



NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

INVITATION FOR BID #EBC-2014-1

"The Empire Plan Employee Benefit Card"

RELEASE DATE: October 1, 2014

Amended 11-7-14

PROPOSAL DUE DATE: November 13, 2014

IMPORTANT NOTICE: A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement and 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 IFB, Section II: Procurement Protocol and Process).

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

**Procurement Manager
Employee Benefits Division, Room 1106
New York State Department of Civil Service
Albany, New York 12239
(518) 402-2096
e-mail: EBC2014IFB@cs.ny.gov**

**Jerry Boone
Commissioner
New York State Department of Civil Service**

**David Boland
Director
New York State Department of Civil Service
Employee Benefits Division**

SECTION I: INTRODUCTION**A. Purpose**

The purpose of this Invitation for Bid (IFB) #EBC-2014-1, entitled “The Empire Plan Employee Benefit Card” is to secure the services of an Offeror to: 1) produce and distribute Employee Benefit Cards (EBC) on behalf of the New York State Department of Civil Service (Department) to individuals covered under The Empire Plan; and 2) create and distribute associated Management Reports to the Department to manage the contract. For the purposes of this IFB, the use of the term Offeror will be understood to mean Offeror.

Note: Numbers, data or statistics which may appear in this IFB are considered to be accurate but should not be used or viewed by prospective Offerors as guarantees or representations of any future card requests. Accordingly, prospective Offerors should rely upon and use such numbers, data or statistics in preparing their Proposals at their own discretion.

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 responsive to the requirements of the IFB and the Program Service duties and responsibilities set forth in the IFB, Section IV “Technical Section.”

It is the Department’s intent to enter into a contract (Agreement) with one (1) Offeror selected as a result of this IFB. The term of this Agreement shall include a sixty (60) day implementation period followed by five (5) years of Production Services. Unless modified as provided herein, this Agreement shall begin on June 1, 2015 and end on May 31, 2020. The State retains the right to cancel all or any part of the Agreement without cause and in its sole discretion, provided that the Department must give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination must become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The sixty (60) day implementation period shall begin after the Office of the State Comptroller approves the Agreement, during which the selected Offeror shall be responsible for the production and distribution of Employee Benefit Cards and associated Management Reports in accordance with the terms and conditions of the Agreement.

The Offeror must agree to be bound by its Proposal which will be explicitly incorporated by reference into the executed 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 or Affiliates, the Offeror will be considered the Contractor, and the Offeror shall assume full responsibility for the fulfillment of all of the Contractor responsibilities under the Agreement. This IFB and other relevant information may be reviewed at: www.cs.ny.gov/EBC2014IFB/index.cfm

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

B. Overview of the New York State Health Insurance Program

The New York State Health Insurance Program (NYSHIP) was established by the New York State Legislature in 1957 to provide essential health insurance protection to New York State (NYS) Employees, Retirees, 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 NYSHIP; those that do are called Participating Employers (PEs). Article XI of the NYS Civil Service Law also allows local units of government such as school districts, special districts, and municipal corporations to participate in NYSHIP; those local government units which choose to participate in NYSHIP are called Participating Agencies (PAs). At present, there are approximately 451 NYS agencies, 92 PEs, and 800 PAs in NYSHIP. Under Article XI of the Civil Service Law, as amended, and 4 New York Code of Rules and Regulations (NYCRR) Part 73, as amended, the President of the New York State Civil Service Commission, who also serves as the Commissioner of the Department, through the Department's Employee Benefits Division (EBD), is responsible for the ongoing administration of NYSHIP.

NYSHIP currently covers over 589,635 NYS, PA and PE Employees and retirees. Eligible covered Dependents bring the total number of covered lives to approximately 1,222,500.

NYSHIP currently provides health benefits coverage through The Empire Plan, a Participating Provider Organization (PPO) with managed care components, and 10 Health Maintenance Organizations (HMOs). The Excelsior Plan is a lower cost version of The Empire Plan available to PAs. Additionally, the Student Employee Health Plan (SEHP) is administered through The Empire Plan contracts. SEHP is a health benefits plan for graduate student Employees of the New York State and New York City University systems. NYS and PE employees and retirees may elect to enroll in either The Empire Plan or in HMOs offered through NYSHIP. NYSHIP offers only The Empire Plan and the Excelsior Plan to PAs. PAs may, and frequently do, offer HMOs directly to their own Employees and retirees as an alternative to Empire Plan coverage.

Regarding new and replacement EBCs, The Empire Plan Enrollees who elect individual coverage receive one (1) EBC whereas Enrollees who elect family coverage, generally, receive two (2) EBCs listing all Dependents. Empire Plan Enrollees and Dependents use their EBC as identification when accessing healthcare services under The Empire Plan. There are approximately 208,195 Enrollees with individual coverage in The Empire Plan and 281,217 Enrollees with family coverage in The Empire Plan.

C. Overview of Required EBC Production, Distribution, and Reporting Services

The EBC is a durable card that provides identifying information for an Enrollee and any covered Dependents enrolled in The Empire Plan. A sample of the current EBC is included in **Exhibit II.A** titled, “Sample Card, Card Carrier and Envelope.”

The Contractor produces and distributes EBCs on behalf of the Department. Over the last three (3) years, approximately 540,000 EBCs have been issued in the form of new, duplicate, and replacement cards, which equated to an average weekly production of approximately 3,000 cards. See **Exhibit II.D**, Sample Summary Report, for a summary of weekly EBC and carrier/envelope production. The Contractor also produces and distributes weekly Management Reports including Card Detail Reports and Card Summary Reports. The Card Detail Report contains data supporting the EBCs produced for each Enrollee and/or their Dependent. The Card Summary Report contains total card counts and the total number of agencies that received EBCs. Both reports shall be transmitted to the Department through a

secure electronic transmission that is HIPAA compliant and in a format that is searchable. See **Exhibit II.C** Sample Detail Report and **Exhibit II.D** Sample Summary Report.

Once a week, currently on Wednesdays, the Department produces an EBC Data File(s) containing all the information necessary to produce and distribute EBCs. See **Exhibit II.B** to the IFB for the required file layout. Using the information contained in the EBC Data File(s), the Contractor produces and distributes the EBCs via first-class U.S. Postal Service to the Cardholder, and electronically sends both the Card Detail Reports and Card Summary Reports within the timeframes established in this IFB in Section IV. The file layout and information placed on the EBC is subject to change at the sole discretion of the Department.

The Department anticipates, but does not guarantee, that during the term of the Agreement, the number of EBCs required to be produced and distributed will not change substantially from current levels, i.e., approximately 3,000 EBCs per week. The typical number of EBCs produced is two (2) cards for Enrollees with family coverage, and one (1) card for Enrollees with individual coverage. EBC volume in any given weekly Production Cycle may be highly variable due to the addition of Participating Employers and Participating Agencies to The Empire Plan.

During the term of the Agreement, the Department reserves the right to re-issue EBCs to all Cardholders. If the Department determines a complete or partial re-issuance is required the Department will provide advance notice to the Contractor.

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

IFB Release Date	October 1, 2014
Exhibit I.K Offeror's Affirmation of Understanding & Agreement Due Date	See * below
Questions Due Date	October 15, 2014, 5:00pm ET
Release Date of Official Responses to Questions	October 22, 2014
Exhibit I.J Notice of Bidding Intention Form Deadline	November 8, 2014
Amended 11-7-14	
Proposals Due Date	November 13, 2014 3:00pm ET
Anticipated Contract Start Date	Upon OSC Approval of the Agreement, with card production starting June 1, 2015

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

2. Procurement Lobbying Limitations

- a.** Pursuant to State Finance Law sections 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 the IFB until the date of the Agreement's final approval by the 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 IFB, "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids (i.e., Proposals) in response to the IFB. 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 Offeror is subject to two non-responsibility findings within four years the Offeror 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 Procuring Agencies' Policy and associated procedures are included as **Exhibit I.L, "Procurement Lobbying Policy: Restrictions on Contacts during the Procurement Process"** to this IFB. Further information about these requirements can be found at:

<http://www.ogs.ny.gov/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 IFB is released until the Agreement is approved by OSC. "Offeror" means any individual or entity, or any employee, agent, consultant, or person acting on behalf of such individual or entity, who contacts the Department or any other State governmental entity about a governmental procurement during that procurement's restricted period, whether or not the caller has a financial interest in the outcome of the governmental procurement; provided, however, that a governmental agency (or its employees) that communicates with the Department regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offeror. "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids in response to the solicitation document. All contacts, inquiries, questions, filings and submissions of Proposals in regard to the IFB must be directed, in writing, by mail, facsimile or e-mail, as applicable, solely to the EBC Procurement Manager. An Offeror's failure to comply with this requirement may result in the Offeror's disqualification from this Procurement.

