



NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

REQUEST FOR PROPOSALS

“NEW YORK STATE VISION PLAN SERVICES”

RELEASE DATE: March 1, 2011

PROPOSAL DUE DATE: April 26, 2011

IMPORTANT NOTICE: A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until State Comptroller approval of the resultant contract. During the Restricted Period for this Procurement ALL communications must be directed, in writing, solely to the Procurement Manager as listed below and shall be in compliance with the Procurement Lobbying Law and the NYS Department of Civil Service “*Rules Governing Conduct of Competitive Procurement Process*” (refer to RFP, Section II: Procurement Protocol and Process).

**Department of Civil Service Contact for
Inquiries and Submissions for this Solicitation:**

**Vision Plan Services Procurement Manager
Employee Benefits Division, Room 641
New York State Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239
(518) 402-2096**

e-mail: 2012VisionPlanRFP@cs.state.ny.us

New York State Department of Civil Service

**Robert W. DuBois, CEBS
Director
Employee Benefits Division**

SECTION I: INTRODUCTION**A. Purpose**

The purpose of this Request for Proposals (RFP or Procurement) entitled, “New York State Vision Plan Services” is to secure the services of a qualified organization to administer the New York State Vision Plan (Plan or Program). It is the Department of Civil Service’s (Department or DCS) intent to enter into a contract (the “Agreement”) with the Offeror selected as a result of this RFP for the period January 1, 2012 through December 31, 2016, under which the selected Offeror (Contractor) shall be responsible for administering the Program in accordance with the specifications in this RFP. The Offeror/Contractor must agree to be bound by its Proposal which will be explicitly incorporated by reference into the Agreement. The Department will only contract with a single Offeror, which will be the sole contact with regard to all provisions of the Agreement. If the Offeror’s Proposal includes Key Subcontractors, the Department will consider the Offeror the Prime Contractor, and the Offeror shall assume full responsibility for the fulfillment of all of the Contractor’s responsibilities under the Agreement. The Department reserves the right to approve (or disapprove) any or all Key Subcontractors. This RFP and other relevant information may be reviewed at: www.cs.state.ny.us/2012VisionPlanRFP.

Note: Refer to RFP, Section VIII, Glossary, for the definitions of terms used throughout this RFP.

B. Overview of the New York State Vision Plan

The NYS Vision Plan was established in 1982 to provide vision plan benefits to certain New York State employees and their eligible dependents. Public authorities, public benefit corporations, and other quasi-public entities, such as the NYS Thruway Authority and the Dormitory Authority, may choose to participate in the NYS Vision Plan; those that do are called Participating Employers (PEs).

The NYS Vision Plan is a self-funded vision program that is paid for entirely by New York State, with the exception of certain copayments, Upgrade fees and Laser Vision Surgery fees paid by Enrollees. The NYS Vision Plan is sponsored by the Council on Employee Health Insurance. The

Council is composed of the President of the Civil Service Commission, who also serves as the Commissioner of the Department, the Director of the Governor's Office of Employee Relations (GOER), and the Director of the Division of the Budget (DOB). The DCS currently holds, and will hold, the contract with the NYS Vision Plan contractor. The Employee Benefits Division (EBD) of the Department is responsible for administration of the NYS Vision Plan and oversight of the Agreement. The NYS Vision Plan currently has close to 103,375 Enrollees, with approximately 261,884 covered individuals.

The benefit design of the NYS Vision Plan is the result of collective bargaining between the State and the various unions representing its employees. Benefits under the Program are administratively extended to non-represented State employees and employees of Participating Employers. As a result, the Plan's benefits design is subject to change from time to time as the result of those negotiations, and there are variations in the Plan benefits design among the bargaining units. The benefits design cannot deviate from that which has been collectively bargained. The majority of the active workforce is represented by various unions, and union participation in the design and oversight of the NYS Vision Plan is active and ongoing. The collective bargaining units and the unions representing the collective bargaining units as well as the other groups that participate in the NYS Vision Plan are identified in RFP, Exhibit II.A.

The NYS Vision Plan also provides benefits to members of the Student Employee Health Plan (SEHP). The SEHP was established in 1994 through collective bargaining. The SEHP became part of NYSHIP in 2002 to provide basic health insurance as well as limited dental and vision services to graduate student employees of the State University of New York (GSEU) and their eligible dependents. Plan benefits were extended to graduate student employees of the City University of New York (CUNY) on January 1, 2009. SEHP is administered by the Employee Benefits Division. SEHP covers an average of 5,548 employees; their covered dependents bring the total number of average covered lives to approximately 6,625.

C. Current Plan Description

The goal of the NYS Vision Plan is to offer quality eye care services at little or no cost to eligible employees (Enrollees) and their covered dependents (Dependents). The Plan described in Section I.C. of this RFP applies to the ALESU, C82, NYSCOPBA, PBA, PEF, PIA, and M/C

and unrepresented employee groups. Plan benefits applicable to employees represented by GSEU and CUNY are described in Section I.D. of this RFP.

Enrollees and Dependents may receive services from any licensed Optometrist or Ophthalmologist acting within the scope of his/her license. Plan benefits are currently available from approximately 1,300 Participating Provider locations throughout New York State. For those Enrollees and Dependents who obtain Vision benefits from Non-Participating Providers, partial reimbursement is available based on a fixed Indemnity Reimbursement Schedule. (See a listing of covered benefits in Exhibit II.C and II.D. of this RFP). For calendar year 2010, the Participating Provider utilization rate was over 98%.

Under the Program, eye examinations, frames, and lenses or contact lenses are available to Enrollees and covered Dependents once in any twenty-four (24) month period. For almost all groups, Dependent children under the age of 19 are entitled to such benefits once in any twelve (12) month period. The 24-month eligibility period (12-month for Dependent children under age 19) will **not** be reset as of the beginning of the Agreement. Partial use of benefits is considered full use; although all Enrollees (except for SEHP Enrollees) are permitted up to a 90-day window to select eyewear from the date of the eye examination at a Participating Provider.

Participating Providers perform eye examinations and dispense Plan lenses and frames, subject to applicable copays and upgrade fees, where applicable. Participating Providers offer several quality lens types and a wide variety of Plan frames, including styles in metal or plastic for men, women and children. Ultraviolet coating and fashion tinting are currently offered by the incumbent Contractor to Plan participants (except for SEHP Enrollees), at no charge to the Enrollee/Dependent or Plan.

In lieu of eyeglasses, Enrollees/Dependents may select contact lenses. Participating Providers perform a contact lens examination and fitting and offer a selection of Plan contact lenses, including soft, daily wear, planned replacement and disposable contact lenses. The incumbent contractor uses an allowance for contact lenses per Benefit period (Currently \$105 for conventional contact lenses and \$125 for disposable contact lenses) for all PEF, M/C and Unrepresented Enrollees/Dependents subject to a \$25 or \$45 copayment, respectively.

Enrollees and their Dependents represented by NYSCOPBA, ALESU, Council 82, PBA and PIA have up to a \$200 allowance towards exam, fitting and materials.

Amended March 29, 2011

Occupational Vision Program: PBA Troopers, PBA Supervisors, PIA, PEF, M/C and unrepresented Enrollees may be entitled to an additional pair of prescription eyeglasses (frame and lenses) from a Participating Provider in conjunction with their regular benefit once in every twenty-four (24) month period. The Occupational Vision Program covers the cost of job-related eyeglasses for said Enrollees only, and if determined they are needed, based on testing done by a Participating Provider in conjunction with the regular vision examination. Occupational eyeglasses must differ from a patient's standard eyeglasses and meet certain criteria in order to be covered. The requirements of the Occupational Vision Program are specified in RFP, **Section IV.B.13**. Historically, approximately 43% of Enrollees have received occupational vision benefits. See Occupational Vision Program Utilization in Exhibit III.A.1.

Additionally, as a health and safety measure, Enrollees in the State Police covered under PBA-Troopers, PBA-Supervisors and PIA may order supplemental occupational lenses meeting precise specifications, for insertion into respirators.

Amended March 29, 2011

Medical Exception Program: Enrollees represented by ALESU, C82, NYSCOPBA, PEF, PBA-Troopers, PBA-Supervisors, PIA and M/C and other unrepresented Enrollees and their covered Dependents are eligible for vision benefits under the Medical Exception Program. These Enrollees and their covered Dependents are entitled to an eye examination, and if necessary, a frame and lenses, if at least one year (12 months) has passed since they last used the vision benefits available under the Plan and they have a documented medical condition which could reasonably be expected to cause a significant change in refractive status. Said Enrollees/Dependents must obtain Plan prior authorization to be eligible for Medical Exception Program benefits. For more information regarding the Medical Exception Program requirements, refer to **Section IV.B.14** of this RFP. See Medical Exception Program utilization in Exhibit III.F of this RFP.

Amended March 29, 2011

Upgrade Program: All Enrollees and their Dependents (except for those represented by SEHP) may upgrade their eyewear selections through the patient-pay-all Upgrade Program. The patient's cost is based on the Offeror's Participating Provider Fee schedule for the lens or lens option(s) eligible for upgrade. The incumbent contractor currently offers a discount of twenty percent (20%) off retail prices for non-covered lenses or lens options (for example, Polaroid lenses) as well as frames priced above the allowance. The specific requirements for the Upgrade Program are outlined in **Section IV.B.15** of this RFP. The current Upgrade Program average utilization by type of service is outlined in Exhibit III.C and III.C.1 of this RFP.

Amended March 29, 2011

Laser Vision Correction Program: Active Employees and Employees enrolled under COBRA who are represented by ALESU, C82 and NYSCOPBA are covered for a laser vision correction benefit at a Laser Vision Correction Provider once every five years, subject to a copayment of 10% of the discounted cost for laser vision correction procedures, up to a maximum of \$200. Dependents of these groups are eligible for the patient-pay-all laser vision "discount program." Active Employees and Employees enrolled under COBRA and their Dependents who are represented by PBA-Troopers, PBA-Supervisors, PIA, and PEF are eligible for the patient-pay-all laser vision "discount program." For more information regarding the Laser Vision Correction Program requirements, refer **to Section IV.B.9** of this RFP.

D. SEHP Plan Benefit Variances

GSEU and CUNY-represented Enrollees and their covered Dependents may only receive services from Participating Providers, and are subject to a combined \$10 copayment for an examination (and contact lens fitting, if applicable) and eyewear. Plan benefits are not available from Non-Participating Providers. The SEHP eyewear selection is limited to a basic frame; single or bifocal lenses, or an allowance for soft, daily wear contacts (currently \$105). Ultraviolet coating and fashion tinting are not permitted. GSEU and CUNY-represented Enrollees and their Dependents are not eligible for the Occupational Vision, Medical Exception, Laser Vision or Upgrade Programs as described above.

SECTION II: PROCUREMENT PROTOCOL AND PROCESS**A. Rules Governing Conduct of Competitive Procurement Process****1. Timeline/Key Events**

RFP Release Date	March 1, 2011
Procurement Lobby Offeror's Affirmation of Understanding & Agreement Due Date (Exhibit I.K)	see * below
Pre-Proposal Conference	March 15, 2011
Questions Due Date	March 22, 2011 5:00 p.m. ET
Release Date of Official Responses to Questions	March 29, 2011
Notice of Bidding Intention Due Date (Exhibit I.J)	April 19, 2011
Proposals Due Date	April 26, 2011, 3:00 p.m. ET
Anticipated Contract Start Date	Upon OSC approval of the Agreement with Program fully implemented by January 1, 2012.

* Prior to the Offeror's initial contact with the Department, the Offeror must complete and submit Exhibit I.K Procurement Lobbying Offeror's Affirmation of Understanding & Agreement to the Vision Plan Services Procurement Manager.

2. Procurement Lobbying Limitations

- a. Pursuant to State Finance Law §139-j and §139-k, this Procurement imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the Procurement's "Restricted Period" (from the issuance of this RFP until the date of the Agreement's final approval by the NYS Office of the State Comptroller (OSC) to other than designated staff of the Department and the Executive Branch of New York State government, unless the contact falls within certain statutory exceptions ("permissible contacts"). For purposes of this Section II.A.2 of the RFP, "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids (i.e., Proposals) in response to the solicitation document (i.e., RFP or Procurement). Staff is required to obtain certain information from Offerors and others whenever there is a contact about the Procurement during the Restricted Period, and is required to make

a determination of the Offeror's responsibility that addresses the Offeror's compliance with the statutes' requirements. Findings of non-responsibility result in rejection for contract award, and if an entity is subject to two non-responsibility findings within four years the entity also will be determined ineligible to submit a Proposal on or be awarded a contract for four years from the date of the second non-responsibility finding. The Department's policy and procedures are included as **Exhibit I.L, "Procurement Lobbying Policy: Restrictions on Contacts During the Procurement Process"** to this RFP. Further information about these requirements can be found at:

www.ogs.state.ny.us/aboutOGS/regulations/defaultAdvisoryCouncil.html.

- b. In order to ensure public confidence and integrity in the procurement process, the Department will strictly control all communications between any Offeror and participants in the evaluation process from the date the RFP is released until the Agreement is approved by OSC. All contacts and inquiries concerning the Procurement must be directed solely to the Vision Plan Services Procurement Manager, the Department's designated contact for this Procurement. An Offeror's failure to comply with this requirement may result in the Offeror's disqualification from this Procurement.

Vision Plan Services Procurement Manager
Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239
Fax: 518-402-2835
E-mail: 2012VisionPlanRFP@cs.state.ny.us

Additionally, prospective Offerors are strictly prohibited from making any contacts or inquiries concerning the Procurement with any member, officer or employee of any State governmental entity other than the Department from the date the RFP is released until the Agreement is approved by OSC, subject only to the specific exceptions listed below. Further, any prospective Offeror shall not attempt to influence this Procurement in any manner that would result in a violation or an attempted violation of Public Officers Law §73(5) or §74.

- c. The following contacts are exempted from the provisions of this section:
- (1) The submission of written Proposals in response to this RFP;
 - (2) The submission of written questions as set forth in this RFP;
 - (3) A complaint by a prospective Offeror regarding the failure of the Vision Plan Services Procurement Manager to respond to an authorized contact, when such complaint is made in writing to the Department's Office of the General Counsel, provided that any such written complaint shall become a part of the procurement record;
 - (4) Communications by the selected Offeror who has been tentatively awarded a contract and is engaged in communications with the Department solely for the purpose of negotiating the terms of the Agreement after having been notified of the tentative award;
 - (5) Contact by an Offeror to request a review of a proposed award when done in accordance with the procedure specified in the RFP;
 - (6) (a) Contacts by an Offeror in protests, appeals or other review proceedings (including the apparent selected Offeror and its representatives) before the Department seeking a final administrative determination, or in a subsequent judicial proceeding; or

(b) Complaints of alleged improper conduct in the Procurement when such complaints are made to the State Attorney General, Inspector General, District Attorney, or to a court of competent jurisdiction; or

(c) Written protests, appeals or complaints to the OSC office during the process of contract approval, where the approval of the OSC is required by law, and where such communications and any responses thereto are made in writing and shall be entered in the procurement record pursuant to State Finance Law §163.
- d. It is mandatory that all prospective Offerors complete **Exhibit I.K, "Procurement Lobbying Offeror's Affirmation of Understanding and Agreement"** affirming their understanding of and agreement to comply with the procurement lobbying requirements set forth in State Finance Law §139-k and §139-j. A completed **Exhibit I.K** must be

submitted to the Vision Plan Services Procurement Manager **prior to a prospective Offeror making its initial contact with the Department** (e.g., attendance at the Pre-Proposal Conference, submission of questions, etc. or concurrent with an Offeror's submission of its Proposal, whichever shall occur first).

Additionally, at the time a Proposal is submitted to the Department, the Offeror is required to provide a completed Certification of Compliance Pursuant to State Finance Law §139-k. This certification is included as **Exhibit I.P** of this RFP.

3. **Notice of Bidding Intention Deadline**

Filing of this notice is **not** mandatory; however, to assist the Department in better managing the procurement process, prospective Offerors, whether they intend to submit a Proposal in response to this RFP or not, are requested to complete a **“Notice of Bidding Intention Form” (Exhibit I.J)** and submit it to the Vision Plan Services Procurement Manager by the Notice of Bidding Intention Deadline as set forth in Section II.A.1. The completed form may be submitted either in hardcopy, at the address provided in Section II.A.2.b, or electronically at: 2012VisionPlanRFP@cs.state.ny.us.

4. **Pre-Proposal Conference**

A Pre-Proposal Conference will be held on March 15, 2011, in Room 354 of the Alfred E. Smith Office Building, Albany, NY, at 10:00 a.m. Attendance is **not** mandatory; but is strongly recommended as prospective Offerors will be afforded the opportunity to ask questions concerning the Procurement at the conference.

Prospective Offerors are asked to submit substantive or procedural questions concerning the content of the RFP, bid proposals or the procurement process in writing, by mail, facsimile or email, to the Vision Plan Services Procurement Manager, in accordance with the requirements of RFP, Section II.A.6., at least five days prior to the Pre-Proposal, if practical. Questions may also be raised at the Pre-Proposal Conference and up to the Question Due Date deadline for submission of Offerors' questions set forth in RFP, Section II.A.1. Any oral responses given by the Department at the Pre-Proposal Conference are unofficial and should not be relied upon in the preparation of Proposals. The Department reserves the right to change any oral response

previously given by the Department at the Pre-Proposal Conference in the official written response (See RFP, Section II.A.6.).

Each Offeror is requested to send no more than three (3) representatives to the conference. If your organization plans to attend the Pre-Proposal Conference, please notify the Vision Plan Services Procurement Manager via facsimile or e-mail at the address noted in Section II.A.2.b. at least five (5) business days before the conference with the name and affiliation of each person attending. Please be advised that due to security requirements, all visitors must be registered in the Alfred E. Smith Building's Visitors' Management System in advance of the meeting date. On the date of the conference, visitors may be required to present photo identification. Prospective Offerors are advised to allow sufficient time to go through security.

5. Submission of Errors or Omissions in the RFP Document

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, prospective Offerors agree to be bound by its terms, including, but not limited to, this process by which a prospective Offeror may submit errors or omissions for consideration. In the event that a prospective Offeror believes there is an error or omission in the RFP, the prospective Offeror may raise such issue according to the following provisions:

a. Process for Submitting Assertions of Errors or Omissions in RFP Document

- (1) ***Time Frame:*** Assertions of errors or omissions in the procurement process which are or should have been apparent prior to the Proposal Due Date must be received by the Department, in writing, five (5) business days after the Release Date of Official Responses to Questions specified in Section II.A.1.
- (2) ***Content:*** The submission alleging the error or omission must clearly and fully state the legal and/or factual grounds for the assertion and must include all relevant documentation.
- (3) ***Format of Submission:*** All submissions asserting an error or omission must be in writing and submitted to the Vision Plan Services Procurement Manager at the following address:

Vision Plan Services Procurement Manager
Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

The envelope or package must clearly and prominently display the following statement:

**"Submission of Errors or Omissions for the
NYS Vision Plan Services
Request for Proposals"**

Any assertion of an error or omission which does not conform to the requirements set forth in this section shall be deemed waived by the prospective Offeror and the prospective Offeror shall have no further recourse.

b. The Review Process for Assertions of Errors or Omissions in RFP Document

The Department shall conduct the review process for submission of errors or omissions. The Commissioner may appoint a designee who will review the submission and make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the prospective Offeror may be given the opportunity to meet with the Commissioner or the Commissioner's designee, as the case may be, to support its submission. The prospective Offeror may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner or the Commissioner's designee.

The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) business days after the close of the review process. If additional time for the issuance of the decision is necessary, the prospective Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision

will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

The Department reserves the right to determine and to act in the best interests of the State in resolving any assertion of error or omission in the RFP document. As a consequence of reviewing the assertion, the Department may elect to extend the Proposal Due Date as may be appropriate. Notice of any such extension will be provided to all organizations who registered via mail, facsimile or e-mail. Notice of any extension will also be posted to: www.cs.state.ny.us/2012VisionPlanRFP/index.cfm.

6. Submission of Questions

In the event a prospective Offeror has any substantive or procedural questions concerning the content of the RFP, bid proposals or the procurement process, those questions can be submitted in the following manner to:

Vision Plan Services Procurement Manager
Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239
Fax: 518-402-2835
E-Mail: 2012VisionPlanRFP@cs.state.ny.us

Prospective Offerors may submit questions to the Vision Plan Services Procurement Manager, in writing, via e-mail, facsimile or mail up until the Question Due Date deadline as set forth in RFP, Section II.A.1. The Department strongly urges prospective Offerors to submit the questions via e-mail. Each question must cite the particular RFP section, page number and paragraph number to which it refers. Only those responses provided in writing by the Department as posted on the procurement website at:

www.cs.state.ny.us/2012VisionPlanRFP/index.cfm shall be considered official responses.

Those written responses as posted on the procurement website (Official Responses) are the official record for the Procurement. Only those questions received prior to 5:00 p.m. Eastern Time (ET), on the Questions Due Date as shown in Section II.A.1 of this RFP, will be accepted.

To expedite its responses, the Department has provided a question template form which prospective Offerors are requested to use in submitting questions regarding the RFP (see RFP, [**Exhibit I.R**] “Question Template”).

After the Questions Due Date, the Department will provide to all organizations who have registered, e-mail notification of the posting of all questions received and the Department’s Official Responses to said questions. Said information will be posted to: www.cs.state.ny.us/2012VisionPlanRFP/index.cfm and all registered potential Offerors will be notified of the posting to this site. In response to questions, the Department will not provide information about processes or information proprietary to any prospective Offeror.

7. Submission of Proposal

a. Submission Requirements

The Offeror’s Proposal must be organized and separated into three (3) separate parts: Administrative Proposal, Technical Proposal, and Cost Proposal. To facilitate the evaluation process, Offerors must submit twelve (12) separately bound hard copies (two (2) ORIGINALS and ten (10) copies) and one (1) electronic copy (CD) **of each of the three (3) parts** of the Offeror’s Proposal. Electronic submissions must be in Adobe Acrobat, as applicable. These thirty-six (36) documents and three (3) CDs are collectively hereafter referred to as “Submissions.”

Each ORIGINAL hard copy of each part must be marked "ORIGINAL," contain original signatures of an official(s) authorized to bind the Offeror to its provisions on all forms submitted that require the Offeror’s signature and should be numbered sequentially, i.e. ORIGINAL #1, ORIGINAL #2. The remaining ten (10) hard copies of each part may contain a copy of the official's signature and should be numbered sequentially (e.g. Copy #1, Copy #2, etc). Please note that, for each of the three (3) parts, that hard copy marked “ORIGINAL #1” will be deemed controlling by the Department when viewing the Proposal.

Proposals should be placed and packaged in sealed boxes/envelopes with a label on the outside containing the information below.

**New York State Department of Civil Service
Request for Proposals
“New York State Vision Plan Services”**

**OFFEROR NAME
OFFEROR ADDRESS**

Indicate content, as applicable
ADMINISTRATIVE, TECHNICAL or COST PROPOSAL

There must be no cost information included in the Offeror’s Administrative Proposal or Technical Proposal.

All Proposals must be mailed or hand-delivered to:

Vision Plan Services Procurement Manager
ATTN: Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

For those Offerors who plan to have their Proposal hand delivered to the Department, arrangements for acceptance of the package must be made in accordance with Department security procedures. **To make such arrangements, the Department requests that the Offeror notify the Vision Plan Services Procurement Manager forty-eight (48) hours prior to delivery.**

All Proposals must be received by 3:00 p.m. ET on the Proposal Due Date as set forth in Section II. A.1. of the RFP. No exceptions will be made for late submission or delays in delivery of the Proposal. If the Proposal is delivered by mail or courier, the Department recommends that it be sent "return receipt requested," so the Offeror obtains proof of timely delivery.

All Proposals submitted become the property of the Department. Any Proposal received after 3:00 p.m. ET on the Proposal Due Date will not be accepted by the Department and may be returned to the submitting entity at the Department's discretion. Offeror assumes all risk of late delivery associated with the Submissions not being identified, packaged or labeled in accordance with the foregoing requirements. In the

event that the Offeror fails to provide such information on the cover of the sealed packages, the State reserves the right to open the package to determine its contents. Offeror shall have no claim against the State arising from such opening and such opening shall not affect the validity of the Procurement. Notwithstanding the State's right to open the package to ascertain the contents, Offeror assumes all risk of late delivery associated with the Proposal not being identified, packaged or labeled in accordance with the foregoing requirements.

The Department will accept amendments and/or additions to an Offeror's Proposal if received by the Department prior to 3:00 p.m. ET on the Proposal Due Date. Such amendments and/or additions must be submitted in writing, in accordance with the format set forth in Section II.A.7. of this RFP, and will be included as part of the Offeror's Proposal, if accepted by the Department as provided above.

Offerors are cautioned to verify the content of their Proposal before submission. Except for material received from an Offeror in response to a request by the Department, the Department will not accept amendments or additions to a Proposal if such material is received after 3:00 p.m. ET on the Proposal Due Date. Offerors are encouraged to submit the Proposal Submission Checklist (**Exhibit I.A**) to facilitate verification of Proposal contents. An Offeror's request to withdraw a Proposal after the Proposal Due Date may be considered at the sole discretion of the Department.

b. Formatting Requirements

The Administrative Proposal, Technical Proposal and Cost Proposal each must comply with the following formatting requirements:

- (1) ***Binding of Proposal:*** The Administrative, Technical and Cost Proposals must be separately bound. The official name of the organization(s) and "NYS Vision Plan Services" must appear on the outside front cover of each copy of the Offeror's Administrative, Technical and Cost Proposal. If the Submissions are submitted in loose-leaf binders, the official name(s) of the organization(s) and "NYS Vision Plan Services" also must appear on the spine of the binders;

- (2) ***Table of Contents***: Each Submission must include a table of contents;
- (3) ***Index Tabs***: Each major Section of the Submission and each Exhibit must be labeled with an index tab that completely identifies the title of the Section or Exhibit as named in the table of contents;
- (4) ***Pagination***: Each page of each Submission, including its Exhibits, must be labeled on the upper right with the Section or Exhibit title and Section or Exhibit reference, page number, and date. Pages within each Section and each Exhibit must be numbered consecutively;
- (5) ***Proposal Updates/Corrections***: Each Offeror must submit its Administrative, Technical and Cost Proposal so that any update pages required by the Department can be easily incorporated into the Proposal. Should it be necessary for an Offeror to submit additional information in support of its Proposal, it must be submitted in accordance with the following: upon written notification by the Offeror and agreement by the Department, new or replacement pages may be placed in the Proposal. All new or replacement pages will show the date of the revision and indicate the portion of the page being changed. This latter requirement will be fulfilled by drawing vertical lines down both margins of all affected passages. All new/ replacement pages will be noted by the Department on the errata sheet to be placed at the front of the Proposal copy; and,
- (6) ***Required Content of Proposals***: The Proposal shall consist of three parts: 1) the Administrative Proposal, which must respond to the requirements set forth in Section III of this RFP; 2) the Technical Proposal, which must respond to the requirements set forth in Section IV of this RFP; and 3) the Cost Proposal, which must respond to the requirements set forth in Section V of this RFP.

8. Notification of Award

A proposed award notification letter will be sent to the selected Offeror indicating a conditional award subject to successful contract negotiations. The remaining Offerors will be notified of the conditional award and the possibility that failed negotiations could result in an alternative

award. No public discussion or news releases relating to this RFP or the Agreement shall be made by any Offeror or their agent without the prior approval of the Department.

9. Debriefing

A debriefing is available to any Offeror that submitted a proposal in response to this RFP. An Offeror will be accorded fair and equal treatment with respect to its opportunity for debriefing. Debriefing shall be requested in writing by the unsuccessful Offeror within ten (10) business days of the Department's letter to the unsuccessful Offerors that another vendor was selected. An unsuccessful Offeror's written request for a debriefing shall be submitted to:

Vision Plan Services Procurement Manager
Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239
Fax: 518-402-2835
E-Mail: 2012VisionPlanRFP@cs.state.ny.us

The debriefing shall be scheduled within ten (10) business days of receipt of written request by the Department or as soon after that time as practicable under the circumstances.

