) *The Contractor negotiated in good faith with minority and women business enterprises submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals or quotations prepared by any minority or women business. "Good faith" negotiating means engaging in good faith discussions with minority or women businesses about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the bids of the minority or women businesses, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available.*

Aon Hewitt Response:

Aon has an established, formal process through Cornerstone for selecting vendors for inclusion in Aon Hewitt/Cornerstone opportunities that includes among other things, negotiating with all potential partners on a "good faith" basis.

NYS Comment

2. Aon indicated that subcontractors are not contemplated for the core Tasks #1, #2 and #3, however, Aon did not indicate why it is not intending to use subcontractors for Tasks #1, #2 and #3. Please provide Aon's rationale in this regard.

Aon Hewitt Response:

Tasks #1, #2, and #3, are core services performed for many large and small clients of Aon Hewitt. These services fall into our core area of expertise. Aon Hewitt believes the services we provide in these areas are best in class and would best serve the needs of New York State for this assignment.

NYS Comment

3. Aon represented that it will seek to use the Cornerstone group for Ad Hoc Consulting Services. Given Aon's intended approach to provide Ad Hoc services (i.e., "scope out the project plan, outlining required data, as well as timing and projected fees and report back to the Department"), please indicate the nature and type of Ad Hoc projects for which Aon would propose it not be subject to the MWBE participation goals (e.g., Ad Hoc projects below a certain dollar threshold, duration, nature [i.e., exigent], etc.).

Aon Hewitt Response:

Aon Hewitt would seek to utilize the services of appropriate Cornerstone partners for certain Ad-Hoc services. Projects where it may not be appropriate to utilize a Cornerstone partner would include projects of a short duration (for example expecting to last no more than three weeks), those of an exigent nature, and those where the expected consulting revenue was less than \$20,000. However, the final decision as to whether to involve a Cornerstone partner in an ad hoc project will be based on the facts and circumstances present at the point at which the need for such ad hoc project arises.

Please let us know if we can provide any additional information.