If using the U.S. Postal Service, please use the following address:

EBC Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

EBC Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239
Fax: 518-402-2835
E-mail: EBC2014IFB@cs.ny.gov

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

- c. The following contacts are exempted from the provisions of paragraph 3 of section 139-j and as such do not need to be directed to the EBC Procurement Manager pursuant to section 139-k:
- i. The submission of written Proposals in response to this IFB;
 - ii. The submission of written questions by a method set forth in IFB when all written questions and responses are to be distributed to all Offerors who have expressed an interest in the Procurement;
 - iii. Participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in IFB;
 - iv. Complaints by an Offeror regarding the failure of the EBC Procurement Manager to respond to an Offeror's authorized contacts, when such complaints are made in writing to the Department's Office of the General Counsel, provided that any such

written complaints shall become a part of the procurement record;

- v. Communications by a successful Offeror(s) 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 tentative award;
- vi. Contact by an Offeror to request the review of a procurement award when done in accordance with the procedure specified in the solicitation document;
 - a. Contacts by an Offeror in protests, appeals or other review proceedings (including the apparent successful 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 NYS Attorney General, Inspector General, District Attorney, or to a court of competent jurisdiction; or
 - c. Written protests, appeals or complaints to the NYS Comptroller's office during the process of contract approval, where the NYS Comptroller's approval is required provided that the NYS Comptroller shall make a record of such communications and any response thereto which shall be entered into the procurement record pursuant to State Finance Law Section 163; or
 - d. Complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the NYS Comptroller's office; and
- vii. Communications between Offerors and governmental entities that solely address the determination of responsibility by a governmental entity of an Offeror.
- d. It is **mandatory** that all prospective Offerors/Offerors complete Part 1 of **Exhibit I.K, "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 EBC Procurement Manager **prior to a prospective Offeror making its initial contact with the Department** (e.g., submission of a Notice of Bidding Intention Form, **Exhibit I.J**; submission of questions, etc. or concurrent with an Offeror's submission of its Proposal, whichever shall occur first). Offerors are advised that whenever any of the Offeror's officers, employees, agents or consultants contact the Department, they should be prepared to provide their name, address, telephone number, place of principal employment, occupation, and whether they were retained, employed or designated, by or on behalf of the Offeror to appear before or contact the Department in regards to this Procurement. To that end and to streamline the process, Offerors are requested to complete and submit Part 2 of **Exhibit I.K** entitled, "Offeror Designated Contact" for each officer, employee, agent or consultant authorized by the Offeror to appear before or contact the Department in regards to this Procurement before appearing or before or at the time such contact is initiated.

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

3. Notice of Bidding Intention Form

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 IFB or not, are requested to complete a "**Notice of Bidding Intention Form**," **Exhibit I.J** and submit it to the EBC Program 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: EBC2014IFB@cs.ny.gov

On the Notice of Bidding Intention Form, New York State certified Minority and Women-

Owned Businesses (M/WBE) may request that their firm's contact information be included on a list of M/WBE firms interested in serving as a subcontractor for this Procurement. The listing will be publicly posted on the Procurement webpage at: www.cs.ny.gov/EBC2014IFB/index.cfm for reference by the bidding community. A firm requesting inclusion on this list should send a copy of its NYS M/WBE certification with its completed Notice of Bidding Intention Form. Nothing prohibits an M/WBE vendor from proposing as a prime contractor.

4. Submission of Errors or Omissions in the IFB Document

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this IFB, 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 IFB, the prospective Offeror may raise such issue according to the following provisions:

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

- i. *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.
- ii. *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
- iii. *Format of Submission:*** All submissions asserting an error or omission must be in writing and submitted to the EBC Procurement Manager at the following address:

If using the U.S. Postal Service, please use the following address:

EBC Procurement Manager

Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

EBC Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

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

**"Submission of Errors or Omissions for the
The Empire Plan Employee Benefit Card
Invitation for Bids"#EBC-2014-1"**

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 IFB 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 IFB, 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 IFB 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 that registered via mail, facsimile or e-mail. Notice of any extension will also be posted to: www.cs.ny.gov/EBC2014IFB/index.cfm

5. Submission of Questions

In the event a prospective Offeror has any substantive or procedural questions concerning the content of the IFB document; those questions can be submitted in the following manner to:

If using the U.S. Postal Service, please use the following address:

EBC Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

EBC Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

Fax: 518-402-2835

E-Mail: EBC2014IFB@cs.ny.gov

Prospective Offerors may submit questions to the EBC Procurement Manager, in writing, via e-mail, facsimile or mail. The Department strongly urges prospective Offerors to submit the questions via e-mail. Each question should cite the particular IFB section, page number and paragraph number to which it refers. All responses will be considered unofficial until issued or confirmed in writing by the Department on the procurement website. Only those questions due prior to 5:00 p.m. Eastern Time (ET), on the Questions Due Date as shown in Section II.A.1. of this IFB, will be accepted.

To expedite its responses, the Department has provided a questions template form which prospective Offerors are requested to use in submitting questions regarding the IFB (see **Exhibit I.R “Questions 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. The aforementioned information will be posted to: www.cs.ny.gov/EBC2014IFB/index.cfm and all registered prospective Offerors will be notified of the posting to this site.

6. Submission of Proposal

a. Submission Requirements

The Offeror’s Proposal must be organized and separated into three (3) sections: Administrative Section; Technical Section, and Cost Section. To facilitate the evaluation process, Offerors must submit eight (8) separately bound hard copies (two (2) ORIGINALS and six (6) copies) and one (1) electronic copy (CD) **of the three (3) sections** of the Offeror’s Proposal. Electronic submissions must be in Adobe Acrobat, as applicable. The Administrative and Technical Sections shall be bound together and clearly labeled. The Cost Section is required to be either separately bound from the Administrative and Technical Sections, or submitted in a separate sealed envelope clearly labeled. These sixteen (16) documents and one (1) CD of the

three (3) sections of the Offeror's Proposal are collectively hereafter referred to as "Submissions."

Each ORIGINAL hard copy of each section 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 six (6) hard copies of each section 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) sections, 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. Each sealed box/envelope should contain a label on the outside which contains the information below.

**New York State Department of Civil Service
Invitation for Bid #EBC-2014-1
"The Empire Plan Employee Benefit Card"
OFFEROR NAME
OFFEROR ADDRESS**

All Proposals must be sent to the following:

If using the U.S. Postal Service, please use the following address:

EBC Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

EBC Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

For those Offerors who plan to have the Proposal hand delivered, arrangements for acceptance of the packages must be made in accordance with procurement security procedures. **To make such arrangements, the Department requests that the Offeror notify the EBC 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 IFB. 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.

The Department will accept amendments and/or additions to an Offeror's Proposal if the amendment and/or addition is received by the Department **prior** to 3:00 p.m. ET on the Proposal Due Date. All amendments to an Offeror's Proposal must be submitted in writing, in accordance with the format set forth in Section II.A.6. of this IFB, 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 Requirement 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 Section, Technical Section and Cost Section each should comply with the following formatting requirements (Failure to comply with the formatting requirements herein below may, but will not necessarily, result in the Proposal being deemed non-responsive and may, but will not necessarily, result in rejection of the Proposal):

- i. *Binding of Proposal:*** The Administrative and Technical Sections must be separate, clearly labeled, and bound as one complete package. The Cost Section is required to be separately bound from the Administrative and Technical Sections, or submitted in a separate sealed envelope, clearly labeled. The official name of the organization(s), the Proposal Due Date and IFB # EBC-2014-1 “The Empire Plan Employee Benefit Card” must appear on the outside front cover of each copy of the package containing the Offeror's Administrative, Technical and Cost Sections. If the Proposals are submitted in loose-leaf binders, the official name(s) of the organization(s) and IFB # EBC-2014-1 “The Empire Plan Employee Benefit Card” also must appear on the spine of the binders;
- ii. *Table of Contents:*** Each Proposal must include a table of contents;
- iii. *Index Tabs:*** Each major Section of the Proposal, each subsection in the Technical Section and each Exhibit must be labeled with an index tab that completely identifies the title of the Section, subsection or Exhibit as named in the table of contents;
- iv. *Pagination:*** Each page of the Proposal, including Exhibits, must be labeled on the upper right with the Section title and Section reference, page number, and date. Pages within each Section and Exhibit must be numbered consecutively;
- v. *Proposal Updates/Corrections:*** Each Offeror must submit its 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,

- vi. *Required Content of Proposals:*** The Proposal must consist of three parts: 1) the Administrative Section, which must respond to the requirements set forth in Section III of this IFB; 2) the Technical Section, which must respond to the requirements set forth in Section IV of this IFB; and 3) the Cost Section, which must respond to the requirements set forth in Section V of this IFB.

c. Material Deviations

New York State Law prohibits NYS from awarding a contract based upon material deviations from the specifications, terms, and conditions set forth in the IFB.

Consequently, each Offeror's Proposal must conform to the specifications, terms, and conditions set forth in this IFB and prospective Offerors are strongly advised to raise issues and/or concerns relating to this Procurement during the question and answer phase rather than taking exceptions within their Proposals. Material deviations from the specifications, terms, and conditions set forth in the IFB may render the Proposal non-responsive and may result in rejection of the Proposal.

In general, a material deviation is one that would (i) impair the interests of NYS, (ii) place the successful Offeror in a position of unfair economic advantage, (iii) place other Offerors at a competitive disadvantage, or (iv) which, if it had been included in the original IFB, could have formed a reasonable basis for an otherwise qualified Offeror to change its determination concerning the submission of a Proposal.

Offerors are advised that Offeror's standard, pre-printed material (including but not limited to: product literature, order forms, manufacturer's license agreements,

standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Offeror's Proposal, unless specifically required by the IFB to be submitted as part of the Offeror's Proposal, will not be considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Proposal, but rather will be deemed by the State to have been included by Offeror for informational or promotional purposes only.

In order to be deemed responsive to this IFB, the Offeror must submit a Proposal which independently satisfies all of the requirements set forth in this IFB, without substitution or modification ("stated requirements"). The Proposal will be evaluated against the requirements and specifications set forth in this IFB to determine the "best value" submission. Best value determination will be considered lowest cost for the proposal that is both responsive and responsible.