10. Submission of Award Protests

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, all Offerors agree to be bound by its terms including, but not limited to, the process by which an Offeror may submit protests of the selection award for consideration. In the event that an Offeror decides to protest the selection decision, the Offeror may raise such issue according to the following provisions.

a. Process for Submitting Post Award Protests of the Selection Decision

- (1) ***Time Frame:*** Any protest of the selection decision must be received no later than ten (10) business days after an Offeror's receipt of written notification by the Department of a conditional award.

- (2) **Content:** The submission of the protest must clearly and fully state the legal and/or factual grounds for the protest and must include all relevant documentation.
- (3) **Format of Submission:** All submissions of protest must be in writing and submitted to the Vision Plan Services Procurement Manager at the following address:

Vision Plan Services Procurement Manager
ATTN: Employee Benefits Division, Room 641
NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, New York 12239

A protest of the selection decision must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Selection Protest for the
NYS Vision Plan Services”**

Any assertion of protest which does not conform to the requirements set forth in this section shall be deemed waived by the Offeror, and the Offeror shall have no further recourse.

b. The Review Process for Submission of Protests

The Department shall conduct the review process of submitted protests. The Commissioner may appoint a designee to review the submission and to make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the opportunity to meet with the Commissioner or the Commissioner's designee, as the case may be, to support its submission. The Offeror may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner, or the Commissioner's designee.

The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) business days after the close of the review process. If additional time for the issuance of the decision is necessary, the Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

In the event that an Offeror protests the selection decision, the Department shall continue working with the selected Offeror pending the outcome of the protest. Any Offeror whose Proposal might become eligible for a conditional award in the event that the intended selection is disqualified may be asked to extend the time for which their Proposal shall remain valid.

The Department reserves the right to determine and to act in the best interests of the State in resolving any post award selection protest.

11. Department of Civil Service Reservation of Rights

In addition to any rights articulated elsewhere in this RFP, the Department reserves the right to:

- a. Make the award under the RFP in whole or in part;
- b. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available. If the Department elects to amend any part of the RFP, notification of the amendment will be provided to all organizations who submitted a Notice of Bidding Intention Form (**Exhibit I.J**) via e-mail, facsimile or mail. Any amendments will also be posted to:
www.cs.state.ny.us/2012VisionPlanRFP/index.cfm.
- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent RFP amendments;
- d. Withdraw the RFP, at any time, in whole or in part, at its sole discretion;
- e. Waive any requirements that are not material;

- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any mandatory requirements of the RFP;
- g. Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an Offeror's Proposal and/or to determine an Offeror's compliance with the requirements of this RFP;
- h. Reject any or all Proposals received in response to this RFP, at its sole discretion;
- i. Change any of the scheduled dates stated in this RFP;
- j. Seek clarifications and revisions of Proposals;
- k. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Offerors;
- l. For the purposes of ensuring completeness and comparability of the Proposals, analyze submissions and make adjustments or normalize submissions in the Proposal(s), including the Offeror's technical assumptions, and underlying calculations and assumptions used to support the Offeror's computation of costs, or to apply such other methods it deems necessary to make level comparisons across Proposals;
- m. Use the Proposal, information obtained through any site visits, management interviews, and the Department's own investigation of an Offeror's qualifications, experience, ability or financial standing, and any other material or information submitted by the Offeror in response to the Department's request for clarifying information in the course of evaluation and selection under this RFP;
- n. Negotiate with the successful bidder within the scope of the RFP in the best interests of the State;
- o. Utilize any and all ideas submitted in the Proposal(s) received;

- p. Set aside the original selected Offeror if it is subsequently determined by the Department that the Offeror is non-responsive or not responsible. The Department may then invite the Offeror with the next highest Total Combined Score to enter into negotiations for purposes of executing an agreement;
- q. Set aside the conditional award to the selected Offeror should the Department be unsuccessful in negotiating an agreement with that Offeror within a time frame acceptable to the Department; such time frame is to be determined solely by the Department based on the best interest of the Department and the State. If the Department determines that contract negotiations between the Department and the selected Offeror are unsuccessful, the Department may then invite the Offeror with the next highest Total Combined Score to enter into negotiations for purposes of executing an agreement.

12. Limitation of Liability

The Department is not liable for any cost incurred by any Offeror for any work performed prior to the execution of and approval by OSC of the Agreement. Additionally, no cost will be incurred by the Department for any prospective Offeror or Offeror's participation in any procurement related activities.

The Department has taken care in preparing the data accompanying this RFP (hard copy Exhibits, website Exhibits, and sample document Exhibits referenced throughout this RFP). However, the Department does not warrant the accuracy of the data; the numbers or statistics which appear in such hardcopy Exhibits, website Exhibits, and sample document Exhibits. Such data; numbers and/or statistics are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future performance or participation. Accordingly, prospective Offerors should rely upon and use such data, numbers and/or statistics in preparing their Proposals at their own discretion.

B. Compliance With Applicable Rules, Laws, Regulations & Executive Orders

This Procurement is governed by the legal authorities referenced below. All Offerors must fully comply with the provisions set forth in this Section II.B. of the RFP. The Department will consider for evaluation and selection purposes only those Offerors who agree to comply with these provisions whose Proposal contains the Statements, Formal Certifications and Exhibits submissions required hereunder.

1. Public Officers Law

All Offerors and Offerors' employees and agents must be aware of and comply with the requirements of the New York State Public Officers Law ("POL"), particularly POL Sections 73 and 74, as well as all other provisions of New York State law, rules and regulations, and policy establishing ethical standards for current and former State employees. In signing its Proposal, each Offeror guarantees knowledge and full compliance with such provisions for purposes of this RFP and any other activities including, but not limited to, contracts, bids, offers, and negotiations. Failure to comply with these provisions may result in disqualification from the procurement process, termination, suspension or cancellation of the Agreement and criminal proceedings as may be required by law. Offerors must submit an affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror because of prior, current, or proposed contracts, engagements, or affiliations, by submitting a completed **Exhibit I.M** in the Offeror's Administrative Proposal.

2. Omnibus Procurement Act

Offerors are hereby notified that, if their principal place of business is located in a foreign or domestic jurisdiction that penalizes New York State vendors, and if the goods or services they offer would be produced or performed substantially outside New York State, the Omnibus Procurement Act 1994 and its 2000 amendments require that they be denied contracts which they otherwise could obtain.

A current list of jurisdictions subject to this provision is available from the NYS Department of Economic Development, or on-line at: www.nyscr.org/pub_omnibus.aspx

A completed **Exhibit I.O** “Omnibus Procurement Act Statement of Acceptance” form must be submitted in the Offeror’s Administrative Proposal.

3. **Minority and Women-Owned Business Enterprises (MWBE) Act and Federal Equal Employment Opportunities Act (EEO)**

a. **General Obligations**

The State of New York and the Department actively support and encourage the participation of certified minority and women-owned business enterprises and equal employment opportunities for minorities and women on State contracts. The Agreement will contain provisions regarding the participation of MWBEs in the performance of the Contract. Those provisions are set forth below. Generally, the provisions state the Contractor's obligations under Article 15-A of the Executive Law and its implementing regulations, including clauses dealing with equal employment opportunities, organized labor cooperation and advertisements for employees.

b. **Minority and Women-Owned Business Enterprises (MWBEs)**

The Department has not established a goal for the participation of the Minority and Women-Owned Business Enterprises (MWBEs) in the performance of services under the Agreement. The Offeror is encouraged to use its best efforts to solicit and obtain the participation of MWBEs on the Agreement. A completed **Exhibit I.Q** entitled, “Article 15-A of the Executive Law” must be submitted as part of the Offeror’s Administrative Proposal.

c. **Equal Employment Opportunity Obligations**

The Offeror shall undertake or continue existing programs of affirmative action 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, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotions, upgradings, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation.

The Offeror's EEO Policy Requirements under this RFP shall contain, but not necessarily be limited to, the following:

- (1) The Offeror must demonstrate its compliance with the Equal Employment Opportunity (EEO) Act by affirming to the Department that the Offeror's EEO Policy Statement contains, at a minimum, language consistent with the provisions set forth in **Exhibit I.G**. During the performance of the Agreement, the Contractor shall agree to comply with such EEO Policy Statement. The Offeror's EEO Policy Statement shall contain, but not necessarily be limited to, the services under the Contract. However, the Offeror is encouraged to use its best efforts to solicit and obtain the participation of MWBEs on the Agreement. Offerors must affirm their ability to comply with this requirement by submitting a completed EEO Obligations – Offeror Certification of Compliance form (**Exhibit I.G**) in the Offeror's Administrative Proposal.
- (2) As part of its Administrative Proposal, the Offeror shall submit a Workforce Employment Utilization Report (see **Exhibit I.H** to this RFP) to be utilized on the Agreement or, where required, information on the Offeror's total workforce, including apprentices, broken down by specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories specified by the Department.
- (3) On a periodic schedule to be provided by the Department, the Contractor shall submit to the Department a workforce utilization report, on a form to be supplied by the Department, of the workforce actually utilized on the Agreement, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the Department.
- (4) The Offeror shall include in every subcontract in connection with the Agreement, if any, the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on the Agreement.

4. Americans with Disabilities Act

The Offeror will be required to assure its compliance with the Americans with Disabilities Act (42 USC§12101 et. seq.), in that any services and programs provided during the course of performance of the Agreement shall be accessible under Title II of the Americans with Disabilities Act, and as otherwise may be required under the Americans with Disabilities Act by submitting a completed Compliance with Americans with Disabilities Act form (**Exhibit I.N**) in the Offeror's Administrative Proposal.

5. MacBride Fair Employment Principles Act & Non-Collusive Bidding Certification

In accordance with Chapter 807 of the Laws of 1992, Offerors must certify whether they or any individual or legal entity in which the Offeror holds a ten percent (10%) or greater ownership interest, or any individual or legal entity that holds a ten percent (10%) or greater ownership in the Offeror have business operations in Northern Ireland. If an Offeror does have business operations in Northern Ireland, they must certify that they are taking lawful steps in good faith to conduct such business operations in accordance with the MacBride Fair Employment Opportunity Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such principles.

The Department also requires that Offerors certify that prices in their Proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition with any other Offeror or competitor. In addition, that unless required by law, the prices quoted in the Offeror's Proposal have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly, indirectly, to any other Offeror or to any competitor. Offerors must also certify that no attempt has been made or will be made by the Offeror to induce any person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition. An executed copy of the combined MacBride Act statement form and Non-collusive Bidding Certification (**Exhibit I.D**) is required to be submitted in the Offeror's Administrative Proposal.

6. Vendor Responsibility Requirements – State Finance Law §163

New York State Finance Law §163 requires contracts for services and commodities be awarded on the basis of lowest price or best value “to a responsive and responsible Offeror.” Furthermore, §163(9)f requires the Department to make a determination of responsibility of the proposed Offeror prior to making an award.

To assist the Department in evaluating the responsibility of Offerors, a completed “**New York State Vendor Responsibility Questionnaire**” must be submitted in the Offeror’s Administrative Proposal. A person legally authorized to represent the Offeror must execute the questionnaire. To the extent that the Contractor is proposing the use of “Key Subcontractors” (i.e., part of the Offeror’s proposed Project Team), the Offeror must submit a completed “New York State Vendor Responsibility Questionnaire” for each Key Subcontractor completed by a person legally authorized to represent the subcontractor.

The Department recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. However, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see VendRep System Instructions available at: http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at: <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Office of the State Comptroller’s Help Desk for a copy of the paper form. The paper form is also included in the RFP as **Exhibit I.I** “New York State Vendor Responsibility Questionnaire.”

7. Tax Law Section 5-a Certification Regarding Sales and Compensating Use Taxes

Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State agency shall not be valid, effective, or binding against the agency unless the Contractor certifies to the Tax Department that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any

means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Tax Department that each affiliate and subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, “affiliate” means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The Contractor also must certify to the procuring state entity that it filed the certification with the Tax Department and that the certification is correct and complete. Accordingly, in the event the value of the Agreement exceeds \$100,000, the Contractor must file a properly completed Form ST-220-CA (**Exhibit I.E**) with the Department and a properly completed Form ST-220-TD (**Exhibit I.F**) 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.

Submission of these forms (ST-220CA and ST-220TD) is **NOT** required at time of Proposal submission however, the selected Offeror will be required to complete and submit these forms as a condition of contract award. These forms may also be found at:

www.tax.state.ny.us/forms/sales_cur_forms.htm#Other%20Sales%20Tax%20Forms

8. Disclosure of Proposal Contents – Freedom of Information Law (FOIL)

All materials submitted by an Offeror in response to this RFP shall become the property of the Department and may be returned to the Offeror at the sole discretion of the Department. Proposals may be reviewed or evaluated by any person, other than one associated with a competing Offeror, designated by the Department. Offerors may anticipate that Proposals will be evaluated by staff and consultants retained by the Department and may also be evaluated by staff of other State agencies interested in the provision of the subject services

including, but not limited to, GOER and DOB, unless otherwise expressly indicated in this RFP. The Department has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this RFP.

To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding the New York State Freedom of Information Law (FOIL). If an Offeror believes that any information in its Proposal or subsequent communication constitutes proprietary and/or trade secret information and desires that such information not be disclosed if requested pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Offeror must make that assertion by completing **Exhibit I.C “Freedom of Information Law – Request for Redaction Chart.”** The Offeror must complete the form specifically identifying by page number, line, or other appropriate designation, the specific information requested to be protected from FOIL disclosure and the specific reason why such information should not be disclosed. Page 2 of Exhibit I.C contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, summary allegations that material is proprietary or trade-secret are inadequate and will not result in protection from FOIL disclosure.

Note: Offerors are advised that Exhibit I.C, as a component part of the Offeror’s Proposal is subject to disclosure under FOIL. Offerors should also highlight any parts of Exhibit I.C which the Offeror wishes to protect from FOIL disclosure.

The completed **Exhibit I.C** must be submitted in the Offeror’s Administrative Proposal. In addition, at the time of Proposal submission the Offeror must submit both a hardcopy and an electronic copy (on CD in Adobe Acrobat format) of the complete Proposal noting the specific portions of each item requested to be protected from FOIL disclosure by highlighting in yellow (the Department’s preference), underlining, or otherwise marking such sections in a manner such that the material remains visible. The electronic copy should contain no more than three pdf files; one for each part of the Proposal (Administrative Proposal, Technical Proposal, and Cost Proposal). No security should be applied to the Adobe Acrobat files. The hardcopy shall be separately bound and clearly labeled "Requested Redactions." These materials will not be considered part of the Offeror's Proposal and will not be reviewed as a part of the Procurement's evaluation process.

The Offeror must also submit an additional electronic copy (on CD in Adobe Acrobat format) with the requested redactions electronically highlighted in black (“blacked out”) for posting to the procurement website upon completion of the procurement process. The electronic copy should contain no more than three pdf files; one for each part of the Proposal (Administrative Proposal, Technical Proposal, and Cost Proposal). A copy of the redacted Agreement will also be posted to the website at that time.

If, after the Proposal Due Date, if the Offeror makes any submissions during the procurement process that it wishes to protect from FOIL disclosure, the Offeror must submit such submissions with a completed **Exhibit I.C** in hardcopy and on CD in Adobe Acrobat format noting the specific portions of each item requested to be protected from FOIL disclosure by highlighting in yellow (the Department’s preference), underlining or otherwise marking such sections in a manner such that the material remains visible. The Offeror must also submit an additional electronic copy (on CD in Adobe Acrobat format with the requested redactions electronically highlighted in black (“blacked out”). These FOIL-related materials will not be considered part of the Offeror’s Proposal and will not be reviewed as a part of the procurement’s evaluation process.

If the Offeror chooses not to assert that any Proposal material or subsequent correspondence should be protected from FOIL disclosure, the Offeror must so advise the Department by checking the applicable box on **Exhibit I.C** and including the completed form in the Offeror’s Administrative Proposal.

In the event any 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.

9. Compliance with New York State Workers’ Compensation Law

Sections 57 and 220 of the New York State Workers’ Compensation Law (WCL) provide that the Department shall not enter into any contract unless proof of workers’ compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the Department, the selected Offeror will be required to verify for the Department, on

forms authorized by the New York State Workers' Compensation Board, the fact that it is properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed in **Exhibit I.W – Compliance with NYS Workers' Compensation Law**. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at 518-486-6307. You may also find useful information at their website: <http://www.wcb.state.ny.us>

Failure to provide verification of either of these types of insurance coverage by the time the Agreement is ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

Submission of the insurance verification information is **not** required at the time of submission; however, the Department would prefer the Offeror submit this insurance verification information with the Administrative Proposal, if possible, with the understanding that an updated submission may be required of the selected Offeror at time of award.

SECTION III: ADMINISTRATIVE PROPOSAL REQUIREMENTS

This Section III of the RFP sets forth the requirements for the Offeror's Administrative Proposal submission, including the Minimum Mandatory Requirements that must be satisfied to qualify an Offeror to be considered for selection. The Department will accept Proposals only from qualified Offerors and will consider for evaluation and selection purposes only those Proposals that it determines to be in compliance with the requirements set forth in this Section III.

The Offeror's *Administrative Proposal* must respond to all of the following provisions as set forth below in the order and format specified and using the forms set forth in the RFP. Additional details pertaining to the required forms are found in Section II.B. Compliance With Applicable Rules, Laws, Regulations & Executive Orders, and Section III.

The *Administrative Proposal* must contain the following information, in the order enumerated below:

A. Formal Offer Letter

At this part of its Administrative Proposal, the Offeror must submit a formal offer in the form of the **"Formal Offer Letter"** as set forth in **Exhibit I.S**. The formal offer must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the Department. Each of the two copies of the Offeror's Administrative Proposal marked "ORIGINAL" requires a letter with an original signature; the remaining copies of the Offeror's Administrative Proposal may contain photocopies of the signature. The Offeror must accept the terms and conditions as set forth in RFP, Section VII and Appendices A, B and C and agree to enter into a contractual agreement containing, at a minimum, the terms and conditions identified in the RFP section and appendices as cited herein. (**Note:** Appendix A, "Standard Clauses for New York State Contracts" is basically a compilation of statutory requirements applicable to all persons and entities contracting with the State and therefore has been deemed to be non-negotiable by the Offices of the Attorney General and the State Comptroller. Appendix B, "Standard Clauses for All DCS Contracts," and Appendix C, "Third Party Connection and Data Exchange Agreement," are compilations of standard clauses for DCS contracts and also are non-negotiable.) If an Offeror proposes to include the services of a Key Subcontractor(s), the Offeror shall be required to assume responsibility for those services as "Prime Contractor." DCS will consider only the Prime Contractor in regard to contractual matters.

B. Minimum Mandatory Requirements

The Proposal must be submitted by a qualified Offeror. Any Proposal received from an Offeror deemed by the DCS not to be a qualified Offeror will be removed from consideration. At this part of its Administrative Proposal, the Offeror must submit a completed **Exhibit I.T “Offeror Attestation Form”** representing and warranting that:

1. The Offeror, as of the Proposal Due Date, possesses the legal capacity to enter into a contract with the President of the New York State Civil Service Commission ("Commissioner").
2. The Offeror will permanently forfeit at least fifty percent (**50%**) of its Monthly Administrative Fees until all Implementation and Start-Up activities are complete.
3. The Offeror's principal place of business is not located in a state that penalizes New York State vendors and that, if selected goods or services provided under the Agreement will not be substantially produced or performed in such a state (refer to Section II.B.2).
4. The Offeror is, as of the Proposal Due Date, currently providing vision services, similar to those as set forth in the RFP, for a minimum of five hundred thousand (500,000) covered lives in total and with at least one current client with one hundred (100,000) covered lives, and demonstrate that the Offeror meets or exceeds these requirements to the satisfaction of the Department. To demonstrate that the Offeror, as of the Proposal Due Date, meets the minimum requirement of five hundred thousand (500,000) covered lives in total and at least one client with one hundred (100,000) covered lives, the Offeror must provide a list of current clients with the number of covered lives for each. In determining covered lives, the Offeror should:
 - a. Include both at-risk and fee-for-service business; and
 - b. Count all lives [i.e., an employee, a spouse and two (2) eligible dependents counts as four (4)].
5. The Offeror, as of the Proposal Due Date has an existing Participating Provider Network, that will provide services under the terms of the contract resulting from this RFP that meets the following Minimum Access Standards within NYS:
 - a. Eighty percent (80%) of Enrollees in urban areas will have at least one (1) Participating Provider within five (5) miles of an Enrollee's home;

- b. Eighty percent (80%) of Enrollees in suburban areas will have at least one (1) Participating Provider within fifteen (15) miles of an Enrollee's home; and
- c. Eighty percent (80%) of Enrollees in rural areas will have at least one (1) Participating Provider within thirty (30) miles of an Enrollee's home.

To demonstrate satisfaction of this requirement, the Offeror must submit all information required below based on the Geo-Coded Census file provided by the Department (Exhibit II.B). Based on this file, the Offeror must submit with their Administrative Proposal, the following:

- a. **Exhibit I.Y** – Offeror's Participating Provider Network Access Prerequisite Worksheet;
- b. **Exhibit I.Y.1** - Offeror's GeoAccess Report (on CD), created as supporting documentation for Exhibit I.Y to Meet Minimum Mandatory Requirements. See Exhibit II.A – GeoAccess Reporting Format.

For the purpose of meeting the Minimum Access Standards within NYS, the term Participating Provider shall mean a licensed, Optometrist or Ophthalmologist who has an existing contract with the Offeror as of the Proposal Due Date and who will provide services under the terms of the contract resulting from this RFP.

All Enrollees must be counted in calculating whether the Offeror meets the Participating Provider Network access guarantees. No Enrollee may be excluded even if there is no provider located within the minimum mandatory access requirements.

Note: The Minimum Access Standards within NYS required as of the Proposal Due Date are different than the Minimum Access Standards within NYS which must be met by the Contractor as of January 1, 2012 and thereafter throughout the term of the Agreement.

The Participating Providers Network section of this RFP, Section IV.B.9.a.(2), specifies the Minimum Access Standards within NYS effective as of January 1, 2012.

The Offeror's proposed Participating Provider Network access standards will be scored as part of the evaluation of the Offeror's Participating Provider Network and the Offeror's Participating Provider Network Access Guarantees will be evaluated in accordance with the criteria specified in Section VI, entitled "Evaluation and Selection Criteria."

6. The Offeror, if selected, will, under the Agreement, maintain and make available as required by the State, a complete and accurate set of records as may be required by the State to be produced for review by the State pursuant to the terms and conditions of RFP, Appendices A and B, and including any and all financial records as deemed necessary by the State to discharge its fiduciary responsibilities to Plan participants and to ensure that public dollars are spent appropriately.

Note: Any Offeror which fails to satisfy any of the above Minimum Mandatory Requirements shall be eliminated from further consideration.

C. Exhibits

The Offeror must complete and submit the various Exhibits specified in Sections II and III of this RFP, on the Proposal Due Date in satisfaction of the regulatory requirements described therein. A listing of the required Exhibits is set forth below:

Exhibit Name	Exhibit #
Proposal Submission Requirement Checklist	Exhibit I.A
Freedom of Information Law – Request for Redaction Chart	Exhibit I.C
MacBride Statement and Non-Collusive Bidding Certification	Exhibit I.D
Equal Employment Opportunity (EEO) Obligations – Offeror Certification of Compliance	Exhibit I.G
Workforce Employment Utilization Report	Exhibit I.H
New York State Department of Civil Service Vendor Responsibility Questionnaire	Exhibit I.I
Offeror’s Affirmation of Understanding and Agreement	Exhibit I.K
Compliance with Public Officers Law Requirements	Exhibit I.M
Compliance with Americans with Disabilities Act	Exhibit I.N
Omnibus Procurement Act Statement of Acceptance	Exhibit I.O
Certification of Compliance Pursuant to State Finance Law §139-k	Exhibit I.P
Article 15-A of the Executive Law	Exhibit I.Q
Formal Offer Letter	Exhibit I.S
Offeror Attestations Form	Exhibit I.T
Key Subcontractors	Exhibit I.U
Client References	Exhibit I.V
Participating Provider Network Access Prerequisite Worksheet	Exhibit I.Y
Offeror’s Current Participating Provider Network File (CD)	Exhibit I.Y.1

Note: If not already provided to the Department by time of Proposal submission, the Offeror must also enclose a completed Exhibit I.K “Offeror’s Affirmation of Understanding and Agreement.”

D. Key Subcontractors

At this part of its Administrative Proposal, the Offeror must provide a statement identifying all Key Subcontractors, if any, that the Offeror will be contracting with to provide Vision Program services and must, for each such Key Subcontractor identified, complete and submit **Exhibit I.U “Key Subcontractors”**: 1) provide a brief description of the services to be provided by the Key Subcontractor; and 2) provide a description of any current relationships with such Key Subcontractor and the clients/projects that the Offeror and Key Subcontractor are currently servicing under a formal legal agreement or arrangement, the date when such services began and the status of the project. The Offeror must indicate whether or not, as of the date of the Offeror’s Proposal, a subcontract has been executed between the Offeror and the Key Subcontractor for services to be provided by the Key Subcontractor relating to this RFP. If the Offeror will not be subcontracting with any Key Subcontractor(s) to provide Vision Plan services, the Offeror must provide a statement to that effect.

E. Client References

At this part of its Administrative Proposal, for the purpose of reference checks, the Offeror must list five (5) client references comprised of a combination of both current and at least one former client(s) for whom the Offeror has supplied vision services similar to those described in this RFP. For each client reference provided, the Offeror must complete and submit **Exhibit I.V “Client References.”** The Offeror shall be solely responsible for providing contact names, e-mail address and phone numbers of client references who are readily available to be contacted by the State.

F. Financial Statements

At this part of its Administrative Proposal, the Offeror must provide a copy of the Offeror's last issued GAAP annual audited financial statement. A complete set of statements, not just excerpts, must be provided. Additionally, for each Key Subcontractor, if any, that provides any of the Vision Plan services; provide the most recent GAAP annual audited statement. If the Offeror, or a Key Subcontractor, is a privately held business and is unwilling to provide copies of their annual audited financial statements as part of their Proposal, the Offeror/Key Subcontractor must make arrangements for the procurement evaluation team to review the financial statements.

Note: If financial statements have not been prepared and/or audited, the Offeror must provide a letter from a bank reference attesting to the Offeror's financial viability and creditworthiness as part of its Administrative Proposal. (Note: for purposes of this reference, the Offeror may not give as a reference, a parent or subsidiary company, a partner or an affiliate organization. For the purpose of this requirement, "affiliate" means an organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another organization, is controlled by another organization, or is, along with another organization, under the control of a common parent.) The letter must include the bank's name, address, contact person name and telephone number and it must address, at a minimum, the following items:

1. a brief description of the business relationship between the parties (i.e., the Offeror and the bank), including the duration of the relationship and the Offeror's current standing with the bank. For example: *"The Offeror is currently and has been for "x" number of years a client in good standing"*;
2. a description of any ownership/partner relationship that may exist between the parties, if any. (Note: One party cannot be the parent, partner or subsidiary of the other, nor can one party be an affiliate of the other.); and,
3. any other facts or conclusions the bank may deem relevant to the State in regard to the bank's assessment of the Offeror's financial viability and creditworthiness concerning the nature and scope of the Project Services, which are the subject matter of this RFP, and the parties (i.e., DCS and the Offeror) contractual obligations should it be awarded the resultant contract.

Note: Any Offeror that fails to satisfy one or more of the above submission requirements may be deemed non-responsive and/or non-responsible and eliminated from further consideration.

SECTION IV: TECHNICAL PROPOSAL REQUIREMENTS

The Department seeks through this RFP process to award a contract to a qualified Offeror to provide Vision Plan Services. The purpose of this section of the RFP is to set forth the programmatic duties and responsibilities required of the Offeror by the Department and to obtain required submissions concerning those duties and responsibilities. The Offeror's Proposal must contain responses to all of the required submissions from Offerors in the format requested. Each Offeror may submit only one Technical Proposal. Offerors' Technical Proposals will be evaluated based on each Offeror's responses to the required submissions contained in this section.