As stated above in part, New York State Law prohibits NYS from awarding a contract based upon material deviations from the specifications, terms, and conditions set forth in the IFB. Consequently, each Offeror's Proposal must conform to the specifications, terms, and conditions set forth in this IFB. In addition to, but not in lieu of, its response to the IFB's stated requirements, the Offeror may propose supplemental, "or equal", additional or alternative terms (Extraneous Terms) to the stated requirements within the Proposal, provided that, in the State's sole judgment, the Extraneous Term(s) does not constitute material deviations to the stated requirements. Proposed Extraneous Term(s) may only be considered by the State to the extent that such Extraneous Term(s) constitute non-material deviations from the requirements set forth in the IFB as determined in the Department's sole discretion. Material deviations from the specifications, terms, and conditions set forth in the IFB may render the Proposal non-responsive and may result in rejection of the Proposal.

Therefore, in order for Extraneous Term(s) to be considered, the Extraneous Term must:

- i. Independently satisfy the applicable requirement(s) of the IFB on its own merits;

- ii. Be clearly and separately identified as an “Extraneous Term” within the Administrative, Technical and/or Cost Proposals - Extraneous Terms Submission; and
- iii. Be separately evaluated and scored in accordance with the bid evaluation criteria.

If the Offeror proposes to include Extraneous Terms in its official Proposal, the Offeror must meet all of the following requirements:

- a. Each proposed Extraneous Term must be specifically enumerated in a separate section of the applicable Submission(s) (Administrative, Technical and/or Cost) labeled “Extraneous Terms Submission,” using the format as set forth in **Exhibit I.X** entitled, “Extraneous Terms Template.”
- b. The “Extraneous Terms” section must be in a writing prepared by Offeror and may not include any pre-printed literature or vendor forms;
- c. The writing must identify by part, section and title the particular IFB requirement (if any) which the Offeror proposes to supplement by inclusion of the Extraneous Term, with a brief description of the specific provision being modified by the Extraneous Term; and
- d. The Offeror shall enumerate the proposed additional or alternative term from the IFB requirement, and the reasons therefore.

Only those terms meeting the above requirements (a) through (d) shall be considered as having been submitted as part of the formal offer.

Extraneous Term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, manufacturer’s license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Proposal, or that, in the State’s sole judgment, have not been submitted in compliance with the above requirements (a) through

(d) above, will not be considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Proposal, but rather will be deemed by the State to have been included by Offeror for informational or promotional purposes only.

Absent the State's express written acceptance and incorporation of an Extraneous Term, acceptance and/or processing of the Proposal shall not constitute the State's acceptance of Extraneous Term(s) or be deemed a waiver of the State's rights set forth herein.

7. 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 IFB, the associated procurement process, including but not limited to the bid solicitation, proposal evaluation and award and contract negotiation processes or the Agreement shall be made by any Offeror or their agent without the prior written approval of the Department.

8. Debriefing

As stated in IFB, Section II.A.7 above, proposed award notification letters will be sent to the selected and non-selected Offerors. At that time, Offerors will be advised of the opportunity to request a Debriefing and the timeframe by which such requests must be made, dependent upon the nature of the Debriefing, i.e., pre-award or post-award. Debriefings are subject to the Department's Debriefing Guidelines which are set forth in **Exhibit I.H** entitled, "NYS Department of Civil Service Debriefing Guidelines." An unsuccessful Offeror's written request for a debriefing shall be submitted to:

If using the U.S. Postal Service, please use the following address:

EBC Procurement Manager
Employee Benefits Division, Room 1106

NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

EBC Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239
Fax: 518-402-2835
E-Mail: EBC2014IFB@cs.state.ny.us

9. Submission of Award Protests

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this IFB, 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

- i. *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.
- ii. *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.
- iii. *Format of Submission:*** All submissions of protest must be in writing and submitted to the EBC Procurement Manager at the following address:

If using the U.S. Postal Service, please use the following address:

EBC Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

EBC Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 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
IFB #-EBC-2014-1
The Empire Plan Employee Benefit Card”**

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. Review of Submitted Protests

The Department shall conduct the review process of submitted protests. The Department’s 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 IFB, 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 her 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 Department's final determination in the matter.

In the event that an Offeror protests the selection decision, the Department shall continue contract negotiations regarding the terms and conditions of the agreement 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.

10. Department of Civil Service Reservation of Rights

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

- a. Make or not make an award under the IFB, either in whole or in part.
- b. Prior to the bid opening, amend the IFB. If the Department elects to amend any part of the IFB, notification of the amendment will be provided to all prospective Offerors who submitted a Procurement Registration Form and/or a Offeror's Affirmation of Understanding and Agreement (Exhibit I.K.) via e-mail, facsimile or mail. Any amendments will also be posted to: www.cs.ny.gov/EBC2014IFB/index.cfm
- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent IFB amendments;
- d. Withdraw the IFB, at any time, in whole or in part, at the Department's sole discretion, prior to OSC approval of award of the contract.

- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any of the mandatory requirements of the IFB;
- 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 IFB;
- h. Reject any or all Proposals received in response to this IFB, at its sole discretion;
- i. Change any of the scheduled dates stated in this IFB;
- j. Seek clarifications and revisions of Proposals;
- k. Establish programmatic and legal requirements to meet the Department's needs, and to modify, correct, and/or clarify such requirements at any time during the Procurement, provided that any such modifications would not materially benefit or disadvantage any particular Offeror;
- l. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the Offerors;
- 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, if any, in the course of evaluation and selection under this IFB;
- n. Negotiate with the successful Offeror within the scope of the IFB in the best interests of the Department;
- o. Utilize any and all ideas submitted in the Proposal(s) received;

- p. Conduct contract negotiations with the next responsible bidder, should the Department be unsuccessful in negotiating with the selected Offeror; and
- q. Unless otherwise specified in the IFB, every offer is firm and not revocable for a minimum period of 365 days from the Proposal Due Date as set forth in the IFB.

11. Limitation of Liability

The Department is not liable for any cost incurred by any Offeror prior to approval of the Agreement by OSC. 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 IFB (hard copy Exhibits, website Exhibits, and sample document Exhibits). However, the Department does not warrant the accuracy of the data; the numbers or statistics which appear in hardcopy Exhibits, website Exhibits, and sample document Exhibits referenced throughout this IFB which 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 numbers or statistics in preparing their Proposals at their own discretion.

B. Compliance with Applicable Rules, Laws, Regulations, and Executive Orders

This Procurement is being conducted in accordance with, and is subject to, the competitive bidding laws of the State of New York (New York State Finance Law, Article 11) and it is governed by, at a minimum, the legal authorities referenced below. All Offerors must fully comply with the provisions and set forth in this Section II.B. of the IFB. 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.

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 IFB 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. Per IFB Section III.C, 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 of 1994 and its 2000 Amendment

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 of 1994 and its 2000 amendments require that they be denied contracts which they otherwise could obtain. The list of jurisdictions subject to this provision is set forth in Article 20 of Appendix A.

3. Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority and Women-Owned Business Enterprises (MWBE) and Equal Employment Opportunities ("EEO") for Minority Group Members and Women

New York State Law:

Pursuant to New York State Executive Law Article 15-A, the Department recognizes its obligation under the law to promote opportunities for the maximum feasible participation of certified minority and women-owned business enterprises and the employment of minority group members and women in the performance of the Department's contract. By

submitting a Proposal in response to this Procurement, the Offeror agrees to comply with the provisions of the IFB, including but not limited to Appendix D, entitled “Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures” and the requirements set forth herein.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" (the “Disparity Study”). The Disparity Study can be accessed through Google search keywords:

http://www.esd.ny.gov/MWBE/Data/NERA_NYS_Disparity_Study_Final_NEW.pdf .

The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the Department establish goals for maximum feasible participation of New York State Certified minority and women-owned business enterprises (“MWBE”) and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs:

For purposes of this Procurement, the Department hereby establishes an overall goal of 20% for MWBE participation as relates only to the Employee Benefit Card, Card Carrier and Envelope components of the overall cost of the Agreement (i.e. excludes postage charges). The Contractor must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the

Agreement and Contractor agrees that the Department may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

For guidance on how the Department will determine the Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Offeror/Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Agreement, such finding constitutes a breach of contract and the Department may withhold payment from the Contractor as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

- a.** Offerors are required to submit a MWBE Utilization Plan - Form MWBE-100, **Exhibit I.O** setting forth the Offeror's proposed plan to utilize MWBEs as subcontractors and suppliers under the Agreement and a Certification of Good Faith Efforts - Form MWBE-104, **Exhibit I.Q.** with their Proposal. Any modifications or changes to the MWBE Utilization Plan after contract award and during the term of the Agreement must be reported on a revised MWBE Utilization Plan and submitted to the Department. If the Offeror is requesting a waiver or partial waiver of the MWBE goals on **Exhibit I.Q**, the Offeror must also complete and submit MWBE-101 with the Administrative Proposal.
- b.** The Department will review the submitted MWBE Utilization Plan and advise the Offeror of the Department's acceptance or issue a notice of deficiency prior to contract award.

- c. If a notice of deficiency is issued, the Offeror agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the EBC Program Procurement Manager, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the Offeror and direct the Offeror to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form MWBE-101 entitled “Request for Waiver Form” available at: <http://www.cs.ny.gov/pio/mwbe-eeo-forms.cfm>. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- d. The Department may disqualify an Offeror as being non-responsive under the following circumstances:
- i. If an Offeror fails to submit a MWBE Utilization Plan;
 - ii. If an Offeror fails to submit a written remedy to a notice of deficiency;
 - iii. If an Offeror fails to submit a request for waiver, if applicable; or
 - iv. If the Department determines that the Offeror has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Agreement. Requests for a partial or total waiver of established goal requirements made subsequent to contract award may be made at any time during the term of the Agreement to the Department, but must be made no later than prior to the submission of a request for final payment on the Agreement.

Contractors are required to submit a Contractor’s Quarterly M/WBE Contractor Compliance Reports - Form MWBE-103 to the Department’s Contract Manager, at the address set forth in the Agreement, by the 10th day following each end of quarter over the term of the Agreement documenting the progress made toward achievement of the MWBE goals of the Agreement. Form MWBE-103 is available at:

<http://www.cs.ny.gov/pio/mwbe-eeo-forms.cfm>

Equal Employment Opportunity Requirements:

By submission of a Proposal in response to this Procurement, the Offeror/Contractor agrees with all of the terms and conditions of Appendix A including Article 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Agreement; or (ii) employment outside New York State.

Offeror/Contractor further agrees to submit with its Proposal an EEO Staffing Plan – Form EEO-100, **Exhibit I.G** identifying the anticipated work force to be utilized on the project and if awarded the contract, will, upon request, submit to DCS, a workforce utilization report identifying the workforce actually utilized to perform Program Services, if known.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and any subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the contract, leading to the withholding of funds, suspension or termination of the Agreement or such other actions or enforcement proceedings as allowed by the Agreement.

Per IFB Section III.C, executed copies of:

Exhibit I.G entitled “EEO Staffing Plan (form EEO-100),”

Exhibit I.Q entitled, “Certification of Good Faith Efforts (form MWBE-104);” and

Exhibit I.O entitled, “MWBE Utilization Plan (form MWBE-100)”

must be submitted as part of the Offeror’s Administrative Proposal.

4. Americans with Disabilities

Act The Contractor 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 Section.

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 Section.

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 Contractor prior to making an award.

To assist the Department in evaluating the responsibility of Offerors, a completed “**New York State Standard 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 or Affiliates (i.e., part of the Offeror's proposed Account Team) and expected to receive more than \$100,000 in payments during the term of the Agreement, the Offeror must submit a completed “New York State Standard Vendor Responsibility Questionnaire” for each Key Subcontractor or Affiliate completed by a person legally authorized to represent the Key Subcontractor or Affiliate.

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 the 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>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at: itservicedesk@osc.state.ny.us.

Vendors opting to complete and submit 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.

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: http://www.tax.ny.gov/forms/sales_cur_forms.htm

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

NOTICE TO OFFEROR'S LEGAL COUNSEL

All materials submitted by an Offeror in response to this IFB 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 NYS agencies interested in the provision of the subject services including, but not limited to, the Governor's Office of Employee Relations and the Division of the Budget, unless otherwise expressly indicated in this IFB. The Department has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this IFB.

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 supplemental submission(s) 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.

The completed **Exhibit I.C** must be submitted to the Department at the time of its Proposal submission; it should be included with the Requested Redactions (CD and Hard Copy), described below. It should not be included in the Offeror’s Proposal. If the Offeror chooses not to assert that any Proposal material and/or supplemental submission should be protected from FOIL disclosure, the Offeror should so advise the Department by checking the applicable box on **Exhibit I.C** and submitting it to the Department at the time of its Proposal submission, but separately from its Proposal. If a completed **Exhibit I.C** form is not submitted, the Department will assume that the Offeror chooses not to assert that any proposal material or supplemental submission, as applicable should be protected from FOIL disclosure.

The FOIL-related materials described herein will not be considered part of the Offeror's Proposal and will not be reviewed as a part of the Procurement's evaluation process.

Requested Redactions (CD and Hard Copy):

At the time of Proposal submission, the Offeror is required to identify the portions of its Proposal that it is requesting to be redacted, in accordance with the instructions below, to be used in the event that its Proposal is the subject of a Freedom of Information Law (FOIL) request received by the Department:

The Offeror must provide an electronic copy of the Administrative Section, the Cost Section and the Technical Section, each on a separate CD, which reflect the Offeror’s requested redactions. Additionally, the Offeror must provide a separately bound hardcopy of each of the three (3) Sections of the Proposal with redactions marked that are included

on the CDs. The electronic documents must be prepared in PDF format using the Redaction Function in Adobe Acrobat Professional software, version 8 or higher. Each specific portion of the Proposal documents requested to be protected from FOIL disclosure must be identified using the Adobe **“Mark for Redaction” function; do not use the “Apply Redactions” function.** The resulting documents must show the Offeror’s requested redactions as outlined, while the content remains visible. This will allow the Department to either apply or remove requested redactions when responding to FOIL requests. The documents included on the CD and in hard copy must be complete Proposals, including all Exhibits and Attachments. No section may be omitted from the CD or hard copy even if the entire section is requested to be redacted; such sections should be marked for redaction, not removed. For forms, Exhibits and charts please mark for redaction only those cells/fields/entries that meet the criteria for protection from FOIL, not the entire page.

During the Proposal evaluation process, the Department may request additional information through clarifying letters and at management interviews. Any requested redactions for additional written material provided by the Offeror in response to the Department’s requests also must be submitted following the instructions, above.

9. Compliance with New York State Workers’ Compensation Law

Sections 57 and 220 of the New York State Workers’ Compensation Law (WCL) provides 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 and Key Subcontractor(s) or Affiliates, with more than \$100,000 in expected expenses over the life of the contract, if any, will be required to verify for the Department, on forms authorized by the New York State Workers’ Compensation Board, the fact that they are 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.ny.gov>.

Submission of the proof of workers' compensation and disability benefits insurance coverage is required at the time of Proposal submission. Failure to provide verification of either of these types of insurance coverage with the Offeror's Administrative Proposal may be grounds for disqualification of an otherwise successful Proposal.

To the extent that the Offeror is proposing the use of Key Subcontractors or Affiliates (i.e., part of the Offeror's proposed Project Team), the Offeror must verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that the Key Subcontractors or Affiliates are properly insured or are otherwise in compliance with the insurance provisions of the WCL.

10. Iran Divestment Act

By submitting a Proposal in response to this solicitation or by assuming the responsibility of a contract awarded hereunder, Offeror/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Offeror/Contractor is advised that should it seek to renew or extend an Agreement awarded in response to the solicitation, it must provide the same certification at the time the Agreement is renewed or extended.

During the term of the Agreement, should the Department of Civil Service receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of Civil Service will review such information and offer the person an opportunity to respond. If the person fails to

demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Department of Civil Service shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

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

11. New York Subcontractors and Suppliers

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

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

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

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects Offerors to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers. Offerors are required to complete **Exhibit I.U.2**, NYS Subcontractors and Supplies.

SECTION III: ADMINISTRATIVE SECTION

This section of the IFB sets forth the requirements for the Offeror's Administrative Section 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 the Department determines to be in compliance with the requirements set forth in this Section III.

The Offeror's *Administrative Section* must respond to all of the following items as set forth below in the order and format specified and using the forms set forth in the IFB. 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 Section must contain the following information, in the order enumerated below:

A. Formal Offer Letter

At this part of its Administrative Section, 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 State. Each of the two copies of the Offeror's Administrative Section marked "ORIGINAL" requires a letter with an original signature; the remaining copies of the Offeror's Administrative Section may contain photocopies of the signature. The Offeror must accept the terms and conditions as set forth in IFB, Section VII and Appendices A, B, C and D and agree to enter into a contractual agreement with the Department containing, at a minimum, the terms and conditions identified in the IFB 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 NYS State Comptroller. Appendix B, "Standard Clauses for All Department Contracts", Appendix C, "Third Party Connection and Data Exchange Agreement" and

Appendix D, “Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures” are compilations of standard clauses/requirements for the contracts and also are non-negotiable.) If an Offeror proposes to include the services of a Key Subcontractor(s) or Affiliate(s), the Offeror must be required to assume responsibility for those services as “Prime Contractor.” The Department will consider only the Prime Contractor in regard to contractual matters.

B. Minimum Mandatory Requirements

The Department will only accept Proposals from Offerors that attest and demonstrate through current valid documentation to the satisfaction of the Department that the Offeror meets the Proposal’s Minimum Mandatory Requirements set forth herein this Section III.B. At this part of its Administrative Section, the Offeror must submit a completed **Exhibit I.T “Offeror Attestations 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 Department;
2. The Offeror understands and agrees to comply with all specific duties and responsibilities set forth in Section IV of this IFB #EBC-2014-1, entitled “The Empire Plan Employee Benefit Card,”
3. The Offeror attests to have at least three (3) years prior experience producing and distributing Employee Benefit Cards that are similar to those specified in Exhibit II.E – Employee Benefit Card Specifications, and where the Offeror’s book of business Employee Benefit Card production size is similar or greater in scope of at least two-hundred twenty-five thousand (225,000) in a twelve (12) month period. The Offeror must provide a detailed list of client organizations with the number of cards produced for each client to clearly demonstrate that the Offeror and/or its Key Subcontractor or Affiliate meets the minimum requirement of at least two-hundred twenty-five thousand (225,000) cards produced in a twelve month period;

4. Has provided Employee Benefit Card production services comparable to the services specified in Section IV.A.2 for at least two (2) current or former clients, each with a card production size of at least fifty thousand (50,000) in a twelve (12) month period; and
5. The Offeror attests that its operations, from production to distribution, is fully HIPAA compliant.