Note: Numbers, data or statistics which may appear in the Exhibits referenced throughout this RFP are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future performance or participation.

The Department will accept Proposals only from qualified Offerors and will consider for evaluation and selection purposes only those Offeror Proposals that it determines to meet the Minimum Mandatory Requirements in Section III and are responsive to the duties and responsibilities set forth in Section IV of this RFP.

Please note that Offerors must not include any cost information in the Technical Proposal including exhibits or attachments. Proposed Performance Guarantee amounts are to be included in the Technical Proposal. Specific savings estimates (dollars or percentages) must not be quoted in the Technical Proposal or in any exhibits or attachments submitted with the Technical Proposal.

A. Plan Administration

1. Executive Summary

a. Required Submission

The Offeror must submit an Executive Summary outlining its overall program and its capacity to administer the NYS Vision Plan. The Executive Summary must include:

- (1) The name and address of the Offeror's main and branch offices and the name of the senior officer who will be responsible for this account;

- (2) A description of the Offeror's understanding of the requirements presented in the RFP and how the Offeror can assist the Department in accomplishing its objectives;
- (3) A statement explaining the Offeror's previous experience managing the vision plans of other state or local government employers or any other organizations with over 100,000 covered lives. Detail how this experience qualifies the Offeror to undertake the functions and activities required by this RFP;
- (4) A detailed description of how the following functions will be allocated between the Offeror and any Key Subcontractor, if applicable (i.e., Will the role of the Offeror be limited to supervision of the Key Subcontractor, or will the Offeror perform any administrative functions?).
 - (a) Account Management
 - (b) Customer service
 - (c) Member and Provider Communications
 - (d) Enrollment Management
 - (e) Reporting
 - (f) Consulting
 - (g) Network Management
 - (h) Claims Processing
 - (i) Frame & Lens selection
 - (j) Contact Lens Selection
 - (k) Occupational Vision Program
 - (l) Medical Exception Program
 - (m) Upgrade Program

2. General Qualifications

The NYS Vision Plan covers 269,000 lives and incurs a cost of approximately \$20 million for 2010. The Offeror must have the experience, reliability and integrity to ensure that each Plan Member's vision care needs are addressed in a clinically appropriate and cost effective manner.

a. Required Submission

The Offeror must demonstrate its acceptance of the program duties and responsibilities set forth in this RFP and ensure full compliance with the Program's benefit design. The Offeror must demonstrate that it has the financial and operational wherewithal to administer the Plan as required by this RFP. Offerors should provide detailed responses to the following:

- (1) What experience does the Offeror have in managing a vision plan similar to the Plan described in this RFP?
- (2) Explain how the Offeror's account team will be prepared to administer the operational and clinical aspects of the Plan?
- (3) What financial actions would be taken to provide for ongoing operations if timely payments could not be made timely to the Contractors?

B. Program Services

The Offeror must demonstrate its capacity to provide the required Program Services described in this Section of the RFP.

1. Account Team

The Department expects the successful Offeror to have in place a proactive, experienced leader and an experienced team who have the authority to coordinate the appropriate resources to implement and administer the Plan.

a. Duties and Responsibilities

- (1) The Offeror must maintain, for the entire term of the Agreement, an organization of sufficient size with the skills and experience necessary to administer, manage, and oversee all aspects of the Plan during implementation and operation.
 - (a) The Offeror's account team must be comprised of qualified and experienced individuals who are acceptable to the Department and who will ensure that the

operational, clinical and financial resources are in place to operate the Program in an efficient manner;

- (b) The Offeror must ensure that there is a process in place for the account team to gain immediate access to appropriate corporate resources and senior management necessary to meet all Program requirements and to address any issues that may arise during the performance of the Agreement.
- (2) The Offeror's assigned account team shall be experienced, accessible and sufficiently staffed to provide timely responses (no longer than 1 to 2 Business Days) to administrative concerns and inquiries posed by the Department or other staff on behalf of the Council on Employee Health Insurance for the duration of the Agreement to the satisfaction of the Department.
- (3) The Offeror's assigned account team must immediately notify the Department of actual or anticipated events impacting Plan costs and/or delivery of services to Plan Enrollees.
- (4) The Offeror's assigned account team must ensure that the Program is in compliance with all legislative and statutory requirements. If the Offeror is unable to comply with any legislative or statutory requirements, the Department must be notified immediately.

b. Required Submission

- (1) Provide an organizational chart and narrative description illustrating how the Offeror proposes to administer, manage, and oversee all aspects of the Plan. Include the names, qualifications, and job descriptions of the key individuals proposed to comprise the operational, clinical and management team for the Offeror and its Key Subcontractor(s) (if applicable). Complete Exhibit I.B of this RFP, Biographical Sketch Form, for all key members of the proposed account management team. Where key individuals are not named, include qualifications of the individuals that you would seek to fill the positions. Include the following:

- (a) Reporting relationships and the responsibilities of each key position of the account management team; and how the team will interact with other business units of the Offeror such as the call center(s), quality assurance, reporting and network management within the Offeror's organization. Describe how the account management team interfaces with senior management and ultimate decision makers within the Offeror's organization;
- (2) Confirm that the account team will be readily accessible to the Program. Describe where the account team will be based.
 - (a) Describe how the Offeror proposes to ensure that timely responses (1 to 2 Business Days) are provided to administrative concerns and inquiries.
 - (b) Describe the protocols that will be put into place to ensure the Department will be kept abreast of actual or anticipated events impacting Program costs and/or delivery of services to Program Enrollees. Provide a representative scenario.
- (3) Describe the corporate resources that will be available to the account team to ensure compliance with all legislative and statutory requirements. Confirm the Offeror's commitment to notify the Department immediately if the Offeror were to be unable to comply with any legislative or statutory requirements and to work with the Department to take the appropriate remedial action to come into compliance as soon as practicable.

2. Plan Implementation

The Offeror must have a strong implementation plan to ensure that the Plan will be fully functioning on January 1, 2012. The Offeror's implementation plan must be detailed and comprehensive and exhibit a firm commitment by the Offeror to complete all Plan implementation activities by December 31, 2011.

a. Duties and Responsibilities

- (1) The Offeror must undertake and complete all start-up and implementation activities no later than December 31, 2011, so that the Plan as described in this RFP, including

but not limited to those specific activities set forth below, is fully operational on January 1, 2012.

(2) ***Implementation and Start-Up Service Level Standard:*** The Offeror must complete all Implementation and Start-Up activities no later than December 31, 2011, so that, effective January 1, 2012, the Offeror can assume full operational responsibility for the Plan. For the purpose of this Service Level Standard, the Offeror must, on January 1, 2012, have in place and operational:

- (a) Its contracted Participating Provider Network that meets the access standard set forth in Section IV.B.9.a.(1) of the RFP;
- (b) Its contracted Laser Vision Correction Participating Provider Network that provides reasonable access as defined by the Offeror in Section IV.B.10.b.(2) of the RFP;
- (c) A fully operational call center providing all aspects of customer service as set forth in Section IV.B.3.a. of this RFP;
- (d) A fully operational claims processing system that accurately reimburses claims in accordance with Plan provisions as set forth in Section IV.B.10.a of the RFP; utilizes accurate enrollment and eligibility data provided by the Department to accurately pay claims for eligible Enrollees/Dependents consistent with the Plan benefit design;
- (e) A fully functioning customized Plan website with a secure dedicated link from the Department's access to the specific website requirements as set forth in Section IV.B.3.a.(5) of this RFP.

b. Required Submission

- (1) Provide an implementation plan (narrative diagram and timeline) upon contract approval, on or about October 1, 2011 that results in the implementation of all Plan services by the required date of January 1, 2012, indicating: roles, responsibilities, estimated timeframes for individual task completion, testing dates and objectives, and areas where complications may be expected. Include key activities such as

Member and Provider communications, training customer service staff, report generation, eligibility feeds and claims testing.

- (2) ***Implementation and Start-Up Performance Guarantee.*** The Offeror must guarantee that all of the Implementation and Start-Up requirements listed above in “2.a through 2.e” will be in place on or before December 31, 2011. The Offeror shall propose the forfeiture of a percentage of its Monthly Administrative Fees (prorated on a daily basis) for each day that all Implementation and Start-Up Guarantees are not met.

Amended March 29, 2011

The Standard Credit Amount for each day that all Implementation and Start-Up requirements are not met is fifty percent (50%) of the Monthly Administrative Fees (prorated on a daily basis). However, Offerors may propose higher percentages.

The Offeror must propose its Implementation and Start-Up Performance Guarantee in the format set forth below:

The Offeror’s quoted percent to be credited for each day that all Implementation and Start-Up requirements are not met is _____ percent (%) of the Monthly Administrative Fees (prorated on a daily basis).

3. Customer Service

The Plan requires that the Offeror provide quality customer service to Plan Members. The Offeror must maintain a nationwide toll-free telephone number to service Plan Members and Providers. Through this toll-free telephone number Members and Providers must have access to representatives who respond to questions and inquiries regarding Plan benefits, the Participating Provider Network, the Laser Vision Correction Participating Provider Network, eligibility and claims status, and complaints. Accordingly, the Plan’s required Program Services include customer service Service Level Standards that reflect strong commitments to quality customer service.

a. Duties and Responsibilities

The Offeror shall be responsible for all customer support and services including, but not limited to:

- (1) Providing Members and Providers 24-hour access, except for regularly scheduled maintenance, to information on vision benefits and eligibility related to the NYS Vision Plan through a nationwide toll-free number.
- (2) Maintaining a call center located in the United States employing an adequate staff of fully trained customer service representatives, and supervisors available between the hours of 8:00 a.m. and 8:00 p.m. ET, Monday through Friday, and between the hours of 9:00 a.m. and 4:00 p.m. ET on Saturday, except for legal holidays observed by the State. These hours may be adjusted based on actual call volume by mutual agreement between the Department and the Offeror. Customer service representatives must be able to timely respond to questions, complaints and inquiries, including but not limited to, Plan benefits, Participating Provider and Laser Vision Correction Participating Provider locations, eligibility and claims status.
- (3) Customer service staff must use an integrated system to log and track all Member calls. The system must create a record of the Member contacting the call center, the call type and all customer service actions and resolutions.
- (4) Maintaining a back-up telephone system to be utilized in the event the primary telephone system fails or is unavailable.
- (5) Developing and maintaining a secure online customized website for Enrollees, 24 hours a day, 7 days a week, except for regularly scheduled maintenance throughout the term of the Agreement, which will provide access to information including, but not limited to: Plan benefits; Participating Provider locations; laser vision benefits and Laser Vision Correction Participating Provider locations; eligibility and claim status. The Offeror must establish a dedicated link to the website for the Plan from the Department's website and content is subject to the approval of the Department. Information from the link must be limited to information that pertains to the NYS Vision Plan. Any links should bring a viewer back to the Department website. No other links are permitted without the prior written approval of the Department. Any costs associated with customizing the website or establishing a dedicated link for the Plan shall be borne by the Offeror.

(6) ***Call Center Telephone Service Level Standard:*** The Offeror must meet the following four (4) measures of service on the toll-free customer service number:

- (a) ***Call Center Availability:*** The Plan's Service Level Standard requires that the Offeror's telephone line will be operational and available to Members and Providers at least ninety-nine and five-tenths percent (99.5%) of the Offeror's proposed customer service telephone line availability (minimum scheduled time between the hours of 8:00 a.m. and 8:00 p.m. ET, Monday through Friday; and between the hours of 9:00 a.m. and 4:00 p.m. ET on Saturday, except for legal holidays observed by the State), calculated on an annual calendar year basis. The Offeror shall measure telephone system availability monthly and report the results to the Department quarterly;
- (b) ***Call Center Telephone Response Time:*** The Plan's Service Level Standard requires that at least ninety percent (90%) of the incoming calls to the Offeror's telephone line will be answered by a customer service representative within sixty (60) seconds. Response time is defined as the time it takes incoming calls to the Offeror's telephone line to be answered by a customer service representative. The telephone response time shall be measured monthly and reported to the Department quarterly;
- (c) ***Telephone Abandonment Rate:*** The Plan's Service Level Standard requires that the percentage of incoming calls in which the caller disconnects prior to the call being answered by a customer service representative will not exceed three percent (3%). The telephone abandonment rate shall be measured monthly and reported to the Department quarterly; and
- (d) ***Telephone Blockage Rate:*** The Plan's Service Level Standard requires that not more than three percent (3%) of incoming calls to the customer service telephone line will be blocked by a busy signal. The telephone blockage rate shall be measured monthly and reported to the Department quarterly.

b. Required Submission

- (1) Confirm that the Offeror will maintain a call center located in the United States employing a staff of fully trained customer service representatives and supervisors available, at a minimum, between the hours of 8 a.m. and 8 p.m. ET, Monday through Friday and between the hours of 9 a.m. and 4 p.m. ET on Saturday, except for legal holidays observed by the State. If additional hours are proposed please state.
- (2) Describe the training that will be provided to customer service representatives before they go “live” on the phone with Members/Providers. Include:
 - (a) A description of the internal reviews that are performed to ensure quality service is being provided to Members/Providers;
 - (b) The first call resolution rate for the proposed call center;
 - (c) The call center location, average staff and turnover rate for call center employees;
 - (d) Ratio of management and supervisory staff to customer service representatives and;
 - (e) Proposed staffing levels including the logic used to arrive at the proposed staffing levels.
- (3) Describe the information, resources and capabilities that will be available for the customer service representatives to address and resolve member inquiries. Include:
 - (a) Whether any Interactive Voice Response (IVR) system is proposed;
 - (b) A sample of the IVR script and a description of customizable options, if any, the Offeror is proposing for the Plan;
 - (c) A description of the management reports and information that will be available from the system including any key statistics the Offeror is proposing to report;
 - (d) A description of the capabilities of the phone system to track call types, reasons and resolutions.

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- (4) Describe the Offeror's proposed back-up systems for its proposed primary telephone system which would be used in the event the primary telephone system fails or is unavailable. Indicate the number of times the back-up system has been utilized over the past two (2) years.
- (5) Describe the information and capabilities the Offeror's proposed website will provide to Members/Providers. Does the Offeror currently have customized websites for its clients? If so, describe the process utilized by the Offeror to establish customized websites for its clients.
- (6) ***Call Center Telephone Performance Guarantees:*** For each of the four (4) Call Center Telephone Service Level Standards above, the Offeror shall propose the forfeiture of a specific dollar amount of the Monthly Administrative Fee, for failure to meet the Offeror's proposed Performance Guarantee.

(a) Call Center Availability Performance Guarantee:

The Standard Credit Amount for each .01 to 1.0% below the standard of ninety-nine and five-tenths percent (99.5%) that the Offeror's telephone line is not operational and available to Members and Providers during the Offeror's Call Center Hours as calculated on a calendar year basis, is \$5,000. However, Offerors may propose higher or lesser amounts.

The Offeror must propose its Call Center Availability Performance Guarantee in the format set forth below:

“The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% below the standard of ninety-nine and five-tenths percent (99.5%) (or the Offeror's proposed standard of ____%) that the Offeror's telephone line is not operational and available to Members and Providers during the Offeror's Call Center Hours as calculated on a calendar year basis, is \$_____.”

(b) Call Center Telephone Response Time Performance Guarantee:

The Standard Credit Amount for each .01 to 1.0% below the standard of ninety percent (90%) of incoming calls to the Offeror's customer service toll-free telephone line that are not answered by a customer service representative within sixty (60) seconds, as calculated on a calendar year basis, is \$5,000. However, Offerors may propose higher or lesser amounts.

The Offeror must propose its Call Center Telephone Response Time Performance Guarantee in the format set forth below:

“The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% below the standard of ninety percent (90%) (or the Offeror's proposed standard of ____%) that incoming calls to the Offeror's customer service toll-free line that are not answered by a customer service representative within sixty (60) seconds, as calculated on a calendar year basis, is \$_____.”

(c) Telephone Abandonment Rate Performance Guarantee:

The Standard Credit Amount for each .01 to 1.0% of incoming calls to the Offeror's telephone line in which the caller disconnects prior to the call being answered by a customer service representative in excess of the standard of three percent (3%), as calculated on a calendar year basis, is \$5,000. However, Offerors may propose higher or lesser amounts.

The Offeror must propose its Telephone Abandonment Rate Performance Guarantee in the format set forth below:

“The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% of incoming calls to the Offeror's telephone line in which the caller disconnects prior to the call being answered by a customer service representative in excess of the standard of three percent (3%) (or the Offeror's proposed standard of ____%), as calculated on a calendar year basis, is \$_____.”

(d) Telephone Blockage Rate Performance Guarantee:

The Standard Credit Amount for each .01 to 1.0% of incoming calls to the Offeror's telephone line that are blocked by a busy signal, in excess of the standard of three percent (3%), as calculated on a calendar year basis, is \$5,000. However, Offerors may propose higher or lesser amounts.

The Offeror must propose its Telephone Blockage Rate Performance Guarantee in the format set forth below:

“The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% of incoming calls to the Offeror's telephone line that are blocked by a busy signal, in excess of three percent (3%) (or the Offeror's proposed standard of ____%), as calculated on a Calendar Year basis, is \$_____.”

4. Member Communication Support

The Offeror shall be required to create Plan materials that enhance a Member's understanding of Plan benefits. All Member communications are subject to the review and approval of the Department.

a. Duties and Responsibilities

The Offeror shall be responsible for providing Member communication support and services including but not limited to:

- (1) Designing and producing all necessary claim forms, benefit booklets, Participating Provider directories, and other printed materials in sufficient quantities to promote and operate the Plan. All such materials are subject to the Department's review and approval.
- (2) Developing, printing and mailing to Enrollees' homes within 90 days of the Contractor's implementation date a directory of Participating Providers (or customized listing of such providers) and a Vision Plan Summary of Benefits booklet which states the Plan benefits applicable to each Member and summarizes Plan provisions, including eligibility criteria. Vision Plan Summary of Benefit booklets are not required for Enrollees represented by SEHP;

- (3) Distributing to the Health Benefits Administrators (HBAs) of each State Agency and Participating Employer, a sufficient quantity of Vision Plan Summary of Benefits booklets for the Plan to provide a copy to each newly eligible employee throughout the term of the Agreement. The initial shipment of Vision Plan Summary of Benefit Booklets will equal 5% of the Agency's Enrollee count by bargaining unit as of January 1, 2012. The Enrollee count by State agency by bargaining unit is included as Exhibit II.F for informational purposes.
- (4) Developing an order entry process for HBAs to order replacement copies of Plan materials and fulfilling and shipping such orders to HBAs in an expeditious manner.
- (5) Developing, printing and mailing to Enrollees' homes notification of benefit modifications and any other communications materials that may be required by the Department during the term of the Agreement, in cooperation with and subject to the approval of the Department and in accordance with Article VIII; Paragraph 8.3.0 of the Agreement.
- (6) Accounting and paying for all development, production and mailing costs incurred to disseminate Plan communications materials to Enrollees and HBAs.
- (7) The Department shall:
 - (a) Retain editorial control over all aspects of the Plan material, including final determination on the content and tone. The Department will provide expeditious final approval of all print and/or other materials developed for the Plan;
 - (b) Make available, if possible, any records or information which the Offeror clearly needs to design and implement effective communication strategies; and
 - (c) Assist the Offeror as necessary in communicating with Enrollees and Providers but at no additional expense to the State, except as provided in Article IX, Paragraph 8.3.0 of the Agreement.

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- (8) The Offeror shall retain no proprietary or literary rights with respect to communication material developed solely for the Plan and shall execute any assignment found necessary to release proprietary rights.
 - (9) Attending health benefit fairs, conferences, and benefit design information sessions, located in New York State, at the request of the Department.
 - (10) ***Website Maintenance Service Level Standard:*** The Offeror must accurately update the Plan's customized website within thirty (30) days of notification by the Department.

b. Required Submission

- (1) Provide an outline of the communications campaign the Offeror is proposing for the Plan's first year; including the timeline for developing, printing and mailing Enrollee and Provider Plan materials.
- (2) Does the Offeror have staff within its organization or a Key Subcontractor that specializes in enrollee communications? What is their capacity to provide the communication support described above?
- (3) Confirm that upon request, subject to the approval of DCS, on an "as needed" basis, the Offeror shall provide staff to attend health benefit fairs, conferences, and benefit design information sessions. **The Offeror agrees that the costs associated with these services are included in the Offeror's Monthly Administrative Fee.** Describe the experience and qualifications of the staff who will be assigned to attend such events when so requested by the Department.
- (4) State the Offeror's agreement to work with the Department to develop appropriate customized forms and letters for the Program, including but not limited to Enrollee claim forms, disruption letters, etc., and that all such communications must be approved by the Department.

(5) Website Maintenance Performance Guarantee:

The Plan's Service Level Standard requires that all Plan benefit changes be accurately updated by the Offeror to the Plan's customized website within thirty (30) days of notification by the Department.

The Standard Credit Amount for each calendar day beyond thirty (30) days notification by the Department that all Plan benefit changes are not accurately updated to the Plan's customized website is \$500. However, Offerors may propose higher or lesser amounts.

The Offeror must propose its Website Maintenance Performance Guarantee in the format set forth below:

“The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each calendar day in excess of the thirty (30) day standard that Plan benefit changes are not accurately updated to the Plan's customized website, is \$_____.”

5. Enrollment Management

The Plan requires the Offeror to ensure timely addition of enrollment data as well as cancellation of benefits in accordance with Plan eligibility rules. EBD utilizes a web-based enrollment system for the administration of employee benefits. The system is referred to as the New York Benefits Eligibility & Accounting Systems (NYBEAS). NYBEAS is the source of eligibility information for all NYS Vision Plan Enrollees and Dependents. Enrollment information is set forth in Exhibits II.A and II.B.

Note: The enrollment counts depicted in these exhibits may vary slightly due to timing differences in exhibit generation.

a. Duties and Responsibilities

The Offeror shall be responsible for the maintenance of an accurate, complete and up-to-date enrollment file based on information provided by the Department. This enrollment file shall be used by the Offeror to process claims, provide customer service,

and produce management reports. The Offeror is required to provide enrollment management services including, but not limited to:

(1) *Initial testing*

- (a) Performing an initial enrollment load to commence upon receipt of a test file from the Department during Program implementation. The file may be EDI Benefit Enrollment and Maintenance Transaction set 834(ANSI x.12 834 standard either 834 (4010x095A1) or 834 (005010x220)) or a custom file format. The determination will be made by the Department;
- (b) Testing to determine if the enrollment file and enrollment transactions loaded correctly and that the enrollment system interfaces with the claims processing system to accurately adjudicate claims. The selected Offeror shall submit enrollment test files to the Department for auditing, provide the Department with secure, online access required to ensure accurate loading of Program enrollment data, and promptly correct any identified issues to the satisfaction of the Department;

- (2)** Providing an enrollment system capable of receiving secure enrollment transactions and having all transactions fully loaded to the claims processing system within forty-eight (48) hours of release of a retrievable file by the Department. The Offeror shall immediately notify the Department of any delay in loading enrollment transactions. In the event the Offeror experiences a delay due to the quality of the data supplied by the Department, the Offeror shall immediately load all records received (that meet the quality standards for loading) within forty eight (48) hours of their release, as required. The Offeror must have a process in place to correct any records that cannot be loaded programmatically in a timely manner. The Department will transmit enrollment transactions changes to the Offeror in an electronic format weekly. The format of these transactions will be in EDI Benefit Enrollment and Maintenance transaction set, utilizing an ANSI x.12 834 transaction set in the format specified by the Department (see Exhibit II.G for a detailed record layout). The Offeror must also have the capability to receive any special update files from the Department containing eligibility additions and deletions, including emergency updates, if required; and

- (3) Meeting the administrative requirements for National Medical Support Notices. A child covered by a Qualified Medical Child Support Order (QMCSO), or the child's custodial parent, legal guardian, or the provider of services to the child, or a State agency to the extent assigned the child's rights, may file claims and the Offeror must make payment for covered benefits or reimbursement directly to such party. The Offeror shall store this information in their system so that any claim payments or any other plan communication distributed by the Offeror, including access to information on the Offeror's website would go to the person designated in the QMCSO;
- (4) Ensuring the security of all enrollment information as well as the security of a HIPAA compliant computer system in order to protect the confidentiality of Enrollee/Dependent data contained in the enrollment file. The Offeror must have an Information Security Plan (ISP) acceptable to the Department in place on the effective date of the Agreement, which states all of the security policies and procedures for the protection of data, equipment and facilities, including receipt of and transmission of data in accordance with Department standards, policies and procedures. The ISP must, at a minimum conform to the requirements of the Department of Civil Service Information Security Policy (**Exhibit I.X**); and agree to the policies, terms and conditions stated in this RFP, the Agreement and Appendices A, B and C. Any transfers of enrollment data within the Offeror's system or to external parties must be completed via a secured process;
- (5) Cooperating fully with any Department initiatives to use new technologies, processes, and methods to improve the efficiencies of maintaining enrollment data including any enrollment file conformance testing requested during the course of the Agreement.
- (6) Maintaining a read only connection to the NYBEAS enrollment system for the purpose of providing the Offeror's staff with access to current Program enrollment information. Offeror's staff must be available to access enrollment information through NYBEAS, Monday through Friday, from 9:00 a.m. to 5:00 p.m., with the exception of State holidays;
- (7) Providing a back-up system in the event that the primary enrollment system fails or cannot be accessed so that there is no interruption of service to Members.

Amended March 29, 2011

(8) Verifying dependent child full-time student status for all employee groups (except for those covered by SEHP) for Dependents age nineteen through twenty-five, prior to authorization of Vision Plan services. Student status is not maintained in NYBEAS. Dependent children of Employees who are in SEHP are covered up to age twenty-six regardless of student status.

(9) ***Enrollment Management Service Level Standard:*** The Program's Service Level Standard requires that one hundred percent (100%) of all Plan enrollment records that meet the quality standards for loading must be loaded into the Offeror's enrollment system within forty-eight (48) hours of release by the Department.

b. Required Submission

- (1) Describe the Offeror's proposed testing plan to ensure that the initial enrollment load is accurately updated to the Offeror's system and that the Offeror's enrollment system interfaces correctly with the Offeror's claims system.
 - (a) Describe what quality controls will be performed before the initial and ongoing enrollment transactions are loaded into the claims adjudication system.
 - (b) Describe how the Offeror's system will identify transactions that will not load into the Offeror's enrollment system. What exceptions will cause enrollment transactions to fail to load into the enrollment system? What steps will be taken to resolve the exceptions, and what is the proposed turnaround time for the exception records to be added to the enrollment file?
- (2) Describe the Offeror's system capabilities for retrieving and maintaining enrollment information within forty-eight (48) hours of its release by the Department as well as:
 - (a) How the Offeror's system will maintain a history of enrollment transactions and how long enrollment history will be kept online. Indicate whether or not there will be a limit as to the quantity of historic transactions that can be kept online.
 - (b) How the Offeror's system will handle retroactive changes and corrections to enrollment data.

- (c) Confirm that the Offeror's enrollment and claims processing system has and will have the capability to administer a social security number and Employee identification number. Indicate whether or not the system has any special requirements to accommodate these Enrollee identification numbers? Explain how Dependents will be linked to the Enrollee in the enrollment and claims processing systems.
- (3) Describe the Offeror's ability to meet the administrative requirements for national Medical Support Orders and Dependents covered by a Qualified Medical Child Support Order (QMCSO), including storing this information in the Offeror's system so that information about the Dependent is only released to the individual named in the QMCSO.
- (4) Describe the process the Offeror will utilize to verify a dependent child's full time student status prior to authorization of Vision Plan services. Confirm whether this process is utilized for other customers.
- (5) Describe how the Offeror's enrollment system data transfer and procedure for handling data are HIPAA compliant.
- (6) Confirm that the Offeror will maintain a read only connection to the NYBEAS enrollment system, and that Offeror's staff will be able available to access enrollment information through NYBEAS during the required hours.
- (7) Describe the Offeror's backup system, process or policy that will be used in the event that enrollment information is not immediately available.
- (8) ***Enrollment Management Performance Guarantee:*** The Program's Service Level Standard requires that one hundred percent (100%) of all Program enrollment records that meet the quality standards for loading be loaded into the Offeror's enrollment system within forty-eight (48) hours of release by the Department. The Offeror shall propose the forfeiture of a specific dollar amount of the Monthly Administrative Fee for failure to meet this level of standard.