C. Exhibits

At this part of its Administrative Section, the Offeror must complete and submit the various Exhibits specified in Section II.B and Section III of this IFB, 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
MacBride Statement and Non-Collusive Bidding Certification	Exhibit I.D
EEO Staffing Plan (Form EEO-100)	Exhibit I.G
Offeror's Affirmation of Understanding and Agreement	Exhibit I.K*
Compliance with Public Officer's Law Requirements	Exhibit I.M
Compliance with Americans with Disabilities Act	Exhibit I.N
MWBE Utilization Plan (Form MWBE-100)	Exhibit I.O
Offeror's Certificate of Compliance Pursuant to State Finance Law §139-k	Exhibit I.P
Certification of Good Faith Efforts (Form MWBE-104)	Exhibit I.Q
Formal Offer Letter	Exhibit I.S
Offeror Attestations Form	Exhibit I.T
Key Subcontractors or Affiliates	Exhibit I.U.1
NYS Supplier and Subcontractor	Exhibit I.U.2
Program References	Exhibit I.V

***Note: If not already provided to the Department by the time of Proposal submission, the Offeror must enclose a completed Exhibit I.K - Offeror's Affirmation of Understanding and Agreement with their Administrative Section.**

D. Key Subcontractors or Affiliates

At this part of its Administrative Section, the Offeror must provide a statement identifying all Key Subcontractors or Affiliates, if any, that the Offeror will be contracting with to provide Program Services and must, for each such Key Subcontractor or Affiliate identified, complete and submit **Exhibit I.U.1**; “Key Subcontractors or Affiliates”:

1. Provide a brief description of the services to be provided by the Key Subcontractor or Affiliate; and
2. Provide a description of any current relationships with such Key Subcontractor or Affiliate and the clients/projects that the Offeror and Key Subcontractor or Affiliate 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 (or shared services agreement) has been executed between the Offeror and the Key Subcontractor or Affiliate for services to be provided by the Key Subcontractor or Affiliate relating to this IFB. If the Offeror will not be subcontracting with any Key Subcontractor(s) or Affiliate(s) to provide Project Services, the Offeror must provide a statement to that effect.

E. Reference Checks

At this part of its Administrative Section, for the purpose of reference checks, the Offeror must list two (2) references of current clients and one (1) reference of a former client for a total of three (3) references for which the Offeror has supplied Benefit Card production services similar to those required in this IFB. At least two (2) of the referenced clients must be an entity with card production volume of fifty thousand (50,000) or more. If the Offeror has no former clients to include as references, the Offeror must include a statement attesting to that fact. Otherwise, the Offeror must include, at minimum, one (1) former client as a reference for which the Offeror has supplied services similar in nature to those required in this IFB. If the Offeror is proposing any Key Subcontractors or Affiliates, the references should be with clients for whom the Offeror and Key Subcontractor or Affiliate have jointly

supplied services similar to those described in this IFB. For each Reference provided the Offeror must complete and submit **Exhibit I.V**, entitled “Program References.” The Offeror must be solely responsible for providing contact names and phone numbers that are readily available to be contacted by the State. The Offeror must also indicate what participation, if any, the Program Manager and each key staff person proposed for this program had in the referenced services.

F. Financial Statements

As part of its Administrative Section, 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 or Affiliate, if any, that provides any of the Program Services; which are the subject matter of this IFB, provide the most recent GAAP annual audited statement. If the Offeror, or a Key Subcontractor or Affiliate, is a privately held business and is unwilling to provide copies of their GAAP annual audited financial statements as part of their Proposal, the Offeror/Key Subcontractor/Affiliate 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 /Key Subcontractor/ Affiliate must provide the following as part of its Administrative Section:: a letter from a bank reference attesting to the Offeror/Key Subcontractor/Affiliate’s financial viability and creditworthiness. (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.) 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/Key Subcontractor/Affiliate and the bank), including the duration of the relationship and the Offeror’s current standing with the bank. For example: “*The (Offeror/Key Subcontractor/Affiliate’s name) is currently and has been for “x” number of years a client in good standing*”;
2. 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 /Key Subcontractor/Affiliate's financial viability and creditworthiness concerning the nature and scope of the Program Services, which are the subject matter of this IFB, and the Parties (i.e., Department, and the Offeror or the Offeror and Key Subcontractor or Affiliate) contractual obligations should the Offeror be awarded the resultant contract.

SECTION IV: TECHNICAL SECTION

This section of the IFB sets forth the Contractor's responsibilities in regard to the content of the Technical Section of the Offeror's Proposal and the products and services which are the subject of this IFB. The Offeror must provide responses in the Technical Proposal that confirm the Offeror will satisfy all of the "Contractor's Responsibilities" requirements set forth in Section IV.A.2 of the IFB. Failure of the Offeror to satisfy all requirements set forth in this Section IV of the IFB may result in a determination by the Department that the Offeror is non-responsive.

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

A. Content of Bid: The Technical Section of the Offeror's Proposal shall include separate responses to each of the following requirements pertaining to substance and general content:

- 1. Executive Summary:** The Offeror must submit an Executive Summary that describes its capacity to administer the Employee Benefit Card Program Services. The Executive Summary must include:
 - a.** A description demonstrating its understanding of the requirements presented in the IFB, and how the Offeror can assist the Department in accomplishing its objectives;
 - b.** The name and address of the Offeror's main and branch offices, the location of the Offeror's proposed production site(s) for Program Services described in Section IV.2, and the name of the senior officer who will be responsible for this account; and
 - c.** A statement explaining the Offeror's and the Offeror's Key Subcontractor's previous experience producing EBC's of other state governments or large public entities or any other organizations with annual EBC volume of 50,000 or more, Detail how this experience qualifies the Offeror and, if applicable, the experience of its key Subcontractors to undertake the functions and activities required by this IFB.

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- 2. Contractor's Responsibilities:** The Offeror must confirm that it will meet the following Contractor Responsibilities if selected to enter into an Agreement with the Offeror as a result of this IFB.
- a. Materials, Processing and Prototype Specifications:** The Contractor shall comply with the following Materials Processing and Prototype Specifications,:
- i.** The materials used in the production of EBCs, Card Carriers and Envelopes shall meet the materials specifications set forth in **Exhibit II.E** of this IFB.
 - ii.** The Contractor may utilize any combination of offset, digital or flexographic methods for producing a durable EBC that meets the specifications of this IFB.
 - iii.** The layout of the EBC, Card Carrier and Envelope shall meet the Prototype and Information Specifications set forth in **Exhibit II.E**. A sample of the current EBC, Card Carrier, and Envelope is set forth in **Exhibit II.A**.
 - iv.** A prototype of the Contractor's final EBC, Card Carrier and Envelope shall be submitted to the Department for approval during the Implementation Period. The Department shall, in its sole discretion, determine if the Contractor's EBC, Card Carrier, and Envelope meet the specifications set forth in **Exhibit II.E**.
 - v.** The Contractor shall be able to customize, modify, and produce new or modified EBC layouts and Card Carrier contents within sixty (60) days' notice at the written direction of the Department.
 - vi.** The Contractor's production process shall display the Enrollee's name and up to five (5) Dependents' names on the EBC and attach up to four (4) EBCs with the same Enrollee identification number onto a single Card Carrier addressed to the Enrollee or Dependent, as applicable and insert it in a single Envelope that meets the specifications set forth in **Exhibit II.E** of this IFB. The Contractor must be capable of producing and distributing EBCs in all possible production scenarios as set forth in **Exhibit II.G**.

- vii.** The Contractor shall pre-sort and mail the Envelopes containing the EBC(s) and Cards Carriers through the U.S. Postal Service (USPS), first class to all Enrollees and Dependents who reside in the United States and Canada in a manner that ensures compliance with HIPAA requirements and with USPS technology that results in maximum postal discounts.
- viii.** The Contractor shall ensure that: 1) no Defective EBCs, Card Carriers or Envelopes are mailed; 2) all EBCs are mailed to the correct Cardholder(s); and 3) the Department is not invoiced for any Defective EBCs, Card Carriers or Envelopes or any associated postage charges.
- ix.** The Contractor shall ensure that all Program materials including blank EBCs, Card Carriers and/or Envelopes that contain the NYSHIP or NYS or logo pre-printed Program information are securely maintained and properly accounted for by the Contractor.
- x.** In the event of unforeseen emergency circumstances which affect the Contractor's ability to adhere to its Production Cycle, the Contractor shall immediately notify the Department and provide the following:

 - 1)** The circumstance(s) precluding production/delivery.
 - 2)** A statement of whether or not succeeding production/deliveries will be affected and when the situation will be corrected.
 - 3)** The Contractor shall remain responsible for producing the associated EBCs and reports prior to the following week's Production Cycle.
- b. Weekly card production and distribution for new, duplicate and replacement EBCs:**

 - i.** The Contractor shall produce and distribute EBCs reflecting the data contained in the Department's weekly EBC Data File that comply with EBC specifications, the

Production Cycle and the performance standards set forth in this Section IV of the IFB.

- ii. The Contractor shall produce one EBC for Enrollees with individual coverage and two EBCs for Enrollees with family coverage who have five (5) or fewer Dependents. The Contractor shall produce additional EBCs for Enrollees having six (6) or more Dependents. Each EBC shall list up to six (6) covered names.
- iii. The Department anticipates placing weekly card production orders, but may request EBCs on a more frequent basis over the term of the Agreement. During each weekly Production Cycle, the Contractor shall complete all Program Services associated with the production and distribution of EBCs.
- iv. The Department will transmit to the Contractor a weekly computerized EBC Data File via secure transfer containing detailed benefit card data elements shown in **Exhibit II.B**.
- c. **Management reports:** The Contractor shall create and electronically distribute to the Department in a HIPAA-compliant manner, accurate weekly Card Detail and Card Summary Reports, comparable to **Exhibit II.C** and **Exhibit II.D**, within two (2) Business Days from the completion of each Production Cycle. The Department reserves the right to request reports be sent in paper or an electronic format that is searchable, or both.
- d. **Performance Guarantees and Credits:** The Contractor shall contractually agree to the following performance guarantees and the corresponding credit amounts for failure to meet the guarantees.

 - i. **Implementation and start-up Guarantee and Credit Amount:**

 - a. ***Guarantee:*** The Contractor guarantees that all implementation and start-up activities will be completed the first day of the month following a sixty (60) day Implementation Period after the Office of the State Comptroller (OSC)

approves the Agreement so that the Contractor can assume full operational responsibility for the services required by this IFB for the production and distribution of EBCs, Card Carriers and Envelopes and production of Card Detail Reports and Summary Reports.

- b. ***Credit Amount:*** If the Contractor fails to complete all implementation and start-up activities within the Implementation Period, the Contractor shall credit against the Program's fees one thousand dollars (\$1,000) per Day that the Contractor fails to assume full operational responsibility to the satisfaction of the Department.

ii. **Production Cycle Guarantee and Credit Amount:**

- a. ***Guarantee.*** The Contractor guarantees that each weekly Production Cycle shall be completed within the following time frames:
- 1) For orders $\leq 10,000$ cards, within three (3) Business Days from the date that the EBC Data File is made available by the Department;
 - 2) For orders $> 10,000$ but $\leq 40,000$ cards, within four (4) Business Days from the date that the EBC Data File is made available by the Department;
and
 - 3) For orders $> 40,000$ cards, within the number of Business Days equal to the number of EBCs requested in the EBC Data File divided by 10,000, and then rounded up to the next whole number.
- b. ***Credit Amount:*** The Contractor shall credit against the Program's fees \$250 per Day, for each weekly Production Cycle that is not completed within the required timeframe as set forth in Section IV.A 2.a.vii of this IFB.

iii. **Report Guarantee and Credit Amount:**

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- a. *Guarantee:*** The Contractor guarantees that accurate Card Detail and Card Summary Reports shall be delivered to the Department within two (2) Business Days from the completion of each Production Cycle.
- b. *Credit Amount:*** The Contractor's shall credit against the Program's fees \$250 per Day, for each management report not received within two (2) Business Days from the completion of each Production Cycle.
- e. Re-issuance of EBCs:** Should the Department require a complete or partial re-issuance of EBCs during the term of the Agreement, the Contractor shall agree to produce and distribute the EBCs and management reports. Routine weekly card Production Cycles will continue during the Production Cycle(s) for a complete or partial re-issuance. The Department does not anticipate a complete re-issuance of EBCs to all Enrollees will occur during the term of the Agreement.
- f. Administration:** The Contractor shall maintain an organization of sufficient size with staff that possess the necessary skills and experience to administer, manage and oversee all aspects of the Agreement resultant from this IFB during implementation, operation and transition. Specifically the Contractor shall:
- i.** Establish and/or dedicate a team of qualified and experienced employees to the Department and maintain and adjust staffing patterns at appropriate levels to provide Program services as required by the Department;
 - ii.** Provide timely responses (within one [1] to two [2] Business Days) to questions and requests posed by the Department.
 - iii.** Notify the Department in writing of changes in key personnel, key Subcontractor(s), or production facility locations specifically identified in its Bid. Substituted personnel, key Subcontractor(s) or production locations shall have comparable or better qualifications or facilities to those outlined in the Bid.

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- g. Billing Requirements:** The Contractor shall bill the Department and will be paid for the production and distribution of EBCs and associated Card Carriers and Envelopes in accordance with the requirements set forth in this IFB, and according to the Program Services fees quoted in the Contractor's completed **Exhibit II.F**. In addition to the quoted Program Services fees, the Offeror shall bill the Department and be reimbursed for actual USPS costs incurred in accordance with Section IV.A.2.g.ii.
- i.** The Contractor shall bill the Department and be paid for the production of: 1) EBCs, Card Carriers and Envelopes that meet the Program specifications set forth in this IFB; and 2) only those Defective EBCs, and Card Carriers produced by the Contractor that the Department directly caused to be defective. An EBC, Card Carrier and/or Envelope is defective if it does not meet the Program specifications set forth in the **Exhibit II.E** of the Agreement resultant from this IFB, or, if after having been mailed, it is determined by the Department that the EBC(s) was not properly matched with its associated Card Carrier. An EBC and/or Card Carrier is also defective if the Cardholder information contained in the EBC Data File provided by the Department is not properly displayed on the EBC and/or Card Carrier.
- ii.** The Contractor shall bill the Department and be reimbursed for the actual USPS charges, using the best U.S. Postal discounts available to the Program for mailing: 1) EBCs and/or Card Carriers and Envelopes that meet the Program specifications set forth in this IFB; and 2) Defective EBCs where the Department directly caused the EBCs and/or Card Carriers to be defective. The Contractor shall not bill or be reimbursed by the Department for any USPS charges the Contractor incurs to mail Defective EBCs that were not directly caused to be defective by the Department. The Contractor shall not bill and will not be reimbursed for any excess USPS charges incurred as a result of the Contractor's failure to qualify for the best U.S. Postal Service discounts available.
- iii.** The Contractor will not be reimbursed for any postage charges associated with normal day-to-day functions undertaken by the Contractor to complete Program

Services. Such postage charges are considered overhead expenses and, as such, included as a component of the Contractor's per EBC, Card Carrier and Envelope fees.

- iv.** The Contractor shall invoice the Department, monthly in arrears, for all Program Services rendered during the preceding month, together with full supporting detail(s) to the Department's reasonable satisfaction and in a format required by the Department. Such invoices shall include, at a minimum, the quantity, unit price, and total amount due for EBCs, Card Carriers and Envelopes, as well as USPS charges. Accurate invoices shall be submitted to the Department for review, approval and payment by the 15th of every month. Upon review of the submitted invoices and verification of the charges, the Department will make best efforts to process all approved invoices within thirty (30) Days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article XI-A of the State Finance Law.
- v.** The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the Comptroller of the State of New York.

SECTION V: COST SECTION

A. **Introduction** The Department seeks, as a result of this IFB, to award a contract to that responsive and responsible Offeror, meeting the Department's requirements as set forth in the IFB, at the Lowest Total Projected Cost to the Department over the five year and two month term of the resultant Agreement, unless terminated in advance at the sole discretion of the Department.

B. **Cost Structure** The Offeror must complete **Exhibit II.F – Employee Benefit Card Fee Schedule**, and submit it with the Cost Section of the Offeror's Proposal.

The Offeror's **Exhibit II.F – Employee Benefit Card Fee Schedule** submission must set forth the Offeror's proposed EBC fee(s) and Card Carrier and Envelope fee(s).

C. **Pricing Assumptions** The EBC fee(s) and Card Carrier and Envelope fee(s) quoted by the Offeror represent the charges to the Program to cover all of the Program services required of the Contractor, with the exception of USPS charges which will be reimbursed on a pass-through basis.

The Contractor is bound by its quoted EBC fee(s) and Card Carrier and Envelope fee(s), as proposed in the Contractor's Cost Proposal for the entire term of the Agreement, unless amended in writing.

Contractor shall provide complete and accurate billing invoices to the Department, on a monthly basis in arrears, in order to receive payment. Billing invoices submitted to the Department must contain all information and supporting documentation required by the Agreement resulting from this IFB, the Department and the OSC.

The OSC shall render payment for invoices under the Agreement in accordance with ordinary State procedures and practices.

The Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article XI-A of the State Finance Law.

SECTION VI: EVALUATION AND SELECTION CRITERIA

The Department will evaluate Offerors' Proposals in accordance with provisions set forth in this Section VI of the IFB.

Contract award under this IFB shall be made on the basis of lowest Total Projected Cost, submitted on **Exhibit II.F** of the IFB among responsible and responsive Offerors.

On or after the Proposal Due Date and Time as set forth in IFB, Section II.A.1, all timely Proposals accepted by the Department will be opened and recorded. The Department will verify that the apparent lowest cost Proposal (i.e., the Proposal with the lowest Total Projected Cost) on **Exhibit II.F** of the IFB is responsive and the Offeror is responsible. Responsive means that the Proposal meets all mandatory requirements and specifications of the IFB. If the apparent lowest cost Proposal/Offeror is not found to be responsive and/or responsible, that Offeror's Proposal will be rejected and the next lowest cost Proposal/Offeror will be reviewed to determine responsiveness and responsibility.

In the event of a tie, the decision to award a contract to one Offeror over the other(s) shall be made by the Commissioner whose decision shall be final and the basis for determining the award shall be documented in the procurement record.

SECTION VII: AGREEMENT PROVISIONS**AGREEMENT NO. C000631**

THIS Agreement is entered into by and between New York State Department of Civil Service (“Department” or “The Department”), having its principal office at Agency Building 1, Albany, N.Y. 12239 and _____, 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, Civil Service Law Article XI requires the Department to establish a health insurance plan for the benefit of State Employees, Retirees, and their Dependents, and for the benefit of Participating Employers’ Employees, Retirees, and their Dependents; and

WHEREAS, the Department, oversees the enrollment eligibility of enrollees and the services of a Contractor to produce and distribute employee benefit cards on behalf of the Department for enrollees of the New York State Health Insurance Program for New York State employees, Participating Employers (PE’s) and Participating Agencies (PA’s); and

WHEREAS, on October 1, 2014, the Department issued an Invitation for Bid (IFB) entitled, “The Empire Plan Employee Benefit Card” (attached hereto as Exhibit B), to secure the services of a qualified organization to provide card production and reporting services; and

WHEREAS, after thorough review and evaluation by the Department of proposals received in response to the IFB, the Contractor’s Proposal (attached hereto as Exhibit C) was selected as representing the Lowest Total Projected Cost to the State by a responsive and responsible bidder; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver the card production and reporting services, in the manner set

forth in the IFB and the Contractor's Proposal, 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 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.
- 1.2.0 Agreement** means the contract that results from this IFB between the Department and the Contractor.
- 1.3.0 Bid** means the submission by the Offeror in response to the IFB.
- 1.4.0 Business Day(s)** means every Monday through Friday, except for days designated as Business Holidays by the State.
- 1.5.0 Business Holiday(s)** means legal holidays observed by the State, including New Year's Day; Martin Luther King, Jr. Day; President's Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; Christmas Day.
- 1.6.0 Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.
- 1.7.0 Card Carrier** means a paper, cardstock or other acceptable medium designed to function as a holder (whether the cards are spot glued or perforated as a part of the holder), and able to carry printed content, for the benefit cards.