The Standard Credit Amount for each twenty- four (24) hour period beyond forty-eight (48) hours from the release by the Department that one hundred percent (100%) of the Program enrollment records that meet the quality standards for loading is not loaded into the Offeror's enrollment system is \$500. However, Offerors may propose higher or lesser amounts.

The Offeror must propose its Enrollment Maintenance Performance Guarantee in the format as set forth below:

“The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each twenty- four (24) hour period beyond forty-eight (48) hours from the release by the Department that one hundred percent (100%) of the Program enrollment records that meet the quality standards for loading is not loaded into the Offeror's enrollment system, is \$____.”

6. Reporting

Reporting must be structured to provide assurances that member, network and account management service levels are being maintained and that claims are being paid and billed according to the terms of the agreements with Participating Providers and Laser Vision Correction Participating Providers and the terms of the Agreement. The selected Offeror may on occasion be requested to provide ad-hoc reporting and analysis within very tight time frames. The Program requires that the Offeror provide accurate claims data information on a monthly basis as well as specific summary reports concerning the Plan and its administration.

a. Duties and Responsibilities

The selected Offeror will be responsible for reporting services including, but not limited to:

- (1) Developing, in conjunction with the Department, standard electronic management, financial, and utilization reports required by the Department for its use in the review, management, and analysis of the Plan. These reports must tie to the amounts billed to the Plan. The final format of reports is subject to the Department review and approval;
- (2) Providing Ad Hoc reports and other data analysis at no additional cost to the State. The exact format, frequency and due dates for such reports shall be specified by the

Department. Information required in the Ad Hoc Reports may include but is not limited to providing:

- (a) Forecasting and trend analysis
 - (b) Benefit design Modeling
 - (c) Reports to meet clinical program review needs
- (3) Supplying reports in paper format and/or in an electronic format (Microsoft Access, Excel, Word) as determined by the Department. The primary reports and data files are listed under Semi-Annual, Quarterly and Monthly Reports below and include the time frames for each report's submittal to the Department:

Semi-Annual Reports

Utilization Reports: The Offeror must submit reports that detail utilization by type of service and employee group for both network(s) and non-network claims, including services provided under the Occupational Vision Program and the Medical Exception Program as well as the Laser Vision Correction Program. Additionally, for the Medical Exception Program, the Offeror must report the number of authorized services, by medical condition and employee group. The reports are due on a semi-annual basis, thirty (30) days after the end of the reporting period.

Enrollee Satisfaction Survey Summary Report: The Offeror must submit a semi-annual report which summarizes, by employee group, the results of Enrollee satisfaction surveys designed to evaluate the level of Enrollee satisfaction with the Plan. The survey should seek Enrollee satisfaction with:

- (i) Quality of Professional care provided, including eye examinations, contact lens fittings and eyewear dispensing;
- (ii) Quality of frames and lenses;
- (iii) Technical competency, familiarity with Plan benefit design, and customer service skills of the Participating Provider staff; and
- (iv) Adequacy of Provider access, including ease of making an appointment and convenience of office hours.

The format of the report is subject to Department input and approval and must include free form reporting of all Enrollee comments and an accounting and resolution of any Enrollee issues. This report is due on a semi-annual basis, ninety (90) Days after the end of the reporting period.

Quarterly Reports

Quarterly Performance Guarantee Report: The Offeror must submit quarterly the Plan's Performance Guarantee report that details the Offeror's compliance with all of the Offeror's Performance Guarantees. The report shall include, at a minimum, the areas of Plan implementation, customer service (telephone availability, response time, blockage rate, abandonment rate), eyewear turnaround time, enrollment management reports, and Participating Provider access. Documentation of compliance/non-compliance is to be included with this report. The report is due thirty (30) Days after the end of the quarter.

Monthly Reports

Monthly Payment Summary: The Offeror is required to submit a monthly report that provides summarized claims processed, issued and paid on behalf of the NYS Vision Plan during the reporting period. Such report shall separately identify claims for State employees from those of Participating Employers (PE) and include a summarized breakout by service type. This report will be used for PE billings, thus should include sufficient claims detail for a PE to verify that it was correctly billed. The report must identify separately paid claims on behalf of direct pay Enrollees (i.e. COBRA) of PEs. This report shall serve as the billing to the NYS Vision Plan, and is due ten (10) Days after the end of the month. The exact format will be specified by the Department but should include, at a minimum, the data elements outlined in Exhibit II.E.

Monthly Claims File: The Offeror shall provide a Microsoft Access database file containing the claims payment information for the month, in accordance with the specifications presented in Exhibit II.E. The monthly file is due fifteen (15) Days after the end of the month.

(4) *Management Reports and Claim File Service Level Standard:* The Plan's Service Level Standard requires that accurate management reports and claim files, as specified in Section IV.B.6.a.(3) of this RFP, be delivered to the Department no later than their respective due dates, inclusive of the date of receipt.

b. Required Submission

- (1)** The Offeror must submit examples of the financial, utilization and Enrollee satisfaction survey reports that have been listed without a specified format in the reporting requirements above, as well as any other reports that the Offeror is proposing to produce for the Department to be able to analyze and manage the NYS Vision Plan. Provide an overview of the Offeror's reporting capabilities and the value the Offeror believes it will bring to the Plan.
- (2)** Confirm that the Offeror will provide reports in the specified format (paper and or electronic- Microsoft Access, Excel, Word) as determined by the Department.
- (3)** Confirm that the Offeror will provide direct, secure access to its claims system and any online and web-based reporting tools to the Department's offices. Include a copy of the data sharing agreement the Offeror proposes, if any, for Department staff to execute in order to obtain system access.
- (4)** Confirm the Offeror's ability and willingness to provide Ad Hoc reports and other data analysis. Provide examples of Ad Hoc reporting that the Offeror has performed for other clients.
- (5) *Management Reports and Claims File Performance Guarantee:*** The Plan's Service Level Standard requires that, for the management reports and claim files listed in Section IV.B.6.a.(3) of this RFP, accurate management reports and claims files will be delivered to the Department no later than their respective due dates. The Offeror shall propose the forfeiture of a specific dollar amount of the Offeror's Monthly Administrative Fee.

The Standard Credit Amount for each management report or claim file that is not received by its respective due dates is \$500 per report per each Business Day. However, Offerors may propose higher or lesser amounts.

The Offeror must propose its Management Reports and Claims File Performance Guarantee in the format as set forth below:

“The Offeror’s quoted amount to be credited against the Offeror’s Monthly Administrative Fee for each management report or claim file listed in Section IV.B.6.a.(3) that is not received by its respective due date, is \$_____ per report for each Business Day between the due date and the date the accurate management report or claims file is received by the Department inclusive of the date of receipt.”

7. Consulting

The Department expects the Offeror to be an expert in the vision services industry. Thus, the State may request the advice and recommendations of the selected Offeror to provide the State with up-to-date developments in the vision services field. The State expects the selected Offeror to proactively provide advice and recommendations that are related to the clinical quality and cost management of the Plan. Such recommendations must include preliminary analysis of financial and enrollee impact of proposed and contemplated benefit design changes.

a. Duties and Responsibilities

The selected Offeror will be responsible for providing advice and recommendations regarding the Plan. Such responsibility shall include, but not be limited to:

- (1) Informing the State in a timely manner concerning such matters as innovative cost containment strategies, new products, technological improvements, and State/Federal legislation that may affect the Plan. The Offeror must also make available to the State one or more members of the account management team to discuss the implications of these new trends and developments. The Department is not under any obligation to act on such advice or recommendation; and

- (2) Assisting the State with recommendations and evaluation of proposed benefit design changes and implementing any changes necessary to accommodate Plan modifications resulting from collective bargaining, legislation, or within the statutory discretion of the State. Recommendations must include a preliminary analysis of all associated costs, a clinical evaluation, and the anticipated impact of proposed Plan modifications and contemplated benefit design changes on Enrollees.
- (3) If a significant change in benefits occurs during the term of the Agreement which, determined by the Department in its sole discretion, materially impacts the Contractor's Level of effort/cost, the State reserves the right to and at its sole discretion may renegotiate the unit rates contained in the Participating Provider and Laser Vision Surgery Fee Schedules and/or the Monthly Administrative Fees.

b. Required Submission

- (1) What resources will the Offeror utilize to ensure the Plan is kept abreast of the latest developments in the vision services field? How does the Offeror propose to communicate trends, pending legislation and industry information to the Department?

8. Transition and Termination of Contract

The Offeror shall ensure that upon termination of the Agreement, any transition to another organization be done in a way that provides Members with uninterrupted access to their vision benefits and associated customer services through final termination of the Agreement. This includes, but is not limited to: ensuring that Members can continue to receive services from network(s) providers as necessary, processing all network(s) and non-network claims; verification of enrollment; and, providing sufficient staffing to ensure Enrollees continue to receive good customer service even after the termination date of the Agreement. It is also imperative that the Plan continue to have dialogue with key personnel of the Offeror, maintain access to online systems and receive data/reports and other information regarding the Plan after the effective end date of the Agreement. In addition, the Offeror and the selected successor shall fully cooperate with the Department to create and establish a transition plan in a timely manner.

a. Duties and Responsibilities

- (1) The Offeror must commit to fully cooperate with the successor contractor to ensure the timely, smooth transfer of information necessary to administer the Plan.

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- (2) The Offeror must, within ninety (90) days of the end of the Agreement resulting from this RFP, or within forty-five (45) Days of notification of termination, if the Agreement resulting from this RFP is terminated prior to the end of its term, provide the Department with a detailed written plan for transition, which outlines, at a minimum, the tasks, milestones and deliverables associated with:
- (a) Electronic transition of Plan data including, but not limited to, the most recent date of service for Enrollees and Dependents and unique information required for a smooth transition to a successor contractor including providing a test file to the successor contractor in advance of the implementation date; and
 - (b) Completion of all such Contractor-provided services associated with claims incurred on or before the scheduled termination date of the Agreement.
- (3) Within fifteen (15) business days from receipt of the Transition Plan, the Department shall either approve the Transition Plan or notify the Offeror, in writing, of the changes required to the Transition Plan so as to make it acceptable to the Department.
- (4) Within fifteen (15) business days from the Offeror's receipt of the required changes, the Offeror shall incorporate said changes into the Transition Plan and submit such revised Transition Plan to the Department for approval.
- (5) The selected Offeror shall be responsible for transitioning the Plan in accordance with the approved Transition Plan.
- (6) To ensure that the transition to a successor organization provides Enrollees with uninterrupted access to their Vision benefits and associated customer services, and to enable the Department to effectively manage the Agreement, the Offeror is required

to provide the following Contractor related obligations to the Program through the final financial settlement of the Agreement which includes but is not limited to:

- (a) Providing an electronic file of the most recent date of service for Enrollees and covered Dependents, including Laser Vision Correction Surgery Services in a format to be specified by the Department, no later than thirty (30) days prior to termination of the Agreement. A lag file must be provided fifteen (15) days after termination and monthly thereafter until the 90-day benefit period has elapsed;
 - (b) Providing all Contractor provided services associated with claims incurred on or before the scheduled termination date of the Agreement, including but not limited to paying network claims and, manual submit claims, and retaining NYBEAS access.
 - (c) Completing all required reports in the reporting section of this RFP;
 - (d) Providing the Program with sufficient staffing in order to address State audit requests and reports in a timely manner;
 - (e) Agreeing to fully cooperate with all the Department or Office of the NYS Comptroller (OSC) audits consistent with the requirements of Appendices A and B;
 - (f) Performing timely reviews and responses to audit findings submitted by the Department and the OSC's audit unit in accordance with the requirements set forth in Article XV "Audit Authority," Section VII, Contract Provisions; and
 - (g) Remitting reimbursement due the Program in a timely manner upon final audit determination consistent with the process specified in Article XV "Audit Authority" of Section VII, Contract Provisions and Appendix B.
- (7) The selected Offeror is required to reach agreement with the Department on receiving and applying enrollment updates, keeping phone lines open with adequate available staffing to provide customer service at the same levels provided prior to termination of the Agreement, adjusting phone scripts, and transferring calls to a successor contractor's lines.

- (8) If the selected Offeror does not meet all of the Transition Plan requirements, the selected Offeror **will permanently forfeit 100%** of all Monthly Administrative Fees (prorated on a daily basis) from the due date of the Transition Plan requirement(s) to the date the Transition Plan requirement(s) are completed to the satisfaction of the Department.

b. Required Submission

- (1) Provide an outline of the key elements and tasks that the Offeror proposed would be included in its Transition Plan to ensure that all the required duties and responsibilities are completed if the Offeror were to be the incumbent contractor. Include a brief explanation on how the Offeror would accomplish this with the successor contractor.
- (2) Detail the level of customer service that the Offeror would provide after the termination date of the Agreement.
- (3) Confirm the Offeror's agreement to ***permanently forfeit 100%*** of all Monthly Administrative Fees (prorated on a daily basis) from the due date of the Transition Plan requirement(s) to the date the Transition Plan requirement(s) are completed to the satisfaction of the Department.

9. Network Management

Vision Plan Enrollees and Dependents reside primarily in New York State and contiguous states. For this reason, the selected Offeror must have a comprehensive Participating Provider Network in place to allow adequate access for Plan Members. The Plan establishes minimum standards for Participating Provider Network access. Although the access standards only apply to New York State, Offerors are encouraged to propose a nationwide network that would provide access to Members residing or traveling in areas outside of New York.

Participating Provider Network

The current Plan includes a regional Participating Provider Network. The selected Offeror must have a credentialed Participating Provider Network in place January 1, 2012, that meets the

Plan's minimum access standards. The selected Offeror must also illustrate and attest that it has the capability and contractual right to effectively audit its Participating Provider Network.

a. Duties and Responsibilities

- (1) The Offeror must maintain a credentialed and contracted Participating Provider Network that meets or exceeds the Program's minimum access standards throughout the term of the Agreement.
- (2) ***Participating Provider Network Service Level Standard:*** The selected Offeror must have a Participating Provider Network that throughout the term of the Agreement, meets or exceeds the Department's minimum access standards within New York State as follows:
 - (a) Ninety-five (95%) of Enrollees in urban areas of New York State will have access to at least one (1) Participating Provider within five (5) miles;
 - (b) Ninety-five (95%) of Enrollees in suburban areas of New York State will have access to at least one (1) Participating Provider within fifteen (15) miles, and
 - (c) Ninety-five (95%) of Enrollees in rural areas of New York State will have access to at least one (1) Participating Provider within thirty (30) miles;

Note: In calculating whether the Offeror meets the minimum access standards, all Enrollees residing in New York State must be counted; no Enrollee may be excluded even if a provider is not located within the minimum access area. Offerors should propose a Performance Guarantee for each of the three (3) measurements and areas (urban, suburban and rural).

These standards are based on the distance, in miles, from an Enrollee's home zip code to the nearest Participating Provider location.

Urban, suburban and rural are based on US Census Department classifications, as determined by GeoAccess. Offerors may propose Performance Guarantees with better access than the minimums, but the access proposed must follow the same

structure as the above minimum (i.e., access for each of the three (3) areas based on the NYS Vision Plan population in New York State).

b. Required Submission

- (1) Propose access standards for the Plan's Participating Provider Network that meet or exceed the minimum access standard set forth below. The access standard must be provided in terms of actual distance from Enrollees' residences and must meet or exceed the minimum access standards stipulated below.

NYS Enrollee Location	Access Standard – At least 1 Provider within
Urban	5 miles
Suburban	15 miles
Rural	30 miles

- (2) Confirm that if selected, the Offeror shall provide an updated Exhibit I.Y on December 1, 2011 confirming that the proposed Participating Provider Network will be implemented as required on January 1, 2012.
- (3) Describe the approach(es) the Offeror would use to solicit additional providers to enhance its proposed Participating Provider Network or to fulfill a request to add a Participating Provider.
- (4) If a national network of Participating Providers is proposed, explain whether Members traveling or residing outside of New York State will have access to the same level of benefits as those offered by Participating Providers located in New York State.
- (5) ***Participating Provider Access Performance Guarantees:*** The Offeror must guarantee that throughout the term of the Agreement, Enrollees living in urban, suburban and rural areas of New York State will have access to a Participating Provider. The Offeror must propose an access standard that meets or exceeds the minimum access standards set forth in the "Participating Provider Network" Section of this RFP. The Offeror shall propose the forfeiture of a specific dollar amount of the Monthly Administrative Fee for failure to meet these guarantees.

- (a) *The Standard Credit Amount for each .01% to 1.0% below the ninety-five percent (95%) minimum access standard in which the Participating Provider Access for Urban Areas of New York State is not met by the Offeror, as calculated on a Calendar Year basis, is \$5,000. However, Offerors may propose higher or lesser amounts.*

The Offeror must propose its Participating Provider Access for Urban Areas of New York State Performance Guarantee in the format as set forth below:

“The Offeror’s quoted amount to be credited against the Offeror’s Monthly Administrative Fee is \$_____ for each .01 to 1.0% below the ninety-five percent (95%) minimum access standard (or the Offeror’s standard of __%) for any Calendar Year in which the Participating Provider Access for Urban Areas of New York State Performance Guarantee, as calculated on a Calendar Year basis, is not met by the Offeror.”

- (b) *The Standard Credit Amount for each .01% to 10% below the ninety-five percent (95%) minimum access standard in which the Participating Provider Access for Suburban Areas of New York State is not met by the Offeror, as calculated on a Calendar Year basis, is \$5,000. However, Offerors may propose higher or lesser amounts.*

The Offeror must propose its Participating Provider Access for Suburban Areas of New York State Performance Guarantee in the format as set forth below:

“The Offeror’s quoted amount to be credited against the Offeror’s Monthly Administrative Fee is \$_____ for each .01 to 1.0% below the ninety-five percent (95%) minimum access standard (or the Offeror’s proposed standard of __%) for any Calendar Year in which the Participating Provider Access for Suburban Areas of New York State Performance Guarantee, as calculated on a Calendar Year basis, is not met by the Offeror.

- (c) *The Standard Credit Amount for each .01% to 1.0% below the ninety-five percent (95%) minimum access standard in which the Participating Provider*

Access for Rural Areas of New York State is not met by the Offeror, as calculated on a Calendar Year basis, is \$5,000. However, Offerors may propose higher or lesser amounts.

The Offeror must propose its Participating Provider Access for Rural Areas of New York State Performance Guarantee in the format set forth below:

“The Offeror’s quoted amount to be credited against the Offeror’s Monthly Administrative Fee is \$_____ for each .01 to 1.0% below the ninety-five percent (95%) minimum access standard (or the Offeror’s proposed standard of __%) for any Calendar Year in which the Participating Provider Access for Rural Areas of New York State Performance Guarantee, as calculated on a Calendar Year basis, is not met by the Offeror.”

Laser Vision Correction Participating Provider Network

The Offeror must develop and contract a network of Laser Vision Correction Participating Providers to provide eligible Enrollees with a covered laser vision correction benefit. The covered benefit includes a pre-operative evaluation, laser vision correction surgery, and necessary follow-up visits once every five (5) years. Prior utilization data for the covered benefit is set forth in Exhibit III.H. of this RFP.

Ineligible Enrollees and Dependents are, however, provided with an Enrollee-pay-all discounted Laser Vision Correction program through the Offeror’s contracted Laser Vision Correction Network. The incumbent contractor currently offers a minimum fifteen percent (15%) discount off usual and customary fees. Utilization data for the discount program is not available.

Laser Vision Correction benefits are available to Enrollees and Dependents as set forth in the Summary of Covered Benefits, by Group in Exhibit II.D of this RFP.

a. Duties and Responsibilities

- (1) The Offeror must develop and maintain a regional network of qualified, credentialed ophthalmologists that provides reasonable access to Enrollees and Dependents to provide laser vision correction services through both a covered benefit and discount program.

- (2) The Offeror must effectively communicate the availability of the Laser Vision Correction Network to eligible Members, in addition to notifying them of their benefit and how to access their benefit. Eligible Members are eligible to use their laser vision correction benefit once every five years.
- (3) At the request of the Department, the Offeror must solicit additional Laser Vision Correction Participating Providers to participate in the Laser Vision Correction Network.

b. Required Submission

- (1) Indicate whether or not the Offeror currently has, and is proposing, a contracted Laser Vision Correction Network that provides both a covered benefit and a discount program. If so, please provide a listing of the proposed Laser Vision Correction Participating Providers located in New York State.
- (2) Propose the Offeror's definition of "reasonable access" as regards the Laser Vision Correction Network.
- (3) What is the minimum, maximum and average discount offered by Laser Vision Correction Participating Providers, expressed as a percentage? **Do not include any cost information in the Technical Proposal.**
- (4) Confirm that the Offeror will solicit additional Laser Vision Correction Participating Providers at the Department's request.

Participating Provider and Laser Vision Correction Provider Credentialing

Offerors must ensure that their Participating Providers and Laser Vision Correction Participating Providers meet the licensing standards required by the State in which they operate. Participating Providers and Laser Vision Correction Participating Providers are also required to meet the credentialing criteria established by the Offeror. This additional criteria should be designed by the Offeror to ensure quality vision services.

a. Duties and Responsibilities

- (1) The selected Offeror must assure its network is credentialed in accordance with all applicable federal and state laws, rules and regulations.
- (2) The Offeror must credential Participating Providers and Laser Vision Correction Participating Providers to ensure the quality of the network. The Offeror must also credential Participating Providers and Laser Vision Correction Participating Providers in a timely manner and shall have an effective process by which to confirm Participating Provider's and Laser Vision Correction Participating Provider's continuing compliance with credentialing standards.

b. Required Submission

- (1) Describe the Offeror's proposed process to ensure that the Participating Providers and Laser Vision Correction Participating Providers meet the applicable state licensing requirements and are in compliance with all other federal and state laws, rules and regulations. What is the resource, data base, or other information that will be used by the Offeror to verify this information?
- (2) Describe the Offeror's proposed approach for credentialing Participating Providers and Laser Vision Correction Participating Providers. Specify if the Offeror is proposing to utilize an external credentialing verification organization. When was the credentialing verification process last completed? What is the Offeror's process for confirming continued compliance with credentialing standards? How often does/will the Offeror conduct a complete review?
- (3) What steps will the Offeror take between credentialing periods to ensure that Participating Providers and Laser Vision Correction Participating Providers that are officially sanctioned, disciplined, or had their licenses revoked are removed from the Participating Provider Network and/or Laser Vision Correction Network as soon as possible? What steps will the Offeror take, if any, to advise members when a Participating Provider/Laser Vision Correction Participating Provider has been removed from the associated network(s)?

Participating Provider and Laser Vision Correction Provider Contracting

Contracts with Participating Providers and Laser Vision Correction Providers should be written to utilize the Plan's market strength to obtain cost-effective pricing while ensuring Plan access standards are met, where applicable. Contracting staff should keep abreast of current market conditions and have the wherewithal to adjust contracts that reflect the best interests of the Plan. The Offeror must ensure that all Participating Providers and Laser Vision Correction Participating Providers contractually agree and comply with the Plan's requirements and benefit design.

a. Duties and Responsibilities

The Offeror will be responsible for providing Participating Provider and Laser Vision Correction Participating Provider contracting services including but not limited to:

- (1) Ensuring that all Participating Providers and Laser Vision Correction Participating Providers contractually agree to and comply with all of the Plan's requirements and benefit design specifications.
- (2) Ensuring that Participating Providers and Laser Vision Correction Participating Providers accept as payment-in-full the Offeror's reimbursement, plus copayments and upgrade fees, as applicable, for covered services.

b. Required Submission

- (1) Explain the Offeror's proposed contracting process. Describe the type of data analysis or access analysis that is/will be performed before extending participation into your network(s) to a new Provider. Provide a copy of the Offeror's proposed Participating Provider and Laser Vision Correction Participating Provider contracts, rate sheets (if applicable), and provider manual.
- (2) Explain the legal and operational relationship between the Offeror and any optical labs that are used to supply materials provided by Participating Providers.

Network Administration and Quality Assurance

The successful Offeror should have a good working relationship with Participating Providers and Laser Vision Correction Participating Providers to ensure that NYS Vision Plan initiatives are accurately communicated and implemented, Enrollee questions or complaints are resolved timely, and that quality eyewear products are dispensed on a timely basis by Participating Providers. Network administration duties shall include, but not be limited to:

a. Duties and Responsibilities

The Offeror shall be responsible for:

- (1) Developing and distributing communication materials to Participating Providers and Laser Vision Correction Participating Providers introducing the Plan and describing changes, when necessary;
- (2) Working with Participating Providers and Laser Vision Correction Participating Providers to resolve Enrollee billing disputes and complaints about the quality of services or eyewear received , including on-site audits of facilities, as needed; and
- (3) Notifying the Department in writing of any decision where a Participating Provider or Laser Vision Correction Participating Provider is suspended or terminated from participation as a result of serious quality deficiencies.

(4) ***Turnaround Time for Receiving Eyewear Service Level Standard:***

The Plan's Service Level Standard requires that ninety-five percent (95%) of all orders placed with a Participating Provider for covered eyewear will be available to the Member within seven (7) Calendar Days after placing the order.

b. Required Submission

- (1) Describe the Offeror's proposed method(s) for communicating with Participating Providers and Laser Vision Correction Participating Providers to advise them of Plan benefits and modifications. Include copies of newsletters or other correspondence, as applicable.

- (2) How does/will the Offeror monitor Participating Provider and Laser Vision Correction Participating Providers compliance with Plan benefits? What steps will the Offeror take when notified by an enrollee of a billing dispute with a Participating Provider/ Laser Vision Correction Participating Provider or dissatisfaction with services received?
- (3) ***Turnaround Time for Receiving Eyewear Performance Guarantee:*** The Plan's Service Level Standard requires that ninety-five percent (95%) of all orders placed with a Participating Provider for covered eyewear will be available to the Member within seven (7) Calendar Days after placing the order. The Offeror shall propose the forfeiture of a specific dollar amount of the Offeror's Monthly Administrative Fee for failure to meet this standard.

The Standard Credit Amount for each .01 to 1.0% below the standard of ninety-five percent (95%) of all orders from a Participating Provider for covered eyewear that are not available to the Member within seven (7) Calendar Days after placing the order, is as calculated on a Calendar Year basis, \$500. However, Offerors may propose higher or lesser amounts.

The Offeror must propose its Turnaround Time for Receiving Eyewear Performance Guarantee in the format as set forth below:

“The Offeror's quoted amount to be credited against the Offeror's Monthly Administrative Fee for each .01 to 1.0% below the standard of ninety-five percent (95%) (or the Offeror's proposed standard of __%) of all orders from a Participating Provider for covered eyewear that are not available to the Member within seven (7) Calendar Days of placing the order, as calculated on an annual calendar year basis, is \$_____.

10. Claims Processing

The Offeror is required to process all claims submitted under the Plan. The selected Offeror must be capable of processing Participating Providers and Laser Vision Correction Participating Provider claims as well as Enrollee submitted claims for non-network benefits. Enrollees are required to submit claim forms to the Offeror for non-network services no later than ninety (90) days after the end of the calendar year in which the vision services were

rendered, unless it was not reasonably possible for the Enrollee to meet this deadline. The Plan's claim utilization data for Participating Providers, non-network services and Laser Vision Correction Participating Providers and can be found in Exhibits III.A, III.A.1, III.B and III.H, respectively.

a. Duties and Responsibilities

- (1) The Offeror must provide all aspects of claims processing. Such responsibility shall include, but not be limited to:
 - (a) Verifying that the Plan's benefit designs have been loaded into the system appropriately to adjudicate and calculate cost sharing and other edits correctly;
 - (b) Accurate and timely processing of all claims submitted under the Plan in accordance with the benefit design(s) applicable to the Enrollee at the time the claim was incurred as specified to the Offeror by the Department.
 - (c) Charging the Plan consistent with the Offeror's proposed pricing quotes.
 - (d) Developing and maintaining claim payment procedures, guidelines, and system edits that guarantee accuracy of claim payments for covered services only.
 - (e) Maintaining records necessary to support claim payments, legal responsibilities, and reporting, and providing direct access to all NYS Vision Plan records for State audit requests;
 - (f) Utilizing the auditing tools and performance measures proposed by the Contractor to identify potential fraud and abuse by Participating and Laser Vision Correction Participating Providers;
 - (g) Maintaining claims histories for twenty-four (24) months online and archiving older claim histories for up to six (6) years with procedures to easily retrieve and load claim records;
 - (h) Reversing all attributes of claim records processed in error or due to fraud or abuse and crediting the Plan for all costs associated such claim:

- (i) Maintaining the security of the claim files and ensuring HIPAA compliance;
 - (j) Agreeing that all claim data is the property of the State. Upon request of the Plan, the Offeror shall share appropriate claims data with other Department consultants and contractors for various program analysis. The Offeror cannot sell, release, or make the data available to third parties in any manner without the prior consent of the Department.
- (2) Maintaining a back-up system and disaster recovery system for processing claims in the event that the primary claims payment system fails or is not accessible;
- (3) Analyzing and monitoring claim submission to identify errors, fraud or abuse and reporting to the Department in a timely fashion in accordance with a Department approved process. The Plan will be charged for only accurate (i.e., the correct dollar amount) claims payments of covered expenses. The Offeror shall credit the Plan the amount of any overpayment regardless of whether any overpayments are recovered from Provider and/or Enrollees in instances where a claim is paid in error due to Offeror error or due to fraud or abuse. In cases of overpayments resulting from errors found to be the responsibility of the Department, the Offeror shall use reasonable efforts to recover any overpayment and credit them to the Plan upon receipt; however, the Offeror is not responsible to credit amounts that are not recovered. The Offeror shall report fraud and abuse to the appropriate authorities.
- (4) Processing Enrollee submitted claims using the non-network fee schedule set forth in Exhibit III.E.

b. Required Submission

- (1) Provide a flow chart and step-by-step description of the Offeror's proposed methodology for processing Participating Provider, Laser Vision Correction Participating Provider and Enrollee-submitted claims for the Plan. Provide a description of the edits implemented to ensure proper claim adjudication.
- (2) Describe the Offeror's claims processing system platform including any backup system utilized. Describe the Offeror's disaster recovery plan and how Enrollee disruption will

be kept to a minimum during a system failure. What will be the process for Enrollees trying to receive Vision Plan Services when the claim payment system is down or not available?

- (3) Describe the capabilities of the Offeror's claim processing system addressing each of the following Plan components:
 - (a) Eligibility verification;
 - (b) Prior authorization for Medical Exception Program benefits;
 - (c) Variations in covered Plan benefits for various employer groups;
 - (d) Duplicate claims; and
 - (e) Accurate claims pricing.
- (4) Describe how any changes to the benefit design would be monitored, verified and tested for the Plan, and the quality assurance program to guarantee that changes to other client benefit programs do not impact the Plan.
- (5) What steps will you take to ensure that Participating Providers and Laser Vision Correction Participating Providers comply with the HIPAA requirement for use of National Provider Identifiers for all electronic claims submissions?
- (6) Describe how the Offeror's adjudication system will feed the reporting and billing systems.

11. Frame and Lens Selections

The Offeror may propose a standardized selection of Plan frames available at each Participating Provider or a frame allowance. The incumbent contractor utilizes a frame allowance with price points set at \$80, \$100 and \$130 for basic, standard and enhanced frames. Participating Providers must offer all covered Lens types and options, as set forth in the Summary of Covered Benefits in Exhibit II.D of this RFP. Frame and Lens Plan Utilization data is set forth in Exhibit III.A and III.A.1 of this RFP.

a. Duties and Responsibilities

- (1) The Offeror shall be responsible for ensuring that Participating Providers maintain a varied and contemporary selection of Plan frames, including but not limited to styles in metal or plastic for men, women and children, half-eye styles, protective sport goggles and designer models. Plan frames must be available at three separate benefit levels, Basic, Standard, and Enhanced. The Offeror must contractually require Participating Providers to stock a minimum of 10 Basic frame styles, 25 Standard frame styles and 10 Enhanced frame styles. The Offeror may not count a different size or different color of the same frame when assessing compliance with the minimum frame selection.
- (2) The Offeror is responsible for ensuring that all Participating Providers will dispense all covered lens types and lens options, including combination of two or more lens types and options.
- (3) The Offeror must provide a one-year unconditional warranty against breakage for all Plan frames and lenses that are fabricated in laboratories at manufacturing companies that are either a parent or subsidiary company of the Offeror.

b. Required Submission

- (1) Describe in detail how the Offeror proposes to develop and maintain the three levels of Plan frames required under the Plan, including whether the Offeror is proposing a standardized Plan frame selection or allowance method, a description of the variety of frame options, and the minimum contractual and average number of frames available in each level. How will Plan Enrollees be made aware of the available Plan frame selection when receiving services from a Participating Provider (i.e., separate location of frames, color coding of UPC codes, price tag, etc....)?
- (2) State the retail price points for a standard collection or the Offeror's proposed allowances for frames covered at each of the three (3) levels. If an allowance method is proposed, confirm the allowances are adequate to ensure that Participating Providers stock the minimum contractual number of frames.

- (3) Describe in detail how lens types and lens options will be classified as either Standard (covered) material or premium material, eligible for the upgrade program.
 - (a) Provide a listing of the currently manufactured lens products that are/will be classified as Standard or premium for the following categories of lens types: progressive, high index, photochromatic and polycarbonate.
 - (b) Confirm which covered lens options are/will be available in both basic and premium classifications.
 - (c) Confirm that Enrollees eligible for multiple covered lens types and options will be able to select a combination of covered eyewear with no out-of-pocket cost, for example, a photochromatic single vision high index lens with Standard scratch-resistance and ultraviolet coating.
- (4) Describe the Offeror's proposed product guarantees for Plan frames and lenses dispensed by a Participating Provider. How does/will the Offeror ensure that Participating Providers perform product repairs and replacements for eyewear which are under warranty?

12. Contact Lens Selection

The Offeror may propose a standardized contact lens selection or a contact lens allowance for PEF, GSEU, M/C and unrepresented Employees and their covered Dependents. A \$200 contact lens allowance benefit is available for the other employee groups.

a. Duties and Responsibilities

- (1) The Offeror must ensure that Participating Providers maintain a varied selection of Plan contact lenses, including soft, daily-wear, planned replacement and disposable contact lenses, subject to Plan benefit coverages set forth in Exhibit II.D.
- (2) If proposed, the standardized contact lens selection should be updated periodically to reflect current products and preferences. Conversely, if an allowance method is proposed, the allowances must be adequate to ensure a wide variety of contact lens selection.

- (3) The Offeror must administer a \$200 contact lens benefit for Enrollees and covered Dependents in NYSCOPBA, Council 82, ALESU, PBA and PIA, which includes the cost of the eye examination, standard or premium contact lens fitting and contact lens material.

b. Required Submission

- (1) State whether a Standardized contact lens selection or contact lens allowance is proposed.
- (2) If a Standardized contact lens selection is proposed:
 - (a) Describe how the Offeror will develop and maintain the selection of Plan contact lenses. Complete Exhibit III.G, Summary of Contact Lenses Covered by the Plan to detail the Plan contact lenses the Offeror is proposing.
 - (b) State the Offeror's proposed criteria for classifying contact lenses as either standard or premium (which are subject to the higher copay level for PEF, GSEU, M/C and unrepresented Employee and their covered Dependents).
- (3) If a contact lens allowance is proposed, state the proposed allowance for standard and premium contact lenses. Do not include any cost information in the Technical Proposal.
- (4) State how the Offeror proposes to administer the \$200 contact lens benefit for other employee groups, and confirm that the eye exam, contact lens fitting, and contact lens material will be included.

13. Occupational Vision Program

The Plan's Occupational Vision Program enables eligible Enrollees to obtain a second eyewear selection (intended for occupational use) from a Participating Provider, at the time the primary eyewear is ordered. The occupational eyewear must differ from the primary eyewear based on criteria established by the Offeror and consistent with the Occupational Vision Program benefits specified in the Summary of Covered Benefit by Group,

Exhibit II.D of this RFP. The Occupational Vision Program is not available to Dependents. Further, as a health and safety measure, Enrollees in the State Police covered under PBA-Troopers, PBA-Supervisors and PIA are entitled to an additional set of occupational lenses, if needed, for insertion into respirators. See insert specifications on Exhibit II.H of this RFP.

a. Duties and Responsibilities

- (1) The Offeror must develop sound eligibility criteria for the Occupational Vision Program, e.g., variations in lens type, strength, or tint, for occupational vision needs, in accordance with the negotiated benefit design by employee group;
- (2) The Offeror must communicate Occupational Vision Program eligibility criteria to Participating Providers and ensure that they properly administer the program.
- (3) The Offeror must work with the Department and the State Police to develop a procedure to order and fabricate prescription lenses for insertion into respirators.

b. Required Submission

- (1) Does the Offeror currently administer an Occupational Vision Program for an Employer? If so, please describe the Offeror's experience administering an Occupational Vision Program and state what percentage of Enrollees receive Occupational Vision eyewear for a similar client, using the same criteria that the Offeror proposes for the NYS Plan.
- (2) State the Offeror's proposed eligibility criteria for the Occupational Vision Program. Be specific. Based on the proposed criteria, are there additional procedures outside of the regular, comprehensive eye examination required under this Program that Participating Providers will be required to perform? If so, please describe the additional procedures.
- (3) Does the Offeror's lens fabricator have experience with or the ability to fabricate lenses for insertion into respirators, as specified in Exhibit II.H? If so, please describe that experience.

- (4) Describe how the Offeror will communicate the Occupational Vision Program and monitor Participating Provider compliance.

14. Medical Exception Program

The Plan's Medical Exception Program benefit is available to eligible Enrollees and Dependents as specified in the Summary of Benefit Variances by Group, Exhibit II.C of the RFP. Under the Medical Exception Program, Enrollees and Dependents with a medical condition that may impact vision refraction, when referred by the physician caring for that medical condition, are eligible for benefits sooner than the usual twenty-four (24) month period, but not less than one year from last exam. Medical Exception Program utilization is presented in Exhibit III.F of this RFP.

a. Duties and Responsibilities

- (1) The Offeror must communicate Medical Exception Program eligibility criteria to Participating Providers and ensure that they properly administer the program.
- (2) In consultation with their medical director, the Offeror must establish and maintain a listing of medical conditions that would qualify an Enrollee or Dependent to receive services under the program. The listing of medical conditions must include, but not be limited to: diabetes, cataracts, keratoconus, eye surgery within two years of last Rx, taking a prescription drug whose side effects cause vision changes, and any other documented medical condition which could reasonably be expected to result in a change in refractive status, and;
- (3) The Offeror must administer a process for Participating Providers to request prior authorization of medical exception benefits for eligible Enrollees and Dependents. As part of this process, the Offeror must develop sound criteria for authorizing eyewear benefits.

b. Required Submission

- (1) Does the Offeror currently administer a Medical Exception Program for an employer? If so, please describe the Offeror's experience administering a Medical Exception Program.

- (2) Provide a listing of medical conditions that the Offeror is proposing to use to qualify an Enrollee or Dependent to receive services under this program.
- (3) Describe the Offeror's proposed authorization process for the Medical Exception Program. Include a sample of any Medical Exception Program authorization forms that the Offeror is proposing to use under the program, timeframes for authorization and eyewear benefit criteria.
- (4) Describe how the Offeror will communicate the Medical Exception Program and monitor Participating Provider compliance.

15. Upgrade Program

Through the Upgrade Program, eligible Enrollees and their Dependents may select certain non-Plan eyewear from a Participating Provider and pay a discounted surcharge (in addition to the Participating Provider fee paid by the Plan). The goal of the program is to make available, at a discounted price, a wider selection of frames, lens types (including contact lenses) and lens options, than is otherwise covered under the Plan.

a. Duties and Responsibilities

- (1) The Offeror must communicate the Upgrade Program requirements and pricing methodology to Participating Providers and ensure that they properly administer the Program.
- (2) The Offeror must provide a minimum discount off of retail pricing for upgrade selections that are not a covered benefit for any Employee Group covered under the Plan. The Offeror must set the Upgrade Program surcharges for selections that are a covered benefit for one or more Employee Groups under the Plan equal to the fee paid by the Plan, as set forth by the Offeror in Exhibit IV.A of the RFP.

b. Required Submission

- (1) Does the Offeror currently administer an Upgrade Program for an employer? If so, please describe the Offeror's experience in administering an upgrade program. What direction does the Offeror give to Participating Providers regarding up selling?

- (2) Propose a minimum discount off of retail pricing for upgrade selections that are not a covered benefit for any Employee Group covered under the Plan. Propose a methodology for charging Enrollees for these options under the Upgrade Program, including examples of the pricing methodology for frames with a retail cost of \$200 or more, premium progressive lenses and premium anti-reflective lens coating.
- (3) Confirm that the Enrollee surcharge for Upgrade Program selections that are a covered benefit for one or more Employee Groups covered under the Plan will be equal to the Plan fees set forth in Exhibit IV.A. (**Note:** Do not specify the actual amount of the Participating Provider Fee Schedule when responding to this question. The amount of the Participating Provider Fee Schedule should be included in the Cost Proposal only.)

SECTION V: COST PROPOSAL REQUIREMENTS**A. General**

The information in this Section A, and Section B below, is presented for use by Offerors in developing their Cost Proposal. Additional information which may impact an Offeror's proposed pricing may be contained in other sections of the RFP, including but not limited to Section VII. Each Offeror may submit **only one** Cost Proposal.

1. The NYS Vision Plan contract is for Administrative Services Only (ASO); the NYS Vision Plan is not insured.
2. The NYS Vision Plan currently provides benefits to approximately 103,375 Enrollees who combined with covered Dependents, equal to approximately 261,884 covered lives. In addition, there are approximately 5,548 Enrollee contracts eligible for the limited NYS Vision Plan-SEHP benefits that provide coverage for approximately 6,625 covered lives. The Department cannot guarantee that, during the term of the Agreement, the same enrollment mix and benefit characteristics as those set forth in Exhibit II.A through Exhibit II.D of this RFP will exist.
3. The 2-year eligibility period (1-year for dependent children under age 19) will not be reset as of the beginning of the Agreement. The current contractor will provide benefit eligibility dates for Enrollees and Dependents to the Contractor.
4. The Contractor shall bill the Department on a monthly basis for NYS Vision Plan claims, including Participating Provider, Laser Vision Correction Surgery and Non-Network claims via the submission of a Monthly Claims Summary invoice. The Non-Network claims are to be processed, for reimbursement to Enrollees and payment by the Department, based on the rates set forth in the Non-Network Reimbursement Schedule presented in Exhibit III.E of this RFP. Upon the Contractor's submission of the Monthly Claims Summary and supporting documentation, the Department shall prepare a voucher to submit to the Office of the State Comptroller (OSC). After OSC review, OSC shall electronically transfer the requested funds

to the Contractor. On average, the transfer of funds will be 15–20 days after the receipt of the Monthly Claims Summary by the Department.

5. **Monthly:** The Department will pay the Contractor a Monthly Administrative Fee based on the number of Enrollees reported by the NYBEAS enrollment system as of the first Thursday of each month. The Department shall calculate the amount payable to the Contractor for a given month by multiplying the applicable Monthly Administrative Fee by the applicable enrollment count as of the first Thursday of each month. A voucher shall be prepared requesting the Office of the State Comptroller to make payment to the Contractor. The payment will be issued by the end of each month. A statement shall be provided to the Contractor supporting the calculation of the payment. Performance credits (if any) will be deducted from the amount paid to the Contractor.
6. The one-time Communications Fee shall be billed by the Contractor and paid by the Department after the Contractor has completed, to the satisfaction of the Department, all of the Contractor's responsibilities as set forth in Section IV.C.3.d. of this RFP.

B. Offeror's Cost Proposal

The following describes the requirements for Offerors' Cost Proposal submissions.

1. Participating Provider and Laser Vision Correction Surgery Fee Schedules

The Department expects Offerors will propose aggressive pricing consistent with the size of the Department's membership. Offerors' proposed Participating Provider and Laser Vision Correction Surgery unit rates as set forth in the Offeror's Exhibit IV.A submission must be guaranteed for the term of the Agreement, although Offerors may propose varying fee levels for each year of the Agreement.

The Contractor shall charge the Plan for covered vision services based on the type of service and the Participating Provider and Laser Vision Correction Surgery Fee Schedule, less any applicable Enrollee copayments. The actual amount reimbursed to Participating Providers and Laser Vision Correction Providers is at the discretion of the Contractor provided that no

liability is incurred by the Enrollee for covered services with the exception of applicable Enrollee copayments.

Offerors must complete and submit the Participating Provider and Laser Vision Correction Surgery Fee Schedules presented in Exhibit IV.A of this RFP. Offerors must propose a fixed fee for each type of service listed in the Participating Provider and Laser Vision Correction Surgery Fee Schedule for each year of the Agreement. During the term of the Agreement, the State reserves the right to renegotiate the unit rates contained in Participating Provider and Laser Vision Correction Surgery Fee Schedule in response to market conditions and/or changes in the collectively bargained benefits.

2. Monthly Administrative Fees and Communications Fee

Offerors must complete and submit the Monthly Administrative Fees and Communications Fee Schedule presented in Exhibit IV.B of this RFP. In developing its proposed Monthly Administrative Fee Per Enrollee fees for all groups excluding SEHP and for only SEHP, as well as its proposed Communications Fee, the Offeror must adhere to the following requirements and assumptions:

- a.** There shall be no commissions included in any fees;
- b.** The Monthly Administrative Fee Per Enrollee fees shall be quoted on a per Enrollee per month basis. Such amount(s) shall be in effect and fixed for the five (5) year term of the Agreement. Offerors may propose different Monthly Administrative Fee Per Enrollee fees for each year of the Agreement;
- c.** Except for the one-time Communications Fee and any Communications Fees resulting from Plan design changes described in (d) and (e) below, the cost of all routine Plan communications, including but not limited to maintaining and updating the customized website, mailing provider listings and benefit booklets to new Enrollees, mailing adequate supplies of benefit booklets to Agency Health Benefit Administrators, distributing Non-Network claims forms and communicating with Participating Providers and Laser Vision Correction Surgery Providers shall be borne by the Contractor and covered by the Contractor's Monthly Administrative Fee Per Enrollee fees as quoted;

- d. A one-time Communications Fee must be quoted to cover all of the Contractor's costs associated with delivering all of the Plan Services set forth in Section IV.4.a. of this RFP, including but not limited to developing, producing and mailing benefit Plan booklets to Enrollees' homes during Plan implementation and the development, production and mailing of an adequate supply of benefit plan booklets to State agencies. If the Enrollee enrollment count on the date of Plan implementation deviates by 5%, plus or minus, as compared to the current Enrollee enrollment count as set forth in Section V.A.2. above (i.e., approximately 108,800 Enrollees), the Communications Fee paid will be adjusted to reflect the addition or reduction in enrollment beyond the 5% threshold. The Contractor shall not be required, and thus should not include in its proposed Communication Fee, the cost to develop, produce or mail benefit Plan booklets to Enrollees in the SEHP.
- e. The cost of developing, producing and mailing to Enrollees' homes notification of benefit modifications or the cost of any additional communications material that may be required by DCS during the 5-year term, including Notices of Privacy Practices, shall not be factored in the development of the Communications Fee. Such cost of required communication material, if necessary, must be approved in advance by the Department and the cost incurred by the Contractor to perform such tasks shall be reimbursed by the Department at an agreed upon amount.
- f. If a significant change(s) in technology, benefits, etc., occurs during the term of the Agreement which, determined by the Department in its sole discretion, materially impacts the Contractor's level of effort/cost, either by raising or lowering such efforts and/or costs, the State reserves the right to and at its sole discretion may renegotiate the Monthly Administrative Fees with the Contractor.

SECTION VI: EVALUATION AND SELECTION CRITERIA

Proposals determined by the Department to satisfy the submission requirements set forth in Section III of this RFP will be evaluated by the Department, the Governor's Office of Employee Relations (GOER), and the Division of the Budget (DOB), assisted by any person(s), other than one associated with a competing Offeror, designated by the Department. Proposals will be made available to representatives of State employee unions for review and comment. An Offeror's Proposal may be removed from the evaluation process and not be considered should it be determined that the Offeror did not demonstrate to have met one of more of the Minimum Mandatory Requirements set forth in Section III of this RFP, despite any attestation made by the Offeror regarding the Minimum Mandatory Requirements.

During the evaluation process, the Department may require clarifying information from an Offeror for the purpose of assuring the Department's full understanding of the Offeror's responsiveness to the RFP requirements and the duties and responsibilities set forth therein. This clarifying information must be submitted in writing in accordance with formats set forth in Section II of this RFP and, if submitted timely, shall be included as a formal part of the Offeror's Proposal. Failure to provide required information by the due date set forth in the Department request for clarification may result in rejection of the Offeror's Proposal. Nothing in the foregoing shall mean or imply that it is obligatory upon the Department to seek or allow clarifications provided for herein. The Department may, at its discretion, elect to perform site visits of Offerors' facilities and have all Offerors provide oral presentations pertaining to their Proposal. The Vision Services Procurement Manager will coordinate the necessary scheduling arrangements with Offerors.

The Department will consider for evaluation and selection purposes only those Proposals that, as determined by the State, meet the Minimum Mandatory Requirements specified in Section III of this RFP and are responsive to the duties and responsibilities set forth in the RFP. The evaluation will entail the review and scoring of the Offeror's Administrative, Technical and Cost Proposals. The Technical and Cost evaluation process is based on 1,000 available points with 200 points available to the Technical Proposal and 800 points available to the Cost Proposal (i.e., 20% allocated to the Technical Proposal and 80% allocated to the Cost Proposal). The Technical Proposal and Cost Proposal are evaluated separately and scored as described below.

The Department intends to select that responsive and responsible Offeror whose Proposal offers the best value to the Department and the State as specified in the following evaluation criteria for the purpose of entering into negotiations for the execution of a contract (i.e., the Agreement).

A. Technical Evaluation – 20% of Overall Score

The Technical Proposal of those Offerors that meet the Minimum Mandatory Requirements will be evaluated by the Department, and others deemed appropriately by the Department. Each Offeror's ability and willingness to deliver the Program Services described in this RFP will be evaluated and scored based on a weighted point system. The evaluation of the Offeror's Technical Proposal will be based on that Offeror's written Technical Proposal; responses to clarifying questions, if any; information obtained through reference checks, including specific reference checks made with the Directors' of Employee Benefits at the Department and GOER for any Offeror (contract/key Subcontractors) who performed services under a contract with the Department and, as deemed necessary by the Department, oral presentation(s) conducted to amplify and/or clarify that Offeror's proposed Technical Proposal; and site visits.

1. Technical Score Ratings

Offerors' Technical Proposals will be evaluated based on the following rating scale and criteria as applied to the Offeror's response to each evaluated requirement, excepting in the case of Performance Guarantees. A rating of "excellent" equates to a score of 5 for each evaluated requirement. Each reduction in the ratings results in a one point reduction in the score such that a rating of "poor" equates to a score of 1.

EXCELLENT (5)

The Offeror far exceeds the requirement. The response provided indicates that the Offeror will provide very high quality services and is very pro-active and innovative.

GOOD (4)

The Offeror exceeds the requirement. The response provided indicates that the Offeror will exceed the Plan's needs. The Offeror demonstrates some innovative features not shown in typical proposals.

MEETS CRITERIA (3)

The Offeror meets but does not exceed the requirement. The response provided indicates that the Offeror will meet the Plan's needs.

FAIR (2)

The Offeror's answer is minimal; or the answer is very general and does not fully address the requirement; or the Offeror meets only some of the requirement.

POOR (1)

The Offeror misinterpreted or misunderstood the requirement; or the Offeror does not answer the requirement in a clear manner or the Offeror does not address or meet the requirement.

The Offeror's commitment to meet or exceed the various Service Level Standards, including their associated standard performance credit amounts, as set forth in the RFP will be evaluated and scored based on the following rating scale and criteria. For each Service Level Standard, said rating scale and criteria will be applied to the two components of the Offeror's proposed response to a given Service Level Standard: 1) the Offeror's proposed level of performance as guaranteed, and 2) the Offeror's proposed credit amount to be applied to the Offeror's Monthly Administrative Fee for the failure to meet the Offeror's guaranteed level of performance, as proposed (Credit Amount) to arrive at a score for a given Service Level Standard. (**Note:** An Offeror's proposed level of performance as guaranteed and its proposed credit amount are hereinafter collectively referred to as a "Performance Guarantee.")

2. Performance Guarantee Ratings

A rating of "excellent" equates to a score of 5 for each evaluated Service Level Standard. Each reduction in the ratings results in a one point reduction in the score such that a rating of "poor" equates to a score of 1.

Offeror may propose Performance Guarantees that exceed the minimum Service Level Standards and its associated standard performance credit amounts presented in this RFP. Proposed

Performance Guarantees are contained within the respective technical areas and will be evaluated using the following rating scale and criteria:

a. EXCELLENT (5)

- (1) The Offeror's proposed level of performance as guaranteed exceeds the Plan's Service Level Standard contained in the RFP; and
- (2) The Offeror's proposed Credit Amount is one hundred and twenty-five percent (**125%**) or more of the standard performance credit amount stated in the RFP.

b. GOOD (4)

- (1) The Offeror's proposed level of performance as guaranteed equals the Plan's Service Level Standard contained in the RFP, and the Offeror's proposed Credit Amount is one hundred and twenty-five percent (**125%**) or more of the standard performance credit amount stated in the RFP; or
- (2) The Offeror's proposed level of performance as guaranteed exceeds the Plan's Service Level Standard contained in the RFP; and the Offeror's proposed Credit Amount is greater than one hundred percent (**100%**) but less than one hundred and twenty-five percent (**125%**) of the standard performance credit amount stated in the RFP.

c. MEETS CRITERIA (3)

- (1) The Offeror's proposed level of performance as guaranteed equals or exceeds the Plan's Service Level Standard contained in the RFP; and
- (2) The Offeror's proposed Credit Amount equals the standard performance credit amount stated in the RFP.

d. FAIR (2)

- (1) The Offeror's proposed level of performance as guaranteed equals or exceeds the Plan's Service Level Standard contained in the RFP; and
- (2) The Offeror's proposed Credit Amount is greater than fifty percent (**50%**) but less than one hundred percent (**100%**) of the standard performance credit amount stated in the RFP.

e. POOR (1)

- (1) The Offeror's proposed level of performance as guaranteed is below the Plan's Service Level Standard contained in the RFP regardless of the Credit Amount proposed by the Offeror; or
- (2) The Offeror's proposed Credit Amount is fifty percent (**50%**) or less of the standard performance credit amount stated in the RFP regardless of the level of performance as guaranteed by the Offeror.

3. Performance Guarantee Standard Credit Amounts

The standard performance credit amount for each Service Level Standard is \$500 with the following exceptions:

- a. **Implementation and Start-Up (Section IV.B.2.b.(2))**: The standard performance credit amount is fifty percent (**50%**) of Monthly Administrative Fees (minimum mandatory requirement); and
- b. **Call Center (Section IV.B.3.b.(6))**: The standard performance credit amount is **\$5,000** for Call Center Availability; **\$5,000** for Call Center Telephone Response Time; **\$5,000** for Telephone Abandonment Rate; and **\$5,000** for Telephone Blockage Rate.
- c. **Network Access (Section IV.B.9.b.(5))**: The standard performance credit amount is **\$5,000** each for urban, suburban and rural access.