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- 1.8.0 Card/Employee Benefit Card** means an employee identification card that meets the specifications of this IFB.
- 1.9.0 Cardholder** means an individual covered by The Empire Plan for which an EBC has been requested to be produced or has been produced by the Contractor.
- 1.10.0 Contractor** means (TBD), the successful Offeror selected as a result of the evaluation of Offerors' Proposals submitted in response to this IFB and the Contractor who executes a Contract with the Department to provide Program Services.
- 1.11.0 Day(s)** means calendar days unless otherwise noted.
- 1.12.0 DCS or Department** means the New York State Department of Civil Service.
- 1.13.0 Defective EBC(s) and/or Card Carrier(s)** means an EBC and/or Card Carrier that does not meet the Program specifications set forth in the IFB, or, if after having been mailed, it is determined that the EBC was not properly matched with its associated Card Carrier. An EBC is defective if the Cardholder information contained in the EBC Data File is not properly displayed on the EBC. A Card Carrier is defective if the Cardholder information contained in the EBC Data File is not properly displayed on the Card Carrier.
- 1.14.0 Dependent** means the spouse, domestic partner, and children under twenty-six (26) years of age of an Enrollee who are eligibility for coverage under the New York State Health Insurance Program.
- 1.15.0 EBC Data File** means the electronic file transmitted by the Department to the Contractor containing the information, as set forth in Exhibit II.B, necessary to produce and distribute EBCs.
- 1.16.0 EBC Program/ Program/ Program Services or Services** means the entire scope of services to be provided by the Contractor pursuant to the terms and conditions of the Agreement.

- 1.17.0 The Empire Plan** means the self-insured comprehensive health benefit program administered by the New York State Department of Civil Service.
- 1.18.0 Employee** means “Employee” as defined in 4 NYCRR Part 73, as amended, or as modified by collective bargaining agreement.
- 1.19.0 Employee Benefit Card(s) or EBC** means benefit cards that meet the specifications of this IFB #2014-EBC-1.
- 1.20.0 Employee Benefits Division** means the functional unit within the Department of Civil Service which has responsibility for administering various employee benefit programs.
- 1.21.0 Employer** means “Employer” as defined in 4 NYCRR Part 73, as amended.
- 1.22.0 Enrollee** means a State, PE, or PA employee, former State, PE or PA employee, or other individual determined by the DCS to be eligible to enroll as the result of law, regulation, rules and/or collective bargaining, who is enrolled in the Empire Plan.
- 1.23.0 Envelope** means a flat paper container with windows and a sealable flap, used to enclose the card carrier and employee benefit card(s).
- 1.24.0 ET** means prevailing Eastern Time.
- 1.25.0 HIPAA** means Health Insurance Portability and Accountability Act of 1996.
- 1.26.0 Implementation Period** means the 60-day period of time subsequent to the Office of the State Comptroller’s approval of the Agreement that results from this IFB.
- 1.27.0 IFB or Procurement** means the Invitation For Bid entitled “The Empire Plan Employee Benefit Card #EBC 2014-1”, dated October 1, 2014, Exhibit B to this Agreement,

including all clarifications and supplemental requests for information made subsequent to the release of the IFB.

1.28.0 Key Subcontractor(s) means those vendor(s) with whom the Contractor subcontracts to provide Program Services and incorporated as a part of the Contractor's Program Team.

1.29.0 NYS means New York State.

1.30.0 NYSHIP means the New York State Health Insurance Program.

1.31.0 Offeror means a person or entity that submits a Proposal in response to this IFB.

1.32.0 OSC means the New York State Office of the State Comptroller.

1.33.0 Participating Agency (PA) means any unit of local government such as school districts, special districts and district or municipal corporations which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.

1.34.0 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 Health Insurance Program.

1.35.0 President means the President of the Civil Service Commission who is also the Commissioner of the Department of Civil Service.

1.36.0 Production Cycle means the time period that elapses from when the Department, or its agent, makes the EBC Data File available to the Contractor until the Contractor presents the associated EBCs to the U.S. Postal Service for delivery to the Cardholder, exclusive of any time period where EBCs are stored by the Contractor prior to mailing at the Department' direction.

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

1.38.0 Regulations of the President of the New York State Civil Service Commission means those regulations promulgated by the President of the Civil Service Commission under the authority of Civil Service Law, Article XI, as amended, and including, but not limited to those regulations to be promulgated as 4 New York Code of Rules and Regulations (NYCRR) Part 73.

1.39.0 Retiree means any person defined as a Retiree pursuant to the terms of 4 NYCRR Part 73, as amended.

1.40.0 Specifications means a detailed description of Employee Benefit Card including Card Stock, Card Carrier Stock, Envelope Stock and Card Processing and Design.

1.41.0 State means New York State as a whole.

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 NYS Office of the State Comptroller (“OSC”). The term of the Agreement shall include a sixty 60-day implementation period followed by five (5) years of Program Services, including but not limited to the production and distribution of Employee Benefit Cards and associated management reports. It is the Department’s intent that this implementation period shall begin following OSC approval of the Agreement, with all other contractual responsibilities to begin on the first day following the sixty 60-day implementation period after OSC approves the Agreement 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 AG and the 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 undertakings are superseded hereby.

3.2.0 All statements made by the Department 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 Contracts;

4.1.4 Appendix C – Third Party Connection and Data Sharing Agreement;

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

4.1.6 The following Exhibits attached and incorporated by reference to the body of the Agreement:

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- 4.1.6a** Exhibit A: the MacBride Act Statement and the Non-Collusive Bidding Certification;
- 4.1.6b** Exhibit B - Invitation for Bid entitled “The Empire Plan Employee Benefit Card”, dated October 1, 2014; and Exhibit B-1 - Official Department Response to Questions Raised Concerning the IFB, dated (TBD);
- 4.1.6c** Exhibit C - Contractor’s Proposal; and, ExhibitC-1 Written Responses to clarifying questions regarding Contractor’s Proposal;
- 4.1.6d** Exhibit D - Employee Benefit Card Specifications;
- 4.1.6e** Exhibit E - Employee Benefit Card Fee Schedule.
- 4.1.7** 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:
- 4.1.7a** First, Appendix A – Standard Clauses for All New York State Contracts;
- 4.1.7b** Second, Appendix B – Standard Clauses for All Department of Civil Service Contracts;
- 4.1.7c** Third, Appendix C – Third Party Connection and Data Sharing Agreement;
- 4.1.7d** Forth, Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures;
- 4.1.7e** Fifth, any Amendments to the body of the Agreement;
- 4.1.6f** Sixth, the body of the Agreement;

4.1.6g Seventh, Exhibit B, the Invitation for Bids entitled, “The Empire Plan Employee Benefit Card, dated October 1, 2014”; and Exhibit B1, the official Department response to questions raised concerning the IFB, dated **(TBD)**;

4.1.7h Eighth, Exhibit C -Contractor’s Proposal; and, Exhibit C1 Written Responses to clarifying questions regarding Contractor’s Proposal,

4.1.7i Ninth, Exhibit D - Employee Benefit Card Specifications

4.1.7j Tenth, Exhibit E- Employee Benefit Card Fee Schedule

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 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.

5.2.0 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, including but not limited to the requirements set forth in Chapter 56 of the Laws of 2010.

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 During the term of this Agreement, the Contractor will be responsible for the performance of those services/tasks as described herein this Article VI “Program Services”, of this Agreement and any and all other Program Services as referenced in the IFB.

6.1.1 The Empire Plan Identification Card Development/Implementation: The Contractor agrees to be prepared to assume responsibility for the production and distribution of weekly EBCs, Card Detail reports and Summary reports sixty (60) Days after approval of the Agreement by OSC.

6.1.2 Administration: The Contractor must maintain an organization sufficient to administer, manage and oversee all aspects of the Agreement during implementation and operation. Specifically the Contractor must:

6.1.2a Establish and/or dedicate a team of employees to the State and be able to maintain and adjust staffing patterns at appropriate levels to provide services as required by the Department;

6.1.2b Maintain an administrative structure to oversee the billing, payment and processing of invoices to the State for work performed under the Agreement;

6.1.2c The Contractor’s account team must respond to questions and requests reported by the Department in a timely manner and within urgent timeframes when requested;

6.1.2d Notify the Department in writing of any changes in the personnel designated to bind the Agreement;

6.1.2e Notify the Department in writing of changes in key personnel, Key Subcontractor(s) or production facility locations specifically identified in Exhibit C of this Agreement, the Contractor's Proposal. Substituted personnel, Key Subcontractor(s) or production locations must have comparable or better qualifications or facilities to those outlined in the Exhibit C and must meet the Minimum Mandatory Requirement #3 as described in Exhibit C; and

6.1.2.f Correct any and all errors in any reports, materials, documents and/or services provided or prepared by the Contractor pursuant to this Agreement due solely to an error by the Contractor. The Contractor will correct such errors at its own expense provided the Department notifies the Contractor of such errors and furnishes to the Contractor data and information the Department may be required to provide in order for the Contractor to make such corrections after delivery of any such report, material, document or service.