4. Allocation of Technical Score Points

The scores referenced above shall be applied to weighted point values associated with each evaluated requirement. The relative point value for each section of the Technical Proposal is as follows:

a. Plan Management - 10% of Total Technical Score

Offerors will be rated on various components of Plan management including the Offeror's qualifications, executive summary, account team, and Plan implementation plan.

b. Program Delivery and Support Services - 75% of Total Technical Score

Offerors will be rated on the various components of Program Services delivery including customer service, enrollee communication support, enrollment management, reporting, consulting services, Transition Plan, network management, including the proposed Laser Vision Correction Network and claims processing.

c. Products and Programs - 15% of Total Technical Score

Offerors will be rated on the Offeror's ability to develop, administer, and maintain services that include frame and lens selection, contact lens selection, Occupational Vision Program, Medical Exception Program, and Upgrade Program.

5. Technical Scoring

The Offerors' Technical Proposal will be evaluated independently by multiple evaluators based on pre-established Evaluation Criteria. Individual scores will then be averaged. The average score for each response shall be applied to the points associated with each evaluated requirement such that an average score of "Excellent" for each evaluated requirement will result in a maximum of 1,000 points. The points associated with each evaluated requirement are totaled for each Offeror and then be converted to a score such that the Offeror with the highest point total will receive a Technical Score of 200; the highest Technical Score. As calculated by the Vision Services Procurement Manager, all other evaluated Technical Proposals will be awarded a Technical Score at a reduced level calculated in accordance with a pre-determined formula as set forth in the Evaluation Criteria. That formula calculates the Technical Score of the evaluated Technical Proposal based on the proportion of the point total of the evaluated Technical Proposal to the point total of the Technical Proposal with the highest point total. The awarded Technical Scores are calculated to the hundredth decimal place.

B. Cost Evaluation - 80% of Overall Score

The Cost Proposal of those Offerors that meet the Minimum Mandatory Requirements will be evaluated by the Department, and others deemed appropriately by the Department. The Department will calculate a Cost Score for each Offeror based on the evaluated Total Plan Cost.

The Total Plan Cost is the sum of the Total Projected Claims Cost, the Total Projected Administrative Cost and the Total Projected Communications Cost for the five-year period, 1/1/2012 through 12/31/2016.

1. **Total Projected Claims Cost:** The Total Projected Claims Cost shall be calculated by the Department by multiplying the Offeror's quoted Participating Provider and Laser Vision Correction Surgery scheduled fees for each type of service, as presented by the Offeror in Exhibit IV.A, by the normalized utilization projected by the Department for Participating Providers and Laser Vision Correction Providers over the five-year period, 1/1/2012 through 12/31/2016.
2. **Total Projected Administrative Costs:** Total Projected Administrative Costs shall be calculated by the Department by multiplying the Monthly Administrative Fees quoted by the Offeror in Exhibit IV.B by the projected Plan enrollment.
3. **Total Projected Communications Costs:** The Total Projected Communications Cost shall represent the aggregate 2012 amount quoted by the Offeror in Exhibit IV.B.
4. The Department reserves the right to analyze and/or normalize: The Department reserves the right to make other cost calculation adjustments as necessary to determine the evaluated cost of Offerors' Proposals. Any such adjustments shall be made with the intent to evaluate Offerors' Proposals on a fair and consistent basis, without prejudice. The normalization adjustments may include, but are not limited to the Offeror's projected utilization, administrative and communication costs.
5. The Department shall calculate each Offeror's Total Plan Cost as the sum of 1. through 3. above. That Offeror's Proposal with the lowest calculated Total Plan Cost will be awarded a Cost Score of eight hundred (800). The Cost Score awarded to all other Offerors shall be based on a pre-established formula such that the Cost Scores awarded will be proportional to the evaluated costs. The Cost Scores shall be calculated to the hundredth decimal place.

C. Total Combined Score of Technical and Cost

The results of the Technical and Cost evaluations as set forth in A and B above will be combined to calculate the Offeror's Total Combined Score.

D. Best Value Determination

The Department shall select, and enter into negotiations for the purpose of executing a contract, that responsive and responsible Offeror with the highest Total Combined Score. If an Offeror's Total Combined Score is equal to or less than 1 point below the highest Total Combined Score, that Offeror's Proposal will be determined to be substantially equivalent to the Offeror holding the highest Total Combined Score. Among any Offeror Proposals deemed substantially equivalent, the Department shall select the Offeror that has the highest Cost Score calculated pursuant to Section VI.B.5. of this RFP to enter into negotiations for the purpose of executing a contract.

Please note that the terms in Appendix A, Standard Clauses for All New York State Contracts, Appendix B, Standard Clauses for all Department Contracts, and Appendix C, Third Party Connection and Data Exchange Agreement, are ***not*** subject to negotiation.

If the Department determines that contract negotiations between the Department and the selected Offeror are unsuccessful, the Department may invite the Offeror with the next highest Total Combined Score to enter into negotiations for purposes of executing a contract. Prior to negotiating with the Offeror with the next highest Total Combined Score, the Department will notify the Offeror originally selected and provide the date when negotiations shall cease should an agreement not be reached. Scores will not be recalculated for any remaining Offerors should contract negotiations between the Department and the selected Offeror are unsuccessful because of material differences in key provision(s).

SECTION VII: DRAFT CONTRACT**AGREEMENT NO. C000XXX**

THIS Agreement is entered into by and between New York State Department of Civil Service (“Department” or “DCS”), having its principal office at the Alfred E. Smith State Office Building, Albany, NY, 12239 and ____ (“contractor”), a corporation authorized to do business in the State of New York with a principal place of business located at _____, and collectively referred to as “the Parties.”

WITNESSETH

WHEREAS, New York State, through DCS, oversees the New York State Vision Plan for New York State employees represented by Council 82, (C-82); New York State Correctional Officers & Police Benevolent Association (NYSCOPBA) Police Benevolent Association, (PBA); Police Investigators Association, (PIA); Graduate Student Employee Union (GSEU), and Public Employees Federation, (PEF); for Legislators and Legislative employees of the NYS Senate or NYS Assembly; for judges and judicial employees of the NYS Unified Court System, and for New York State employees and Participating Employers (PE’s) employees designated Management /Confidential; and

WHEREAS, the New York State Vision Plan is administered by the President of the New York State Civil Service Commission, who also serves as the Commissioner of the DCS (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 _____, the Department of Civil Service issued a Request for Proposal (RFP) entitled, “NYS Vision Plan Services”, to secure the services of a qualified organization to provide Vision Plan services as defined in the RFP; and

WHEREAS, after thorough review and evaluation by the State of proposals received in response to the RFP, the Contractor’s Proposal was selected as representing the best value to the State; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver the Vision Plan services, pursuant to the terms and conditions set forth in this Agreement;

THEREFORE, the Parties agree as follows:

ARTICLE I: DEFINITION OF TERMS

- 1.1.0 Affiliate** means a business concern owned or controlled in whole or in part by another concern or is owned or controlled in whole or in part by another concern.
- 1.2.0 Business Day(s)** means every Monday through Friday, except for days designated as business holidays by the Contractor and approved as such by DCS prior to January 1st of each Calendar year.
- 1.3.0 Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.
- 1.4.0 Call Center Hours** means between the hours of 8:00 a.m. until 8:00 p.m. ET, Monday through Friday, and between the hours of 9:00 a.m. to 4:00 p.m. ET on Saturday.
- 1.5.0 Child(ren)** means children under 25 years of age, including natural children, legally adopted children, children in a waiting period prior to finalization of adoption, Enrollee stepchildren and children of the Enrollee's domestic partner. Other children who reside permanently with the Enrollee in the Enrollee's household and are chiefly dependent upon the Enrollee are also eligible, subject to a Statement of Dependence and documentation.
- 1.6.0 Contractor** means successful Offeror selected as a result of the evaluation of Offerors' Proposals submitted in response to the RFP and who executes a contract with the Department to provide Program Services.
- 1.7.0 Copayment** means the amount an Enrollee or Dependent is required to pay for covered vision services as specified by the benefit design of the Plan.
- 1.8.0 Day(s)** means calendar days unless otherwise noted.

- 1.9.0 DCS or Department** means the New York State Department of Civil Service.
- 1.10.0 Dependent** means the spouses, domestic partners, and full-time dependent student children under twenty-five (25) years of age enrolled in the Plan and determined to be eligible by the DCS. Young adult dependent children age twenty-five (25) or over are also eligible if they are incapable of supporting themselves due to mental or physical disability acquired before termination of their eligibility for coverage under the Plan.
- 1.11.0 Employee** means any person defined as an Employee in 4 NYCRR Part 73, as amended, or as modified by collective bargaining agreement.
- 1.12.0 Employer** means the State of New York in all its branches, departments and agencies, and any Participating Employer.
- 1.13.0 Enrollee** means an Employee enrolled under the NYS Vision Plan or a former Employee or covered Dependent who elects to continue vision coverage with the NYS Vision Plan through COBRA.
- 1.14.0 Enrollee Submitted Claim or Subscriber Claim** means a claim for benefits submitted by an Enrollee to the Contractor for direct reimbursement.
- 1.15.0 ET** means prevailing Eastern Time.
- 1.16.0 Health Benefits Administrator (HBA)** means an agency representative, primarily located in agency human resource office, who provides information on health insurance benefits to agency staff.
- 1.17.0 Indemnity Reimbursement Schedule** means a schedule for which partial reimbursement is available for those Enrollees and Dependents who obtain Vision benefits from Non-Participating Providers.
- 1.18.0 Key Subcontractor** means those vendors with whom the Contractor subcontracts to provide Program Services and incorporates as a part of the Contractor's Project Team.
- 1.19.0 Laser Vision Correction Participating Provider** means any Ophthalmologist who entered into an agreement with the Contractor or any Key Subcontractor of the Contractor, to provide covered laser vision benefits to Enrollees and to accept the Participating Provider fee schedule for covered laser vision correction services.

- 1.20.0 Medical Exception Program** means a Program for Enrollees and covered Dependents who have a medical condition that may impact vision refraction. Eligible program participants may receive an examination less than twenty-four (24) months, but not less than one year from last examination, when referred by the physician caring for the medical condition. Additional plan benefits are covered only if the patient has, in fact, experienced a change in vision.
- 1.21.0 Member** means Enrollee or Dependent enrolled in the New York State Vision Plan.
- 1.22.0 National Medical Support Notice** means a child medical support order issued pursuant to the standardized system established by the Child Support Performance and Incentive Act of 1998.
- 1.23.0 Non-Participating Provider** means any Optometrist or Ophthalmologist who has not entered into an agreement with the Contractor, or any Key Subcontractor of the Contractor, to provide covered vision benefits to Enrollees.
- 1.24.0 NYS** means New York State.
- 1.25.0 Occupational Vision Program** means a Program “by which,” or “where by” eligible Enrollees may obtain a second eyewear selection (intended for occupational use) from a Participating Provider, at the time the primary eyewear is ordered.
- 1.26.0 Optometrist/Ophthalmologist** means a person who is legally licensed to practice the profession of Optometry in the state in which they practice. He or she must regularly practice such profession within the scope of his or her license.
- 1.27.0 Participating Employer (PE)** means a public authority, public benefit corporation, or other public agency, subdivision or quasi-public organization of the State which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Vision Plan.
- 1.28.0 Participating Provider** means any Optometrist or Ophthalmologist who has entered into an agreement with the Contractor, or any Key Subcontractor of the Contractor, to provide covered vision benefits to Enrollees and accept the Participating Provider fee schedule as payment in full for covered vision services.
- 1.29.0 Plan/Program** means the New York State Vision Plan.

- 1.30.0 President** means the President of the Civil Service Commission and the Commissioner of the DCS.
- 1.31.0 Program/Plan** means the New York State Vision Plan.
- 1.32.0 Program Services or Vision Plan Services** means all of the services to be provided by the Contractor as set forth in this RFP.
- 1.33.0 Proposal** means the Contractor's Administrative Proposal, Technical Proposal and Cost Proposal, including all responses to supplemental requests for clarification, information, or documentation submitted during the course of the Procurement.
- 1.34.0 RFP or Procurement** means the Request for Proposals, entitled "New York State Vision Plan Services," dated March 1, 2011.
- 1.35.0 Service Level Standard** means the Department's expected performance level of service that the selected Offeror must meet or exceed for the New York State Vision Plan.
- 1.36.0 State** means the DCS acting in its statutory authority as the administrator of New York State's Vision Plan.
- 1.37.0 Transition Plan** means a written plan for transition, which outlines, at a minimum, the tasks, milestones and deliverables associated with transitioning the Plan to a new contractor.
- 1.38.0 Upgrade Program** means a Program for eligible Enrollees and their Dependents that enables them to select certain non-Plan eyewear from a Participating Provider and pay a discounted surcharge (in addition to the Participating Provider fee paid by the Plan).

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

- 2.1.0** This Agreement shall be subject to and effective upon the approval of the New York State Attorney General's Office ("AG") and the New York State Office of the State Comptroller ("OSC"). The term of the Agreement shall include an implementation period followed by five (5) years of Program Services. It is the Department's intent that this implementation period shall begin on upon OSC approval of the Agreement with all other contractual obligations to begin on

January 1, 2012 through and including December 31, 2016, and subject to the termination provisions contained herein.

- 2.2.0** The Agreement is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by the New York State Attorney General’s Office (“AG”) the Office of the State Comptroller of the State of New York (“OSC”).

ARTICLE III: INTEGRATION

- 3.1.0** This Agreement, including all Exhibits, copies of which are attached hereto and incorporated by reference, constitutes the entire Agreement between the Parties. All prior Agreements, representations, statements, negotiations, and undertaking are superseded hereby.
- 3.2.0** All Statements made by the DCS shall be deemed to be representations and not warranties.

ARTICLE IV: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

- 4.1.0** The Agreement consists of:
- 4.1.1** The body of the Agreement (that portion preceding the signatures of the Parties in execution) and any amendments thereto;
 - 4.1.2** Appendix A – Standard Clauses for all New York State Contracts;
 - 4.1.3** Appendix B – Standard Clauses for all Department of Civil Service Contracts;
 - 4.1.4** Appendix C – Third Party Connection and Data Exchange Agreement
 - 4.1.5** The following Exhibits attached and incorporated by reference to the body of the Agreement:
 - 4.1.5a** Exhibit A: which includes the MacBride Act Statement; and the Non-Collusive Bidding Certification;
 - 4.1.5b** Exhibit B: the Request for Proposals entitled, “NYS Vision Plan,” dated _____ and Exhibit B-1, the official DCS response to questions raised concerning the RFP;

- 4.1.5c** Exhibit C: the Contractor's Proposal and Exhibit C-1: the official transcript of the Management Interview and related materials clarifying the contractor's proposal;
- 4.1.5d** Exhibit D, the Schedule of Participating Provider Fees;
- 4.1.5e** Exhibit E, the Schedule of Monthly Administrative Fees and Communications Fee;
- 4.1.5f** Exhibit F, the Schedule of Indemnity Reimbursement Fees; and
- 4.1.5g** Exhibit G, Summary of Benefit Variances by Employee Group;

4.1.6 In the event of any inconsistency in, or conflict among, the document elements of the Agreement identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

- 4.1.6a** First, Appendix A - Standard Clauses for all New York State contracts;
- 4.1.6b** Second, Appendix B - Standard Clauses for all Department of Civil Service contracts;
- 4.1.6c** Third, Appendix C – Third Party Connection and Data Exchange Agreement
- 4.1.6d** Fourth, any Amendments to the body of the Agreement;
- 4.1.6e** Fifth, the body of the Agreement;
- 4.1.6f** Sixth, Exhibit B – the Request for Proposals entitled, “NYS Vision Plan Services,” dated _____ and Exhibit B-1, the official DCS response to questions raised concerning the RFP; and
- 4.1.6g** Seventh, Exhibit C – the Contractor's Proposal and Exhibit C-1, the official transcript of the Management Interview and related materials clarifying the Contractor's proposal; and
- 4.1.6h** Eighth, Exhibit D, the Schedule of Participating Provider Fees; Exhibit E, the Schedule of Monthly Administrative Fees and Communications Fee; Exhibit F, the Schedule of Indemnity Reimbursement Fees; and Exhibit G, Summary of Benefit Variances by Employee Group.

4.2.0 The terms, provisions, representations, and warranties contained in the Agreement shall survive performance hereunder.

ARTICLE V: LEGAL AUTHORITY TO PERFORM

- 5.1.0** Contractor agrees that it shall perform its obligations under this Agreement in accordance with all applicable Federal and NYS Laws, rules and regulations, policies and/or guidelines now or hereafter in effect.
- 5.2.0** 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 the 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 the Program Services are to be delivered.
- 5.3.0** 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 the performance of Contractor's duties under the Agreement.

ARTICLE VI: PROGRAM SERVICES

- 6.1.0** The Contractor shall provide all of the Program Services as set forth herein this Article VI of the Agreement for the entire term of the Agreement pursuant to the Summary of Benefit Variances by Employee Group incorporated into this Agreement as Exhibit G.

All Program Services shall be provided in accordance with the New York State Civil Service Law and its implementing regulations, and other NYS and Federal Law as may be applicable. In addition, the Contractor shall deliver the Program Services in such a manner so as to comply with all provisions of this Agreement. The Contractor may provide certain services through key subcontracts with the prior review and approval of DCS. Each subcontract entered into with a corporate entity separate from the Contractor for the purpose of delivering Program Services must be maintained throughout the term of the Agreement unless such change is approved in writing by DCS. DCS must be explicitly identified as the intended beneficiary of the key subcontract. The Contractor must maintain significant financial, legal, and audit oversight of any of its Key Subcontractors. The Contractor remains fully responsible for all services and actions performed under this Agreement. The Contractor shall submit all key subcontracts to DCS for its approval. The Contractor shall submit all such key subcontracts with no redactions

to the Department before execution for its review and approval. (**Note: Costs/Fees for all services required under this Agreement shall be included in the Contractor's Claims Administrative Fee).**

6.2.0 Plan Implementation

6.2.1 The Agreement includes an implementation period beginning on or around October 1, 2011. During this time, the Contractor must undertake and complete all implementation activities, including, but not limited to, those specified activities set forth in Section 7.1.1 of this Agreement, no later than December 31, 2011, so that the Plan is fully operational on January 1, 2012.

6.3.0 Account Team

6.3.1 The Contractor must maintain, for the entire term of the Agreement, an organization of sufficient size with the skills and experience necessary to administer, manage, and oversee all aspects of the Plan during implementation and operation.

6.3.2 The Contractor's account team must be comprised of qualified and experienced individuals who are acceptable to the Department and who will ensure that the operational, clinical and financial resources are in place to operate the Program in an efficient manner;

6.3.3 The Contractor must ensure that there is a process in place for the account team to gain immediate access to appropriate corporate resources and senior management necessary to meet all Program requirements and to address any issues that may arise during the performance of the Agreement.

6.3.4 The Contractor's assigned account team shall be experienced, accessible (and sufficiently staffed) to provide timely responses (no longer than 1 to 2 Business Days) to administrative concerns and inquiries posed by the Department or other staff on behalf of the Council on Employee Health Insurance for the duration of the Agreement to the satisfaction of the Department.

6.3.5 The Contractor's assigned account team must immediately notify the Department of actual or anticipated events impacting Plan costs and/or delivery of services to Plan Enrollees.

- 6.3.6** The Contractor's assigned account team must ensure that the Program is in compliance with all legislative and statutory requirements. If the Contractor is unable to comply with any legislative or statutory requirements, the Department must be notified immediately.

6.4.0 Customer Service

The Contractor will be responsible for all customer support and services including but not limited to:

- 6.4.1** Providing Members and Providers 24-hour access, except for regularly scheduled maintenance, to information on vision benefits and eligibility related to the NYS Vision Plan through a nationwide toll-free number.
- 6.4.2** Maintaining a call center located in the United States employing an adequate staff of fully trained customer service representatives, and supervisors available between the hours of 8:00 a.m. and 8:00 p.m. ET, Monday through Friday, and between the hours of 9:00 a.m. and 4:00 p.m. ET on Saturday, except for legal holidays observed by the State. These hours may be adjusted based on actual call volume by mutual agreement between the Department and the Contractor. Customer service representatives must be able to timely respond to questions, complaints and inquiries, including but not limited to, Plan benefits, Participating Provider and Laser Vision Correction Participating Provider locations, eligibility and claims status.
- 6.4.3** Customer service staff must use an integrated system to log and track all Member calls. The system must create a record of the Member contacting the call center, the call type and all customer service actions and resolutions.
- 6.4.4** Maintaining a back-up telephone system to be utilized in the event the primary telephone system fails or is unavailable.
- 6.4.5** Developing and maintaining a secure online customized website for Enrollees, 24 hours a day, 7 days a week, except for regularly scheduled maintenance, throughout the term of the Agreement, which will provide access to information including, but not limited to: Plan benefits; Participating Provider locations; laser vision benefits and Laser Vision Correction Participating Provider locations; eligibility and claim status. The Contractor

must establish a dedicated link to the website for the Plan from the Department's website and content is subject to the approval of the Department. Information from the link must be limited to information that pertains to the NYS Vision Plan. Any links should bring a viewer back to the Department website. No other links are permitted without the prior written approval of the Department. Any costs associated with customizing the website or establishing a dedicated link for the Plan shall be borne solely by the Contractor.

6.5.0 Enrollee and Provider Communication Support

All Enrollee communications are subject to the review and approval of DCS. The Contractor will be responsible for providing enrollee communication support and services including but not limited to:

- 6.5.1** Designing and producing all necessary claim forms, benefit booklets, Participating Provider directories, and other printed materials in sufficient quantities to promote and operate the Plan. All such materials are subject to the Department's review and approval.
- 6.5.2** Developing, printing and mailing to Enrollees' homes within 90 days of the Contractor's implementation date a directory of Participating Providers (or customized listing of such providers) and a Vision Plan Summary of Benefits booklet which states the Plan benefits applicable to each Member and summarizes Plan provisions, including eligibility criteria. Vision Plan Summary of Benefit booklets are not required for Enrollees represented by SEHP;
- 6.5.3** Distributing to the Health Benefits Administrator of each State Agency and Participating Employer, a sufficient quantity of Vision Plan Summary of Benefits booklets for the Plan to provide a copy to each newly eligible employee throughout the term of the Agreement. The initial shipment of Vision Plan Summary of Benefit Booklets will equal 5% of the Agency's Enrollee count by bargaining unit as of January 1, 2012. The Enrollee count by State agency by bargaining unit for October 2010 is included as Exhibit II.A for informational purposes.

- 6.5.4** Developing an order entry process for Health Benefit Administrators (HBAs) to order replacement copies of Plan materials and fulfilling and shipping such orders to HBAs in an expeditious manner.
- 6.5.5** Developing, printing and mailing to Enrollees' homes notification of benefit modifications and any other communications materials that may be required by the Department during the term of the Agreement, in cooperation with and subject to the approval of the Department and in accordance with Article IX; Paragraph 9.5.0 of the Agreement.
- 6.5.6** Accounting and paying for all development, production and mailing costs incurred to disseminate Plan communications materials to Enrollees and Health Benefits Administrators.
- 6.5.7** The Department shall:
- 6.5.7a** Retain editorial control over all aspects of the Plan material, including final determination on the content and tone. The Department will provide expeditious final approval of all print and/or other materials developed for the Plan;
 - 6.5.7b** Make available, if possible, any records or information which the Contractor clearly needs to design and implement effective communication strategies; and
 - 6.5.7c** Assist the Contractor as necessary in communicating with Members and Providers but at no additional expense to the State, except as provided in Article IX, Paragraph 9.5.0 of the Agreement (See Section VI of this RFP).
- 6.5.8** The Contractor shall retain no proprietary or literary rights with respect to communication material developed solely for the Plan and shall execute any assignment found necessary to release proprietary rights.
- 6.5.9** Attending health benefit fairs, conferences, and benefit design information sessions, located in New York State, at the request of the Department.

6.6.0 Enrollment Management

The Selected Contractor will be responsible for the maintenance of an accurate, complete and up-to-date enrollment file based on information provided by the Department. This enrollment

file shall be used by the Contractor to process claims, provide customer service, and produce management reports. The Contractor is required to provide enrollment management services including, but not limited to:

6.6.1 Initial Testing

6.6.1a Performing an initial enrollment load to commence upon receipt of a test file from the Department during Program implementation. The file may be EDI Benefit Enrollment and Maintenance Transaction set 834(ANSI x.12 834 standard either 834 (4010x095A1) or 834 (005010x220)) or a custom file format. The determination will be made by the Department;

6.6.1b Testing to determine if the enrollment file and enrollment transactions loaded correctly and that the enrollment system interfaces with the claims processing system to accurately adjudicate claims. The selected Contractor shall submit enrollment test files to the Department for auditing, provide the Department with secure, online access required to ensure accurate loading of Program enrollment data, and promptly correct any identified issues to the satisfaction of the Department;

6.6.2 Providing an enrollment system capable of receiving secure enrollment transactions and having all transactions fully loaded to the claims processing system within forty-eight (48) hours of release of a retrievable file by the Department. The Contractor shall immediately notify the Department of any delay in loading enrollment transactions. In the event the Contractor experiences a delay due to the quality of the data supplied by the Department, the Contractor shall immediately load all records received (that meet the quality standards for loading) within forty eight (48) hours of their release, as required. The Contractor must have a process in place to correct any records that cannot be loaded programmatically in a timely manner. The Department will transmit enrollment transactions changes to the Contractor in an electronic format weekly. The format of these transactions will be in EDI Benefit Enrollment and Maintenance transaction set, utilizing an ANSI x.12 834 transaction set in the format specified by the Department (see Exhibit II.G for a detailed record layout). The Contractor must also have the capability to receive any special update files from the Department containing eligibility additions and deletions, including emergency updates, if required; and

- 6.6.3** Meeting the administrative requirements for National Medical Support Notices. A child covered by a Qualified Medical Support Order (QMCSO), or the child's custodial parent, legal guardian, or the provider of services to the child, or a State agency to the extent assigned the child's rights, may file claims and the Contractor must make payment for covered benefits or reimbursement directly to such party. The Contractor shall store this information in their system so that any claim payments or any other plan communication distributed by the Contractor, including access to information on the Contractor's website would go to the person designated in the QMCSO;
- 6.6.4** Ensuring the security of all enrollment information as well as the security of a HIPAA compliant computer system in order to protect the confidentiality of Enrollee/Dependent data contained in the enrollment file. The Offeror must have an Information Security Plan (ISP) acceptable to the Department in place on the effective date of the Agreement, which states all of the security policies and procedures for the protection of data, equipment and facilities, including receipt of and transmission of data in accordance with Department standards, policies and procedures. The ISP must, at a minimum conform to the requirements of the Department of Civil Service Information Security Policy (**Exhibit I.X**); and agree to the policies, terms and conditions stated in this RFP, the Agreement and Appendices A, B and C. Any transfers of enrollment data within the Contractor's system or to external parties must be completed via a secured process;
- 6.6.5** Cooperating fully with any Department initiatives to use new technologies, processes, and methods to improve the efficiencies of maintaining enrollment data including any enrollment file conformance testing requested during the course of the Agreement resulting.
- 6.6.6** Maintaining a read only connection to the NYBEAS enrollment system for the purpose of providing the Contractor's staff with access to current Program enrollment information. Contractor's staff must be available to access enrollment information through NYBEAS, Monday through Friday, from 9:00 a.m. to 5:00 p.m., with the exception of State holidays;
- 6.6.7** Providing a back-up system in the event that the primary enrollment system fails or cannot be accessed so that there is no interruption of service to Members.

Amended March 29, 2011

6.6.8 Verifying dependent child full-time student status for all employee groups (except for those covered by SEHP) for Dependents age nineteen through twenty-five, prior to authorization of Vision Plan services. Student status is not maintained in NYBEAS. Dependent children of Employees who are in SEHP are covered up to age twenty-six regardless of student status.

6.7.0 Claims Processing

The Contractor must provide all aspects of claims processing. Such responsibility shall include but not be limited to:

- 6.7.1** Verifying that the Plan's benefit designs have been loaded into the system appropriately to adjudicate and calculate cost sharing and other edits correctly;
- 6.7.2** Accurate and timely processing of all claims submitted under the Plan in accordance with the benefit design(s) applicable to the Enrollee at the time the claim was incurred as specified to the Contractor by the Department;
- 6.7.3** Charging the Plan consistent with the Contractor's proposed pricing quotes;
- 6.7.4** Developing and maintaining claim payment procedures, guidelines, and system edits that guarantee accuracy of claim payments for covered services only;
- 6.7.5** Maintaining records necessary to support claim payments, legal responsibilities, and reporting, and providing direct access to all NYS Vision Plan records for State audit requests;
- 6.7.6** Utilizing the auditing tools and performance measures proposed by the Contractor to identify potential fraud and abuse by Participating and Laser Vision Correction Participating Providers;
- 6.7.7** Maintaining claims histories for twenty-four (24) months online and archiving older claim histories for up to six (6) years with procedures to easily retrieve and load claim records;
- 6.7.8** Reversing all attributes of claim records processed in error or due to fraud or abuse and crediting the Plan for all costs associated with such claim;

- 6.7.9** Maintaining the security of the claim files and ensuring HIPAA compliance;
- 6.7.10** Agreeing that all claim data is the property of the State. Upon request of the Plan, the Contractor shall share appropriate claims data with other Department consultants and contractors for various program analysis. The Contractor cannot sell, release, or make the data available to third parties in any manner without the prior consent of the Department.
- 6.7.11** Maintaining a back-up system and disaster recovery system for processing claims in the event that the primary claims payment system fails or is not accessible;
- 6.7.12** Analyzing and monitoring claim submission to identify errors, fraud or abuse and reporting to the Department in a timely fashion in accordance with a Department approved process. The Plan will be charged for only accurate (i.e., the correct dollar amount) claims payments of covered expenses. The Contractor will credit the Plan the amount of any overpayment regardless of whether any overpayments are recovered from Provider and/or Enrollees in instances where a claim is paid in error due to Contractor error or due to fraud or abuse. In cases of overpayments resulting from errors found to be the responsibility of the Department, the Contractor shall use reasonable efforts to recover any overpayment and credit them to the Plan upon receipt; however, the Contractor is not responsible to credit amounts that are not recovered. The Contractor shall report fraud and abuse to the appropriate authorities.
- 6.7.13** Processing Enrollee submitted claims using the non-network fee schedule set forth in Exhibit __ and within the guaranteed Turnaround Time for Non-Network Claims set forth in Section IV.B.10.a.(5) of this RFP.

6.8.0 Network Management

The Contractor is responsible for managing the provider network in the manner described in the Contractor's Proposal, Exhibit C. Such responsibility shall include, but not be limited to:

6.8.1 Participating Providers Network

The Contractor must maintain a credentialed and contracted Participating Provider Network that meets or exceeds the Program's minimum access standards throughout the term of the Agreement.

- 6.8.1a** Ninety-five (95) percent of Enrollees in urban areas will have at least one (1) Participating Provider within five (5) miles of an Enrollee's home;
- 6.8.1b** Ninety-five (95) percent of Enrollees in suburban areas will have at least one (1) Participating Provider within fifteen (15) miles of an Enrollee's home; and
- 6.8.1c** Ninety-five (95) percent of Enrollees in rural areas will have at least one (1) Participating Provider within thirty (30) miles of an Enrollee's home.
- 6.8.1d** These standards are based on the distance, in miles, from an Enrollee's home (zip code) to the nearest Participating Provider location. Urban, suburban and rural are based on US Census Department classifications, as determined by GeoAccess.

6.8.2 Participating Providers Credentialing

- 6.8.2a** The selected Contractor must assure its network is credentialed in accordance with all applicable federal and state laws, rules and regulations.
- 6.8.2b** The Contractor must credential Participating Providers and Laser Vision Correction Participating Providers to ensure the quality of the network. The Contractor must also credential Participating Providers and Laser Vision Correction Providers in a timely manner and shall have an effective process by which to confirm Participating Provider's and Laser Vision Correction Participating Provider's continuing compliance with credentialing standards.
- 6.8.2c** The Contractor must develop and maintain a regional network of qualified, credentialed ophthalmologists that provides reasonable access to Enrollees and Dependents to provide laser vision correction services through both a covered benefit and discount program.
- 6.8.2d** The Contractor must effectively communicate the availability of the Laser Vision Correction Network to eligible Members, in addition to notifying them of their benefit and how to access their benefit. Eligible Members are eligible to use their laser vision correction benefit once every five years.

6.8.2e At the request of the Department, the Contractor must solicit additional Laser Vision Correction Participating Providers to participate in the Laser Vision Correction Network.

6.8.3 Participating Provider Contracting

The Contractor will be responsible for providing Participating Provider and Laser Vision Correction Participating Provider contracting services including but not limited to:

6.8.3a Ensuring that all Participating Providers and Laser Vision Correction Participating Providers contractually agree to and comply with all of the Plan's requirements and benefit design specifications.

6.8.3b Ensuring that Participating Providers and Laser Vision Correction Participating Providers accept as payment-in-full the Contractor's reimbursement, plus copayments and upgrade fees, as applicable, for covered services.

6.8.4 Network Administration and Quality Assurance

Network Administration duties shall include, but not be limited to:

6.8.4a Developing and distributing communication materials to Participating Providers and Laser Vision Correction Participating Providers introducing the Plan and describing changes, when necessary;

6.8.4b Working with Participating Providers and Laser Vision Correction Participating Providers to resolve Enrollee billing disputes and complaints about the quality of services or eyewear received from a Participating Provider, including on-site audits of Participating Provider facilities, as needed;

6.8.4c Notifying the Department in writing of any decision where a Participating Provider or Laser Vision Correction Participating Provider is suspended or terminated from participation as a result of serious quality deficiencies.

6.9.0 Reporting

The selected Contractor will be responsible for reporting services including, but not limited to:

- 6.9.1** Developing, in conjunction with the Department, standard electronic management, financial, and utilization reports required by the Department for its use in the review, management, and analysis of the Plan. These reports must tie to the amounts billed to the Plan. The final format of reports is subject to the Department review and approval;
- 6.9.2** Providing Ad Hoc reports and other data analysis at no additional cost to the State. The exact format, frequency and due dates for such reports shall be specified by the Department. Information required in the Ad Hoc Reports may include but is not limited to providing:
 - 6.9.2a Forecasting and trend analysis
 - 6.9.2b Benefit design Modeling
 - 6.9.2c Reports to meet clinical program review needs
- 6.9.3** Supplying reports in paper format and/or in an electronic format (Microsoft Access, Excel, Word) as determined by the Department including but not limited to the reports listed in Article XIV of this Agreement.

6.10.0 Consulting

The Contractor is responsible for providing advice and recommendations regarding the Plan. Such responsibility shall include, but not be limited to:

- 6.10.1** Informing the State in a timely manner concerning such matters as innovative cost containment strategies, new products, technological improvements, and State/Federal legislation that may affect the Plan. The Contractor must also make available to the State one or more members of the account management team to discuss the implications of these new trends and developments. The Department is not under any obligation to act on such advice or recommendation; and
- 6.10.2** Assisting the State with recommendations and evaluation of proposed benefit design changes and implementing any changes necessary to accommodate Plan modifications resulting from collective bargaining, legislation, or within the statutory discretion of the

State. Recommendations must include a preliminary analysis of all associated costs, a clinical evaluation, and the anticipated impact of proposed Plan modifications and contemplated benefit design changes on Enrollees.

- 6.10.3** If a significant change in benefits occurs during the term of the Agreement which, determined by the Department in its sole discretion, materially impacts the Contractor's Level of effort/cost, the State reserves the right to and at its sole discretion may renegotiate the unit rates contained in the Participating Provider and Laser Vision Surgery Fee Schedules and/or the Monthly Administrative Fees.

6.11.0 Frame Selection and Lenses

- 6.11.1** The Contractor shall be responsible for ensuring that Participating Providers maintain a varied and contemporary selection of Plan frames, including but not limited to styles in metal or plastic for men, women and children, half-eye styles, protective sport goggles and designer models. Plan frames must be available at three separate benefit levels, Basic, Standard, and Enhanced. The Contractor must contractually require Participating Providers to stock a minimum of [insert Contractor's proposed #] Basic frame styles, [insert Contractor's proposed #] Standard frame styles and [insert Contractor's proposed #] Enhanced frame styles. Offerors may not count a different size or different color of the same frame when assessing compliance with the minimum frame selection.
- 6.11.2** The Contractor is responsible for ensuring that all Participating Providers will dispense all covered lens types and lens options, including combination of two or more lens types and options.
- 6.11.3** The Contractor must provide a one-year unconditional warranty against breakage for all Plan frames and lenses that are fabricated in laboratories at manufacturing companies that are either a parent or subsidiary company of the Contractor.

6.12.0 Contact Lens Selection

- 6.12.1** The Contractor must ensure that Participating Providers maintain a varied selection of Plan contact lenses, including soft, daily-wear, planned replacement and disposable contact lenses, subject to Plan benefit coverages set forth in Exhibit II.D.
- 6.12.2** If proposed, the Standardized contact lens selection should be updated periodically to reflect current products and preferences. Conversely, if an allowance method is proposed, the allowances must be adequate to ensure a wide variety of contact lens selection.
- 6.12.3** The Offeror must administer a \$200 contact lens benefit for Enrollees and covered Dependents in NYSCOPBA, Council 82, ALESU, PBA and PIA, which includes the cost of the eye examination, standard or premium contact lens fitting and contact lens material.

6.13.0 Occupational Vision Program

- 6.13.1** The Contractor must develop sound eligibility criteria for the Occupational Vision Program e.g., variations in lens type, strength, or tint, for occupational vision needs, in accordance with the negotiated benefit design by employee group;
- 6.13.2** The Contractor must communicate Occupation Vision Program eligibility criteria to Participating Providers and ensure that they properly administer the program.
- 6.13.3** The Contractor must work with the Department and the State Police to develop a procedure to order and fabricate prescription lenses for insertion into respirators.

6.14.0 Medical Exception Program

- 6.14.1** The Contractor must communicate Medical Exception Program eligibility criteria to Participating Providers and ensure that they properly administer the Program.
- 6.14.2** In consultation with their medical director, the Contractor must establish and maintain a listing of medical conditions that would qualify an Enrollee or Dependent to receive services under the Program. The listing of medical conditions must include, but not be

limited to: diabetes, cataracts, keratoconus, cataracts, eye surgery within two years of last Rx, taking a prescription drug whose side effects cause vision changes, and any other documented medical condition which could reasonably be expected to result in a change in refractive status, and;

6.14.3 The Contractor must administer a process for Participating Providers to request prior authorization of medical exception benefits for eligible Enrollees and Dependents. As part of this process, the Contractor must develop sound criteria for authorizing eyewear benefits.

6.16.0 Upgrade Program

6.16.1 The Contractor must communicate the Upgrade Program requirements and pricing methodology to Participating Providers and ensure that they properly administer the Program.

6.16.2 The Contractor must provide a minimum discount off of retail pricing for upgrade selections that are not a covered benefit for any Employee Group covered under the Plan. The Contractor must set the Upgrade Program surcharges for selections that are a covered benefit for one or more Employee Groups under the Plan equal to the fee paid by the Plan, as set forth by the Contractor in Exhibit IV.A of the RFP.

ARTICLE VII: PERFORMANCE GUARANTEES

The Parties agree that the following guarantees and the corresponding penalty(ies) for failure to meet each guarantee shall be implemented effective January 1, 2012. The Contractor acknowledges and agrees that failure to perform the Service Features in such a manner which either meets or exceeds any and/or all of the Performance Guarantee(s) as set forth in this Article and/or fails to make any payment(s) of any such credit amounts 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. The Contractor shall report to DCS on a quarterly basis its level of compliance with these guarantees, as specified in 13.2.1 of this Agreement.

Performance credit amounts due from the Contractor to DCS for failure to perform any Service Feature at the Guarantee level as set forth above, and audit credit amounts, as determined pursuant to Article XV of this Agreement, shall be made at the time and in such amounts as determined by DCS to be final.

Upon such determination, DCS shall notify the Contractor, in writing, and the Contractor shall deduct such amounts from the next applicable Monthly Payment Summary report.

7.1.0 Implementation and Start-up Guarantees and Credit Amount

7.1.1 Service Level Standard: The Contractor guarantees that all Implementation and Start-Up activities will be completed no later than December 31, 2011, so that, effective January 1, 2012, the Contractor can assume full operational responsibility for the Plan. For the purpose of this Service Level Standard, the Contractor must, on January 1, 2012, have in place and operational:

7.1.1a its contracted Participating Provider Network that meets the access standard set forth in Section IV.B.9.a.(2) of the RFP;

7.1.1b its contracted Laser Vision Correction Participating Provider Network that provides reasonable access as defined by the Contractor;

7.1.1c a fully operational call center providing all aspects of customer service as set forth in Section IV.B.3.(a) of this RFP;

7.1.1d a fully operational claims processing system that accurately reimburses claims in accordance with Plan provisions as set forth in Section IV.B.10.a. of the RFP; utilizes accurate enrollment and eligibility data provided by the Department to accurately pay claims for eligible Enrollees/ Dependents consistent with the Plan benefit design;

7.1.1e a fully functioning customized Plan website with a secure dedicated link from the Department's access to the specific website requirements as set forth in Section IV.B.3.a.(5) of this RFP.

7.1.2 Performance Guarantee: The Offeror's quoted percent to be credited for each day that all implementation and Start-Up requirements are not met is ____percent (%) of the Monthly Administrative Fees (prorated on a daily basis).

7.2.0 Participating Provider Access Guarantee and Penalty

7.2.1 Guarantee: The selected Contractor must have a Participating Provider Network that throughout the term of the Agreement that meets or exceeds the Department's minimum access guarantees within New York State as follows:

7.2.1a Ninety-five (95%) of Enrollees in urban areas of New York State will have access to at least one (1) Participating Provider within five (5) miles;

7.2.1b Ninety-five (95%) of Enrollees in suburban areas of New York State will have access to at least one (1) Participating Provider within fifteen (15) miles, and

7.2.1c Ninety-five (95%) of Enrollees in rural areas of New York State will have access to at least one (1) Participating Provider within thirty (30) miles;

Note: In calculating whether the Contractor meets the minimum access standards, all Enrollees residing in New York State must be counted; no Enrollee may be excluded even if a provider is not located within the minimum access area. Contractors should propose a Performance Guarantee for each of the three (3) measurements and areas (urban, suburban and rural).

These standards are based on the distance, in miles, from an Enrollee's home zip code to the nearest Participating Provider location.

Urban, suburban and rural are based on US Census Department classifications, as determined by GeoAccess. Contractors may propose Performance Guarantees with better access than the minimums, but the access must follow the same structure as the above minimum (i.e., access for each of the three (3) areas based on the NYS Vision Plan population in New York State).

7.2.2 Performance Credit:

7.2.2a The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee is \$_____ for each .01 to 1.0% below the ninety-five percent (95%) minimum access standard (or the Contractor's proposed standard of ____%) for any Calendar Year in which the Participating Provider

Access - for Urban Areas of New York State Performance Guarantee, as calculated on a Calendar Year basis, is not met by the Contractor.

7.2.2b The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee is \$_____ for each .01 to 1.0% below the ninety-five percent (95%) minimum access standard (or the Contractor's proposed standard of ____%) for any Calendar Year in which the Participating Provider Access for Suburban Areas of New York State Performance Guarantee, as calculated on a Calendar Year basis, is not met by the Contractor.

7.2.2c The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee is \$_____ for each .01 to 1.0% below the ninety-five percent (95%) minimum access standard (or the Contractor's proposed standard of ____%) for any Calendar Year in which the Participating Provider Access for Rural Areas of New York State Performance Guarantee, as calculated on a Calendar Year basis, is not met by the Contractor.

7.3.0 Enrollment Management Guarantees and Credit Amount

7.3.1 Service Level Standard: The Program's service level standard requires that one hundred percent (100%) of all Plan enrollment records that meet the quality standards for loading must be loaded into the Contractor's enrollment system within forty-eight (48) hours of release by the Department.

7.3.2 Performance Guarantee: The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each twenty- four (24) hour period beyond forty-eight (48) hours from the release by the Department that one hundred percent (100%) of the Program enrollment records that meet the quality standards for loading is not loaded into the Offeror's enrollment system, is \$_____.

7.4.0 Turnaround Time for Receiving Eyewear and Credit Amount

7.4.1 Service Level Standard: The Plan's service level standard requires that ninety-five percent (95%) of all orders placed with a Participating Provider for covered eyewear will be available to the Member within seven (7) Calendar Days after placing the order.

7.4.2 Performance Guarantee: The Offeror's quoted amount to be credited against the Offeror's Monthly Administrative Fee for each .01 to 1.0% below the standard of ninety-five percent (95%) (or the Offeror's proposed standard of ____%) of all orders from a Participating Provider for covered eyewear that are not available to the Member within seven (7) Calendar Days of placing the order, calculated on an annual calendar year basis, is \$_____.

7.5.0 Customer Service Telephone Guarantees and Credit Amount

The Contractor must guarantee the following four (4) measures of service on the toll-free customer service number:

7.5.1 Customer Service Availability

7.5.1a Service Level Standard: The Plan's service level standard requires that the Contractor's telephone line will be operational and available to Members and Providers at least ninety-nine and five-tenths percent (99.5%) of the Contractor's proposed customer service telephone line availability (minimum scheduled time between the hours of 8:00 a.m. and 8:00 p.m. ET, Monday through Friday; and between the hours of 9:00 a.m. and 4:00 p.m. ET on Saturday, except for legal holidays observed by the State), calculated on an annual calendar year basis. The Contractor shall measure telephone system availability monthly and report the results to the Department quarterly;

7.5.1b Performance Guarantee: The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% below the standard of ninety-nine and five-tenths percent (99.5%) (or the Offeror's proposed standard of ____%) that the Offeror's telephone line is not operational and available to Members and Providers during the Offeror's Call Center Hours, as calculated on a Calendar Year basis, is \$_____.

7.5.2 Customer Service Telephone Response Rate

7.5.2a Service Level Standard: The Plan's service level standard requires that at least ninety percent (90%) of the incoming calls to the Contractor's telephone line will be answered by a customer service representative within sixty (60) seconds.

Response time is defined as the time it takes incoming calls to the Contractor's telephone line to be answered by a customer service representative. The telephone response time shall be measured monthly and reported to the Department quarterly;

7.5.2b Performance Guarantee: The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% below the standard of ninety percent (90%) (or the Offeror's proposed standard of __%) that incoming calls to the Offeror's customer service toll-free line that are not answered by a customer service representative within sixty (60) seconds, as calculated on a Calendar Year basis, is \$_____.

7.5.3 Telephone Abandonment Rate

7.5.3a Service Level Standard: The Plan's service level requires that the percentage of incoming calls in which the caller disconnects prior to the call being answered by a customer service representative will not exceed three percent (3%). The telephone abandonment rate shall be measured monthly and reported to the Department quarterly;

7.5.3b Performance Guarantee: The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% of incoming calls to the Offeror's telephone line in which the caller disconnects prior to the call being answered by a customer service representative in excess of the standard of three percent (3%) (or the Offeror's proposed standard of __%), as calculated on a Calendar Year basis, is \$_____.

7.5.4 Telephone Blockage Rate

7.5.4a Service Level Standard: The Plan's service level standard requires that not more than three percent (3%) of incoming calls to the customer service telephone line will be blocked by a busy signal. The telephone blockage rate shall be measured monthly and reported to the Department quarterly.

7.5.4b Performance Guarantee: The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% of incoming calls to the Offeror's telephone line that are blocked by a busy signal, in excess of three percent (3%) (or the Offeror's proposed standard of ____%), as calculated on a Calendar Year basis, is \$_____.

7.6.0 Management Reports and Claims Files Guarantee and Credit Amount

7.6.1 Service Level Standard: The Plan's service level standard requires that accurate management reports and claim files, as specified in Section IV.B.6.a(3) of this RFP will be delivered to the Department no later than their respective due dates, inclusive of the date of receipt.

7.6.2 Performance Guarantee: The Offeror's quoted amount to be credited against the Offeror's Monthly Administrative Fee for each management report or claim file listed in Section IV.B.6.a.(3) that is not received by its respective due date, is \$_____ per report for each Business Day between the due date and the date the accurate management report or claims file is received by the Department inclusive of the date of receipt.

7.7.0 Enrollee and Provider Communication Support and Credit Amount

7.7.1 Service Level Standard: The Contractor must accurately update the Plan's customized website within thirty (30) days of notification by the Department.

7.7.2 Performance Guarantee: The Contractor's quoted amount to be credited against the Monthly Administrative Fee for each calendar day in excess of the thirty (3) day standard that Plan benefit changes are not accurately updated to the Plan's customized website, is \$_____;

ARTICLE VIII: MODIFICATION OF PROGRAM SERVICES

8.1.0 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 design elements or 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.

- 8.2.0** In the event that the NYS and the unions representing State Employees enter into collective bargaining agreements or the State otherwise requires changes in Plan design elements or requirements of the Agreement, the DCS shall notify the Contractor of such changes and shall provide the Contractor with reasonable notice to implement such changes.
- 8.3.0** To the extent that any of the events as set forth in this Article shall take place and constitute a material and substantial change in the delivery of services that are contemplated in accordance with the terms of the Program as of the Effective Date and 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 services provided and guarantees made by the Contractor under the terms of the Agreement, accompanied by appropriate documentation. The DCS reserves the right to request and the Contractor shall agree to provide any additional information and documentation the DCS deems necessary to determine in its sole discretion whether an increase in the fee(s) or modification of the guarantees is warranted. If DCS determines an increase in the fee(s) or modification of the guarantees is warranted then DCS will modify the fee(s) to the extent DCS determines reasonable and necessary. The DCS may in its sole discretion modify guarantees it determines necessary to reflect Program modifications. Should the DCS approve the Contractor's request to modify the fee(s), and/or guarantees, such approval shall be subject to written amendment and approval by the Office of the State Comptroller. The Contractor shall implement changes as required by the DCS with or without final resolution of any fee proposal.

ARTICLE IX: PAYMENT FOR PLAN CLAIMS

- 9.1.0** The Contractor will bill the DCS on a monthly basis for Plan claims, including Participating Provider Laser Vision Correction Participating Provider and Enrollee submit claims. Payments will be electronically transferred to the Contractor upon approval by DCS and the Office of the State Comptroller.

- 9.2.0** The Contractor shall not charge to the Plan benefit payments in excess of the level of fees contained in the Schedule of Participating Provider Fees (Exhibit D), or the Schedule of Indemnity Reimbursement Fees (Exhibit F).
- 9.3.0** The level of benefits applicable to any Enrollee under the Agreement shall be in accordance with the Schedule of Participating Provider Fees and Schedule of Indemnity Reimbursement Fees, subject to the provisions and limitations of the Summary of Benefit Variances by Employee Group (Exhibit G).
- 9.4.0** All of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope and volume of services. If, during the course of this Agreement, the Contractor enters into arrangements with any other customers providing benefits which are equal to or greater than those benefits to be provided under this Agreement at more favorable terms, this Agreement shall thereupon be deemed amended to provide the same to the DCS.

ARTICLE X: PAYMENT FOR MONTHLY ADMINISTRATIVE FEE AND COMMUNICATIONS FEE

- 10.1.0** The Contractor agrees that the following costs are not allowable and shall not be charged to the Plan as either a direct or formula expense: commissions, non-Plan advertising costs, capital expenditures for improvement or acquisition of facilities, entertainment costs, including social activities or cost of alcoholic beverages, costs of fund raising, costs for political activities, costs for attendance at conferences or meetings of professional organizations unless attendance is necessary in connection with the Plan and the Contractor receives prior written approval by the DCS and any costs related to or associated with the preparation and submission of a competitive proposal, including but not limited to the Proposal, Exhibit C.
- 10.2.0** The per Enrollee Monthly Administrative Fees for the Plan shall be paid in accordance with Exhibit E of this Agreement.
- 10.3.0** The DCS shall calculate the total Monthly Administrative Fees payable to the Contractor for each month by multiplying the per Monthly Administrative Fees as set forth in Exhibit E, by the number of contracts in force each month as reported by the New York State Benefit Eligibility and

Accounting System on the first Thursday of each month. The DCS shall furnish to the Contractor a written statement for each month showing the number of Plan contracts then in force.

- 10.4.0** The cost of the Contractor's communication plan, including but not limited to, developing, printing and mailing to Enrollees' homes, a Participating Provider directory and a Vision Plan Summary of Benefits booklet as described in Article VI, Paragraph 6.5.2, as well as distributing to the Health Benefit Administrator of each State Agency and Participating Employer, a quantity of Vision Plan Summary of Benefit booklets for the Plan sufficient to provide a copy to each newly eligible employee throughout the term of this Agreement, shall be borne by the Contractor and be included in the one-time Communications Fee.
- 10.5.0** The cost of developing, printing and mailing to Enrollees' homes notification of benefit modifications and any other communicational materials that may be required by DCS during the 5-year term of this Agreement are not included in the Monthly Administrative Fees or the one-time Communications Fee. Such required communications material must be approved in advance by DCS. The Contractor shall be reimbursed only for approved communications costs. All other communication expenses shall be the sole responsibility of the Contractor.

ARTICLE XI: ENROLLMENT INFORMATION AND RECORDS

- 11.1.0** The Contractor shall maintain records from which may be determined at all times the names of all Enrollees covered hereunder and the benefits in force for each such Enrollee together with the date when any coverage became effective and the effective date of any change in benefits.
- 11.2.0** The DCS shall transmit enrollment information provided by the Enrollee to the Contractor for the Plan in an electronic format through the New York State Benefit Eligibility and Accounting System, consistent with Section 6.6.0 of this Agreement. The eligibility rules and the enrollment reports generated as a result of these eligibility rules shall be the sole means of determining valid enrollment for benefits under the Plan.
- 11.3.0** The DCS and the Enrollees shall furnish to the Contractor all information that the Contractor may reasonably require with regard to any matters pertaining to the enrollment of Enrollees under this Agreement. A person will not be entitled to or deprived of benefits under the Agreement due to clerical errors.

11.4.0 The DCS agrees to provide the Contractor with reasonable access to records of the DCS which may have a bearing on the benefits provided by the Contractor or calculation of the Contractor's Monthly Administrative Fee as set forth under Article VIII of the Agreement.

ARTICLE XII: DATA SHARING AND OWNERSHIP

12.1.0 All claims and other data related to the Plan is the property of the State. Upon the request of the DCS, the Contractor shall share appropriate claims data with DCS consultants. Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law, or with the written consent of the Enrollee, the Contractor shall not share, sell, release, or make the data available to third parties in any manner without the prior written consent of the DCS. The provision shall survive the expiration or termination of this Agreement.

ARTICLE XIII: REPORTS AND CLAIMS FILES

13.1.0 Semi-Annual Reports

13.1.1 Utilization Reports: The Contractor shall submit semi-annual utilization reports which detail Plan utilization by type of service and employee group for both Participating Provider and Indemnity claims, including services provided under the Occupational Vision Program and the Medical Exception Program, as well as referrals to the Laser Vision Correction Program. Additionally, for the Medical Exception Program, the Contractor must report the number of authorized services by medical condition and employee group. The reports are due sixty (60) days after the end of the reporting period.

13.1.2 Enrollee Satisfaction Survey Summary Reports: The Contractor shall submit Semi-Annual Enrollee Satisfaction Survey Summary Reports which summarize by employee group, the results of Enrollee satisfaction surveys designed to evaluate the level of Enrollee satisfaction with the Plan. The surveys should cover the quality of Participating Provider services and Plan materials (frames, glasses, and contacts), as well as satisfaction with customer service and administrative aspects of the Plan. The format of the reports is subject to NYS input and approval. The reports are due sixty (60) days after the end of the reporting period.

13.2.0 Quarterly Report

13.2.1 Quarterly Performance Guarantee Reports: The Contractor shall submit Quarterly Performance Guarantee reports which detail the Contractor's compliance with all the Performance Guarantees set forth in this Agreement. The reports should include the areas of customer service (telephone availability, response time, blockage rate, etc.), eyewear turnaround time, enrollment and Provider access. Statistical documentation of compliance should be included in these reports. The reports are due sixty (60) days after the end of the quarter.

13.2.2 Quarterly Participating Employer Payment Summary Report: The Contractor must submit a summary report of the payments made by the Contractor on behalf of each Participating Employer during the three previous months. This report will serve as the basis for Participating Employer billings, thus should include sufficient detailed claims data for a Participating Employer to verify that it was correctly billed for covered members. Similarly, the report should exclude amounts paid on behalf of direct pay Enrollees (i.e., COBRA). The report is due fifteen (15) days after the end of the calendar year quarter.

13.3.0 Monthly Reports

13.3.1 Monthly Claims File: The Offeror shall provide an Access database file containing the claims payment information for the month, in accordance with the specifications presented in Exhibit II.E of the RFP. The monthly file is due fifteen (15) Days after the end of the month.

13.3.2 Monthly Payment Summary: The Contractor shall submit on a monthly basis a summary of the claims that were processed for the month reported, issued and paid on behalf of the New York State Vision Plan. Such report shall separately identify claims for State employees from those of Participating Employers and include a summarized breakout by service type. This report shall serve as the billing to the New York State Vision Plan. The report is due ten (10) days after the end of the month being reported.

13.4.0 Ad Hoc Reports

13.4.1 Ad Hoc Reports: The Contractor shall be required to submit such reports and analyses as DCS deems necessary, in a format specified by the DCS. The frequency and due dates for such reports will be negotiated with the Contractor. Any ad hoc report which

will result in charges to the Plan requires written notification by the Contractor.
Charges requested by the Contractor will be negotiated on a case by case basis.

ARTICLE XIV: GRACE PERIOD

14.1.0 The Contractor shall grant the DCS a “Grace Period” for the payment of claims and Monthly Administrative Fees. The Grace Period shall be thirty (30) Days in duration commencing on the Due Date, which is the thirty days after receipt of an accurate invoice, as set forth in Article IX, Payments for Plan Claims and Article X, Payment for Monthly Administrative Fees and Communication Fee. During the Grace Period, Program Services provided under the Agreement shall continue in full force and effect. If the DCS gives written notice to the Contractor prior to the expiration of the Grace Period that the Agreement is to be terminated before the expiration of the Grace Period, the Agreement shall be terminated as of the date of receipt of such written notice by the Contractor or the date specified by the DCS for such termination, whichever date is later. DCS shall be liable for the payment of claims and Monthly Administration Fees accruing for the period of time such Agreement continues in force commencing with the last Due Date for which claims and Monthly Administration Fees has not been paid and ending with the date of termination.

14.2.0 Upon termination of this Agreement the DCS shall have the right to award a new contract to another Contractor.

ARTICLE XV: TRANSITION AND TERMINATION OF CONTRACT

15.1.0 The Contractor must commit to fully cooperate with the successor Contractor to ensure the timely, smooth transfer of information necessary to administer the Plan.

Amended March 29, 2011

15.1.1 The Contractor must within **ninety (90)** Days **of the end** of the contract term, or within forty-five (45) Days of notification of termination if the Agreement is terminated prior to the end of its term, whichever event occurs first, provide the DCS with a detailed written plan for transition which outlines, at a minimum, the tasks, milestones and deliverables associated with:

15.1.1a Transition of Plan data, history, report formats and unique information required for a smooth transition to a new Contractor;

15.1.1b Completion of all such services associated with claims incurred on or before the scheduled termination date of the Agreement.

15.2.0 Within fifteen (15) Business Days from receipt of the Transition Plan, the DCS shall either approve the Transition Plan or notify the Contractor, in writing, of the changes required to the Transition Plan so as to make it acceptable to the DCS.

15.3.0 Within fifteen (15) Business Days from the Contractor's receipt of the required changes, the Contractor shall incorporate said changes into the Transition Plan and submit such revised Transition plan to DCS.

15.4.0 To ensure that the transition to a successor organization provides Enrollee's with uninterrupted access to their NYS Vision Plan benefits and associated customer services, and to enable the Department to effectively manage the Agreement, the Contractor is required to provide the following Contractor related obligations to the Program through the final financial settlement of the Agreement:

15.4.1 Provide all Contractor provided services associated with claims incurred on or before the scheduled termination date of the Agreement, including but not limited to paying Participating Provider and Laser Vision Correction Provider claims and Enrollee Submit claims;

15.4.2 Complete all required reports in Article XIII "Reports";

15.4.3 Provide the Program with sufficient staffing in order to address State audit requests and reports in a timely manner;

15.4.4 Agree to fully cooperate with all the Department or Office of NYS Comptroller (OSC) audits consistent with the requirements of Appendices A and B;

15.4.5 Perform timely reviews and responses to audit findings submitted by the Department and the Comptroller's audit unit in accordance with the requirements set forth in Article XVI "Audit Authority";

15.4.6 Remit reimbursement due the Program within fifteen (15) Days upon final audit determination consistent with the process specified in Article XVI “Audit Authority,” and Appendix B; and

15.5.0 The Contractor is required to receive and apply enrollment updates, keeping dedicated phone lines open with adequate available staffing to provide customer service at the same levels provided prior to termination of this contract, adjusting phone scripts, and transferring calls to a new vendor’s lines.

15.6.0 If the selected Offeror does not meet all of the Transition Plan requirements, the selected Offeror **will permanently forfeit 100%** of all Monthly Administrative Fees (prorated on a daily basis) from the due date of the Transition Plan requirement(s) to the date the Transition Plan requirement(s) are completed to the satisfaction of the Department.

ARTICLE XVI: AUDIT AUTHORITY

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

16.1.0 The Contractor acknowledges that the DCS has the authority to conduct financial and performance audits of the Contractor’s delivery of Program services in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities;

16.2.0 Such audit activity may include, but not necessarily be limited to, the following activities:

16.2.1 Review of the Contractor's activities and records relating to the documentation of its performance under this Agreement in areas such as determination of Enrollee or Dependent eligibility and application of various DCS program administrative features (e.g., dependent survivor benefits, reasonable adjudication of disabled dependent status).

16.2.2 Comparison of the information in the Contractor's enrollment file to that on the enrollment reports issued to the Contractor by the DCS.

16.2.3 Assessment of the Contractor's information, utilization and demographic systems to the extent necessary to verify accuracy of data on the reports provided to the DCS in accordance with Article 20.00 - Reports, of this Agreement.

16.3.0 The Contractor shall maintain and make available documentary evidence necessary to perform such reviews. Documentation maintained and 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, pertinent contracts, key subcontracts, Provider agreements, and correspondence;

16.4.0 The Contractor shall make available for audit all data in its computerized files that is relevant to and subject to the Agreement. Such data may, at DCS discretion, be submitted to the DCS in machine-readable format, or the data may be extracted by the DCS, or by the Contractor under the direction of the DCS;

16.5.0 The Contractor shall, at the DCS' request, search its files, retrieve information and records, and provide to the auditors such documentary evidence as they require. The Contractor shall make sufficient resources available for the efficient performance of audit procedures;

16.6.0 The Contractor shall comment on the contents of any audit report prepared by the DCS and transmit such comments in writing to the DCS within 30 days of receiving any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit recommendation shall be subject to the dispute resolution procedures set forth in Appendix B of this Agreement.

16.7.0 If the Contractor has an independent audit performed of the records relating to this Agreement, a certified copy of the audit report shall be provided to the DCS within ten (10) Days after receipt of such audit report by the Contractor.

16.8.0 The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the NYS Comptroller as set forth in either Appendix A of this Agreement, Standard Clauses for All New York State Contracts, or Appendix B, Standard Clauses for All DCS Contracts.

ARTICLE XVII: CONFIDENTIALITY

In addition to the Confidentiality terms specified in Appendices A and B to this Agreement, the following provisions also shall apply:

- 17.1.0** All claims and enrollment records relating to the Agreement are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Agreement, for measuring the performance of the Contractor in accordance with the performance guarantees of the Agreement, and for providing the DCS with material and information as may be specified elsewhere in this Agreement.
- 17.2.0** Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law, or with the written consent of the Enrollee, no records may be otherwise used or released to any party other than the DCS by the Contractor, its officers, employees, agents, consultants or sub-contractors 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 DCS, be grounds for termination of the Agreement.
- 17.3.0** The Contractor, its officers, employees, agents, consultants and/or any key Sub-contractors agree to comply, during the performance of the Agreement, with all applicable federal and State privacy, security and confidentiality statutes, including but not limited to the Personal Privacy Law (New York Public Officer's Law Article 6-A, as amended), and its implementing regulations, policies and requirements, for all material and information obtained by the Contractor through its performance under the Agreement, with particular emphasis on such information relating to Enrollees.
- 17.4.0** The Contractor shall be responsible for assuring that any Agreement between the Contractor and any of its officers, employees, agents, consultants and/or key Sub-contractors contains a provision which strictly conforms to the various confidentiality provisions of this Agreement.
- 17.5.0** The Contractor shall promptly advise the DCS of all requests made to Contractor for information regarding the performance of services under this Agreement including, but not limited to, requests for any material and information provided by the DCS, except as required by key Subcontractors or agents solely for the purpose of fulfilling the Contractor's obligations under this Agreement or as required by law.

ARTICLE XVIII: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

18.1.0 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.”

18.2.0 The Contractor acknowledges that the Department administers on behalf of New York State several group health plans as that term is defined in HIPAA’s 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 to the extent that such services extend beyond the NYSHIP OHCA or Empire Plan OHCA, 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.

18.3.0 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 or any instances of which it is aware in which the confidentiality of the information has been breached.

18.4.0 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.

18.5.0 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.

18.6.0 Breach Notification

18.6.1 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.

- 18.6.2 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:
- 18.6.2a** the date of the breach incident;
 - 18.6.2b** the date of the discovery of the breach;
 - 18.6.2c** a brief description of what happened;
 - 18.6.2d** a description of the types of unsecured PHI that were involved;
 - 18.6.2e** identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
 - 18.6.2f** 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
 - 18.6.2g** any other details necessary to complete an assessment of the risk of harm to the individual.
- 18.6.3** 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.
- 18.6.4** 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.
- 18.6.5** 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.
- 18.6.6** 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.

- 18.7.0 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.
- 18.8.0 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.
- 18.9.0 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 PHI into copies of such Department PHI maintained by the Contractor.
- 18.10.0 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.
- 18.11.0 Termination**
- 18.11.1** 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.
- 18.11.2 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.

18.12.0 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 this Agreement or from any acts or omissions related to this Agreement by the Contractor or its employees, officers, subcontractors, agents or other members of its workforce. 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 hereunder. The Contractor's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

18.13.0 Miscellaneous:

18.13.1 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.

18.13.2 Survival: The respective rights and obligations of Business Associate and Covered Entity set forth in this Business Associate Agreement shall survive termination of this Agreement.

18.13.3 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.

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

ARTICLE XVIV: NOTICES

19.1.0 All notices permitted or required hereunder shall be in writing and shall be transmitted either:

19.1.1 via certified or registered United States mail, return receipt requested;

19.1.2 by facsimile transmission;

19.1.3 by personal delivery;

19.1.4 by expedited delivery service; or

19.1.5 by e-mail.

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

New York State Department of Civil Service

Name: Robert DuBois
Title: Director, Employee Benefits Division
Address: A.E. Smith Building, Albany, NY 12239
Telephone Number: 518-473-1977
Facsimile Number: 518-402-2835
E-Mail Address: Robert.DuBois@cs.state.ny.us

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

19.2.0 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.

19.3.0 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.

Contractor: _____

Contract Number: C000XXX

Agency Certification: "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all exact copies of this contract."

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

Date: _____

By: _____

Name: _____

Title: _____

(Contractor)

Date: _____

By: _____

Name: _____

Title: _____

STATE OF)
) ss:
COUNTY OF)

On the _____ day of _____, _____, before me personally came _____, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the _____ of _____ the corporation or organization described in and which executed the above instrument; and that (s)he signed his/her name thereto.

_____ My commission expires: _____

NOTARY PUBLIC

Approved as to form:
ATTORNEY GENERAL

Approved:
STATE COMPTROLLER

By: _____

By: _____

Date: _____

Date: _____

Exhibit A**BIDDER IS REQUIRED TO SIGN BOTH SECTIONS ON THIS PAGE****NYS Vision Plan****NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992 the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either (answer "yes" or "no" to one or both of the following, as applicable):

(1) Have business operations in Northern Ireland.

Yes _____ or No _____

If yes:

(2) Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes _____ or No _____

(Contractor's Signature)

(Name of Business)

NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

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

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

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

(Contractor's Signature)

(Name of Business)

Exhibit B

PLACEHOLDER

the REQUEST FOR PROPOSAL entitled, “NYS VISION PLAN”

Exhibit C

PLACEHOLDER

CONTRACTOR'S PROPOSAL (TECHNICAL AND COST)

Amended March 29, 2011**Exhibit D****NYS Vision Plan****Schedule of Participating Provider Fees**

Provider and laboratory fee schedules for each year of the five (5) year contract period beginning January 1, 2012, are as follows:

<u>Type of Service</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Examinations	\$ x	\$ x	\$ x	\$ x	\$ x
Examinations - Occupational	\$ x	\$ x	\$ x	\$ x	\$ x
Contact Lens Fitting and Dispensing	\$ x	\$ x	\$ x	\$ x	\$ x
Basic Frames	\$ x	\$ x	\$ x	\$ x	\$ x
Standard Frames	\$ x	\$ x	\$ x	\$ x	\$ x
Enhanced Frames	\$ x	\$ x	\$ x	\$ x	\$ x
Basic Plastic Single Vision Lenses	\$ x	\$ x	\$ x	\$ x	\$ x
Basic Plastic Bifocal Vision Lenses	\$ x	\$ x	\$ x	\$ x	\$ x
Basic Plastic Trifocal Vision Lenses	\$ x	\$ x	\$ x	\$ x	\$ x
Plastic Progressive Vision Lenses	\$ x	\$ x	\$ x	\$ x	\$ x
Contacts					
Conventional/Standard	\$ x	\$ x	\$ x	\$ x	\$ x
Disposable/Premium	\$ x	\$ x	\$ x	\$ x	\$ x
Lens options (in additional to base lens price)					
High Index	\$ x	\$ x	\$ x	\$ x	\$ x
Glass	\$ x	\$ x	\$ x	\$ x	\$ x
Ultraviolet Coating	\$ x	\$ x	\$ x	\$ x	\$ x
Photosensitive Glass	\$ x	\$ x	\$ x	\$ x	\$ x
Photosensitive Plastic	\$ x	\$ x	\$ x	\$ x	\$ x
Polycarbonate	\$ x	\$ x	\$ x	\$ x	\$ x
Tint	\$ x	\$ x	\$ x	\$ x	\$ x
Scratch resistant coating	\$ x	\$ x	\$ x	\$ x	\$ x
Laser Vision Correction (Per Eye)	\$ x	\$ x			
PRK	\$ x	\$ x	\$ x	\$ x	\$ x
Traditional Intralase	\$ x	\$ x	\$ x	\$ x	\$ x
Custom Intralase	\$ x	\$ x	\$ x	\$ x	\$ x
Custom Wavefront Lasik	\$ x	\$ x	\$ x	\$ x	\$ x

Note: Unit price quotes must be expressed in fixed dollar amounts.

Exhibit E

NYS Vision Plan

Schedule of Monthly Administrative Fee & Communications Fee

Monthly Administrative Fees for each year of the five year contract period beginning January 1, 2012, are as follows. The one-time Communications Fee will be paid upon completion of Summary Benefit Booklet distribution.

NYS Vision Plan Monthly Administrative Fee Per Enrollee					
	2012	2013	2014	2015	2016
<i>For all groups excluding GSEU</i>	\$x	\$x	\$x	\$x	\$x
<i>For GSEU only</i>	\$x	\$x	\$x	\$x	\$x
<i>Communications Fee</i>	\$xxxxx	N/A	N/A	N/A	N/A

Exhibit F**NYS Vision Plan****Schedule of Indemnity and Non-Plan Material Reimbursement Fees**

The following is the Schedule of Indemnity Fees for the five (5) year contract period beginning January 1, 2012, for Enrollees who choose to receive care from a Non-Participating Provider, or receive Non-Plan benefits.

	ALESU	C82	GSEU	M/C & Unrep	NYSCOPBA	PEF	PBA-S	PBA-T	PIA
Examination	\$16	\$16	N/A	\$20	\$16	\$20	\$20	\$20	\$20
Frame	14	14	N/A	22	14	22	22	22	22
Single Vision Lenses	14	14	N/A	22	14	22	22	22	22
Bifocal Lenses	23	23	N/A	30	23	30	30	30	30
Trifocal Lenses	32	32	N/A	40	32	40	40	40	40
Cataract Lenses	35	35	N/A	35	35	35	35	35	35
Cataract Bifocals	35	35	N/A	35	35	35	35	35	35
Contact Lenses	184	184	N/A	40	184	40	184	184	184
Cataract Contact Lenses	184	184	N/A	40	184	40	184	184	184
Eye Exam & Contact Lenses	200	200	N/A	60	200	60	200	200	200

Note: An enrollee may receive a combination of reimbursements from one visit. For example, examination, lens and frame.

Exhibit G

PLACEHOLDER

SUMMARY OF BENEFIT VARIANCES BY EMPLOYEE GROUP

SECTION VIII: GLOSSARY OF TERMS

Affiliate means a business concern owned or controlled in whole or in part by another concern or is owned or controlled in whole or in part by another concern.

Business Day(s) means every Monday through Friday, except for days designated as business holidays by the Contractor and approved as such by DCS prior to January 1st of each calendar year.

Calendar Year/Annual means a period of 12 months beginning with January 1 and ending with December 31.

Call Center Hours means between the hours of 8:00 a.m. until 8:00 p.m. ET, Monday through Friday, and between the hours of 9:00 a.m. to 4:00 p.m. ET on Saturday.

Child(ren) means children under 25 years of age, including natural children, legally adopted children, children in a waiting period prior to finalization of adoption, Enrollee stepchildren and children of the Enrollee's domestic partner. Other children who reside permanently with the Enrollee in the Enrollee's household and are chiefly dependent upon the Enrollee are also eligible, subject to a Statement of Dependence and documentation.

Contractor means successful Offeror selected as a result of the evaluation of Offerors' Proposals submitted in response to the RFP and who executes a contract with the Department to provide Program Services.

Copayment means the amount an Enrollee or Dependent is required to pay for covered vision services as specified by the benefit design of the Plan.

Day(s) means calendar days unless otherwise noted.

DCS or Department means the New York State Department of Civil Service.

Dependent means the spouses, domestic partners, and full-time dependent student children under twenty-five (25) years of age enrolled in the Plan and determined to be eligible by the DCS. Young adult dependent children age twenty-five (25) or over are also eligible if they are incapable of supporting themselves due to mental or physical disability acquired before termination of their eligibility for coverage under the Plan.

Employee means any person defined as an Employee in 4 NYCRR Part 73, as amended, or as modified by collective bargaining agreement.

Employer means the State of New York in all its branches, departments and agencies, and any Participating Employer.

Enrollee means an Employee enrolled under the NYS Vision Plan or a former Employee or covered Dependent who elects to continue vision coverage with the NYS Vision Plan through COBRA.

Enrollee Submitted Claim or Subscriber Claim means a claim for benefits submitted by an Enrollee to the Contractor for direct reimbursement.

ET means prevailing Eastern Time.

Health Benefits Administrator (HBA) means an agency representative, primarily located in agency human resource office, who provides information on health insurance benefits to agency staff.

Indemnity Reimbursement Schedule means a schedule for which partial reimbursement is available for those Enrollees and Dependents who obtain Vision benefits from Non-Participating Providers.

Key Subcontractor means those vendors with whom the Contractor subcontracts to provide Program Services and incorporates as a part of the Contractor's Project Team.

Laser Vision Correction Participating Provider means any Ophthalmologist who entered into an agreement with the Contractor or any Key Subcontractor of the Contractor, to provide covered laser vision benefits to Enrollees and to accept the Participating Provider fee schedule for covered laser vision correction services.

Medical Exception Program means a Program for Enrollees and covered Dependents who have a medical condition that may impact vision refraction. Eligible program participants may receive an examination less than twenty-four (24) months, but not less than one year from last examination, when referred by the physician caring for the medical condition. Additional plan benefits are covered only if the patient has, in fact, experienced a change in vision.

Member means Enrollee or Dependent enrolled in the New York State Vision Plan.

National Medical Support Notice means a child medical support order issued pursuant to the standardized system established by the Child Support Performance and Incentive Act of 1998.

Non-Participating Provider means any Optometrist or Ophthalmologist who has not entered into an agreement with the Contractor, or any Key Subcontractor of the Contractor, to provide covered vision benefits to Enrollees.

NYS means New York State.

Occupational Vision Program means a Program “by which,” or “whereby” eligible Enrollees may obtain a second eyewear selection (intended for occupational use) from a Participating Provider, at the time the primary eyewear is ordered.

Optometrist/Ophthalmologist means a person who is legally licensed to practice the profession of Optometry in the state in which they practice. He or she must regularly practice such profession within the scope of his or her license.

Participating Employer (PE) means a public authority, public benefit corporation, or other public agency, subdivision or quasi-public organization of the State which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Vision Plan.

Participating Provider means any Optometrist or Ophthalmologist who has entered into an agreement with the Contractor, or any Key Subcontractor of the Contractor, to provide covered vision benefits to Enrollees and accept the Participating Provider fee schedule as payment in full for covered vision services.

Plan/Program means the New York State Vision Plan.

President means the President of the Civil Service Commission and the Commissioner of the DCS.

Program/Plan means the New York State Vision Plan.

Program Services or Vision Plan Services means all of the services to be provided by the Contractor as set forth in this RFP.

Proposal means the Contractor's Administrative Proposal, Technical Proposal and Cost Proposal, including all responses to supplemental requests for clarification, information, or documentation submitted during the course of the Procurement.

RFP or Procurement means the Request for Proposals, entitled "New York State Vision Plan Services," dated March 1, 2011.

Service Level Standard means the Department's expected performance level of service that the selected Offeror must meet or exceed for the New York State Vision Plan.

State means the DCS acting in its statutory authority as the administrator of New York State's Vision Plan.

Transition Plan means a written plan for transition, which outlines, at a minimum, the tasks, milestones and deliverables associated with transitioning the Plan to a new contractor.

Upgrade Program means a Program for eligible Enrollees and their Dependents that enables them to select certain non-Plan eyewear from a Participating Provider and pay a discounted surcharge (in addition to the Participating Provider fee paid by the Plan).

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).

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) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on

its invoice or New York State standard voucher, 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 New York State's Central Accounting System by the Director of Accounting Operations, 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, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 Governor's Office 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
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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
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 this Agreement. This Agreement, including all Exhibits and Appendices, copies of which are attached hereto, and incorporated herein by reference, constitutes the entire agreement between the Parties. 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 this 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 this 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 this Agreement in New York State courts located in Albany County.

4. DISPUTE RESOLUTION

Except as otherwise provided in this Agreement, any dispute raised by the Contractor concerning any question of fact or law arising under this 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 this 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 this Agreement in accordance with the President's decision.

5. WAIVER OF BREACH

No term or provision of this 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 this 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 this Agreement.

7. OUTSIDE OF SCOPE

The Contractor agrees that any and all work performed outside the scope of this 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 this 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 this 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 this 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 this 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 this 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 this 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".

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 this 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 this 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 this 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 this 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 this 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 this 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 this 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 this 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 this 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 this Agreement for breach of warranty.

13. VIRUS WARRANTY

Licensed 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 Licensee'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 Products transferred to the Department under this 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 this 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 this 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 section, the term "Department" is understood to mean the Department acting on behalf of the State.

(A) Definitions

1. Products:

A deliverable furnished under this Agreement by or through the Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment; b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); 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 Products:

Tangible Products and intangible licensed Products which exist prior to the commencement of work under this Agreement. The Contractor retains the burden of proving that a particular product existed before commencement of the Agreement.

3. Custom Products:

Products, preliminary, final or otherwise, which are created or developed by The Contractor, or its subcontractors, partners, employees, or agents under this 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 this Agreement. Unless otherwise specified in writing in this Agreement, the Department shall have ownership and/or license rights as follows:

1. Existing Products:

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 this 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 this 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 Products:

Effective upon creation of Custom Products, 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 Products 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 this Agreement in the course of the Contractor's business.

Where payment for Custom Product does not involve COPS 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 this 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 this Agreement shall be liable or deemed to be in default for any delay or failure in performance under this 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, slow downs or other labor interruptions due to labor/management disputes involving entities other than the Parties to this 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 this Agreement and to resume performance of this 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 this Agreement.

19. RIGHTS AND REMEDIES

The rights, duties and remedies set forth in this 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 this 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 this 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 this 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 this 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 this Agreement.

24. HEADINGS OR CAPTIONS

The headings or captions contained within this 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 this Agreement or any provisions thereof.

25. PARTIAL INVALIDITY

Each Party agrees that it shall perform its obligations under this 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 this Agreement shall be found to be illegal or unenforceable, then, notwithstanding such term or provision, this 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 this Agreement or in its delivery of services pursuant to this Agreement. If, during the term of this 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 this 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 in accordance with this 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 this Agreement, and the review of any and all activities relating to the Contractor's administration of this 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 this Agreement - Standards Clauses for All New York State Contracts.

28. CONFIDENTIALITY

All records maintained by the Contractor and relating to this 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 this 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 this 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 this Agreement.

The Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of services under this Agreement, including any information provided by the Department, except as required by subcontractors or agents solely for the purpose of carrying out obligations under this 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 this Project (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 this 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 this 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 this Agreement. For purposes of this 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 section, if requested to do so by the Department or the State.

This representation shall survive termination of this 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 this 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 this 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 section.

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 this 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 this 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 this 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 this 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 this 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 this Agreement. In addition, each Party shall assist the other Party in orderly termination of this 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 this 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 this 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 this 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 this 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 this 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 administrative organization capable of delivering Program Services in accordance with this Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which these Services are to be delivered pursuant to this 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 this 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 this 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 this 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 State program and this 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. SUB-CONTRACTORS

The Contractor may arrange for specified portions of its responsibilities under this Agreement to be subcontracted to a qualified organization. In such situations, said sub-contractors must be clearly identified and the nature and extent of their involvement in and/or proposed performance under this Agreement must be fully explained by the Contractor to the Department. The Contractor retains the ultimate responsibility for all services performed under this Agreement. The Department reserves the right to approve any subcontracts entered into by the Contractor for the delivery of Program Services under this Agreement.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this Agreement. Such functionally identical and consistent provisions shall include, but not be limited to, the following provisions of this Agreement: Appendix A - Standard Clauses For All New York State Contracts; Appendix B - Standard Clauses for All Department Contracts; the Articles pertaining to Audit Authority and Confidentiality, and such other Agreement Articles as may be specified by the Department.

A copy of any proposed subcontract relating to the Contractor's performance under this Agreement shall be furnished to the Department before its execution for the Department's review and approval. The Department will review the document(s) and advise the Contractor of its approval or disapproval within 30 days.

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 or which may affect the performance of the Contractor's duties under this Agreement.

The Department's requirement of prior approval of any subcontract under this Agreement 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 sub-contractor or proposed sub-contractor against the Department.

Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of this 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 this 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 this 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 this 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, and (ii) the intentional provision of false or incomplete information to a governmental entity.

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

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 this 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 this 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 this Agreement may take effect.

In addition, after this Agreement has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if this 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 Contract, 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 this Contract 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.

January 2010



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

with principal offices at

(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.

<i>Third Party Name:</i>	<i>NYS Department of Civil Service (DCS)</i>
Authorized Signature	Authorized Signature
Name (<i>Print</i>)	Name (<i>Print</i>)
Date	Date



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:



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.



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:

Division:

Office Location:

Phone Number:

Email Address:

Back-up Point of Contact: (Data Custodian)

Name:

Division:

Office Location:

Phone Number:

Email Address:

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.

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?



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



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: 518-485-5588



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.



Name And Address Of Borrower	DCS Business Unit (Loaning Organization)	
	Point Of Contact	
	Work Location	Telephone
Shipping Address (<i>If different from borrower's</i>)	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)

Appendix C
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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 (<i>Upon initial receipt</i>)	DCS Lender (<i>Upon termination of Agreement</i>)
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date

July 2005