6.2.0 Materials, Processing and Prototype Specifications: The Contractor shall comply with the following Materials Processing and Prototype Specifications,

6.2.1 The materials used in the production of EBCs, Card Carriers and Envelopes shall meet the materials specifications set forth in Exhibit II.E of this IFB.

6.2.2 The Contractor may utilize any combination of offset, digital or flexographic methods for producing a durable EBC that meets the specifications of this IFB.

6.2.3 The layout of the EBC, Card Carrier and Envelope shall meet the Prototype and Information Specifications set forth in Exhibit II.E. A sample of the current EBC, Card Carrier, and Envelope is set forth in Exhibit II.A.

6.2.4 A prototype of the Contractor's final EBC, Card Carrier and Envelope shall be submitted to the Department for approval during the Implementation Period. The

Department shall, in its sole discretion, determine if the Contractor's EBC, Card Carrier, and Envelope meet the specifications set forth in Exhibit II.E.

- 6.2.5** The Contractor shall be able to customize, modify, and produce new or modified EBC layouts and Card Carrier contents within sixty (60) days' notice at the written direction of the Department.
- 6.2.6** The Contractor's production process shall display the Enrollee's name and up to five (5) Dependents' names on the EBC and attach up to four (4) EBCs with the same Enrollee identification number onto a single Card Carrier addressed to the Enrollee or Dependent, as applicable and insert it in a single Envelope that meets the specifications set forth in Exhibit II.E of this IFB. The Contractor must be capable of producing and distributing EBCs in all possible production scenarios as set forth in Exhibit II.G.
- 6.2.7** The Contractor shall pre-sort and mail the Envelopes containing the EBC(s) and Cards Carriers through the U.S. Postal Service (USPS), first class to all Enrollees and Dependents who reside in the United States and Canada in a manner that ensures compliance with USPS technology and that results in maximum postal discounts that comply with HIPAA requirements.
- 6.2.8** The Contractor shall ensure that: 1) no Defective EBCs, Card Carriers or Envelopes are mailed; 2) all EBCs are mailed to the correct Cardholder(s); and 3) the Department is not invoiced for any Defective EBCs, Card Carriers or Envelopes or any associated postage charges.
- 6.2.9** The Contractor shall ensure that all Program materials including blank EBCs, Card Carriers and/or Envelopes that contain the NYSHIP or NYS or logo pre-printed Program information are securely maintained and properly accounted for by the Contractor.

6.2.10 In the event of unforeseen emergency circumstances which affect the Contractor's ability to adhere to its Production Cycle, the Contractor shall immediately notify the Department and provide the following:

6.2.10a The circumstance(s) precluding production/delivery;

6.2.10b A statement of whether or not succeeding production/deliveries will be affected and when the situation will be corrected; and

6.2.10c The Contractor shall remain responsible for producing the associated EBCs and reports prior to the following week's Production Cycle.

6.3.0 Weekly card production and distribution for new, duplicate and replacement EBCs

6.3.1 The Contractor shall produce and distribute EBCs reflecting the data contained in the Department's weekly EBC Data File that comply with EBC specifications, the Production Cycle and the performance standards set forth in this Section IV of the IFB.

6.3.2 The Contractor shall produce one EBC for Enrollees with individual coverage and two EBCs for Enrollees with family coverage who have five (5) or fewer Dependents. The Contractor shall produce additional EBCs for Enrollees having six (6) or more Dependents. Each EBC shall list up to six (6) covered names.

6.3.3 The Department anticipates placing weekly card production orders, but may request EBCs on a more frequent basis over the term of the Agreement. During each weekly Production Cycle, the Contractor shall complete all Program Services associated with the production and distribution of EBCs.

6.3.4 The Department will transmit to the Contractor a weekly computerized EBC Data File via secure transfer containing detailed benefit card data elements shown in Exhibit II.B.

- 6.3.5** Although EBC production/distribution must be in accordance with the Production Cycle, there may be unforeseen events outside the Contractor's control which affect the Contractor's ability to adhere to its Production Cycle (e.g. the untimely distribution of the EBC Data File by the Department, or the receipt of an EBC Data File that contains inaccurate or incomplete data). Likewise, there may be unforeseen events which are under the Contractor's control which affect the Contractor's ability to adhere to its Production Cycle (e.g., Contractor equipment malfunction). In either case, the Contractor must remain responsible for producing the associated EBCs and reports prior to the following week's Production Cycle, if possible.
- 6.4.0 Management Reports:** The Contractor shall create and electronically distribute to the Department in a HIPAA-compliant manner, accurate weekly Card Detail and Card Summary Reports, comparable to Exhibits II.C and II.D, within two (2) Business Days from the completion of each Production Cycle. The Department reserves the right to request reports be sent in paper or an electronic format that is searchable, or both.
- 6.5.0 Re-issuance of EBCs:** Should the Department require a complete or partial re-issuance of EBCs during the term of the Agreement, the Contractor shall agree to produce and distribute the EBCs and management reports. Routine weekly card Production Cycles will continue during the Production Cycle(s) for a complete or partial re-issuance. The Department does not anticipate that a complete re-issuance of EBCs to all Enrollees will occur during the term of the Agreement.
- 6.6.0 Administration:** The Contractor shall maintain an organization of sufficient size with staff that possess the necessary skills and experience to administer, manage and oversee all aspects of the Agreement resultant from this IFB during implementation, operation and transition. Specifically the Contractor shall:

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- 6.6.1** Establish and/or dedicate a team of qualified and experienced employees to the Department and maintain and adjust staffing patterns at appropriate levels to provide Program services as required by the Department;
- 6.6.2** Provide timely responses (within one [1] to two [2] Business Days) to questions and requests posed by the Department.
- 6.6.3** Notify the Department in writing of changes in key personnel, key Subcontractor(s), or production facility locations specifically identified in its Bid. Substituted personnel, key Subcontractor(s) or production locations shall have comparable or better qualifications or facilities to those outlined in the Bid.
- 6.7.0** **Billing Requirements:** The Contractor shall bill the Department and will be paid for the production and distribution of EBCs and associated Card Carriers and Envelopes in accordance with the requirements set forth in this IFB, and according to the Program Services fees quoted in the Contractor's completed Exhibit II.F. In addition to the quoted Program Services fees, the Offeror shall bill the Department and be reimbursed for actual USPS costs incurred in accordance with Section IV.A.2.a.vii.
- 6.7.1** The Contractor shall bill the Department and be paid for the production of: 1) EBCs, Card Carriers and Envelopes that meet the Program specifications set forth in this IFB; and 2) only those Defective EBCs, and Card Carriers produced by the Contractor that the Department directly caused to be defective. An EBC, Card Carrier and/or Envelope is defective if it does not meet the Program specifications set forth in the Exhibit II.E of the Agreement resultant from this IFB, or, if after having been mailed, it is determined by the Department that the EBC(s) was not properly matched with its associated Card Carrier. An EBC and/or Card Carrier is also defective if the Cardholder information contained in the EBC Data File provided by the Department is not properly displayed on the EBC and/or Card Carrier.

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- 6.7.2** The Contractor shall bill the Department and be reimbursed for the actual USPS charges, using the best U.S. Postal discounts available to the Program for mailing: 1) EBCs and/or Card Carriers and Envelopes that meet the Program specifications set forth in this IFB; and 2) Defective EBCs where the Department directly caused the EBCs and/or Card Carriers to be defective. The Contractor shall not bill or be reimbursed by the Department for any USPS charges the Contractor incurs to mail Defective EBCs that were not directly caused to be defective by the Department. The Contractor shall not bill and will not be reimbursed for any excess USPS charges incurred as a result of the Contractor's failure to qualify for the best U.S. Postal Service discounts available.
- 6.7.3** The Contractor will not be reimbursed for any postage charges associated with normal day-to-day functions undertaken by the Contractor to complete Program Services. Such postage charges are considered overhead expenses and, as such, included as a component of the Contractor's per EBC, Card Carrier and Envelope fees.
- 6.7.4** The Contractor shall invoice the Department, monthly in arrears, for all Program Services rendered during the preceding month, together with full supporting detail(s) to the Department's reasonable satisfaction and in a format required by the Department. Such invoices shall include, at a minimum, the quantity, unit price, and total amount due for EBCs, Card Carriers and Envelopes, as well as USPS charges. Accurate invoices shall be submitted to the Department for review, approval and payment by the 15th of every month. Upon review of the submitted invoices and verification of the charges, the Department will make best efforts to process all approved invoices within thirty (30) Days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article XI-A of the State Finance Law.

6.7.5 The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the Comptroller of the State of New York.

ARTICLE VII: PERFORMANCE GUARANTEES

7.1.0 The Parties agree that the following guarantees and the corresponding credit amounts for failure to meet the Contractor Performance Guarantees shall be implemented effective the first day of the month following a sixty (60) day implementation period after the Office of the State Comptroller approves the Contract. The Contractor acknowledges and agrees that failure to perform the Program Services features in such a manner which either meets or exceeds any, and/or all of the Contractor Performance Guarantee(s) as set forth in this Article VII, 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. Credit amounts are cumulative. Amounts due from the Contractor to the Department for failure to perform and audit credit amounts, as determined pursuant to Article X of this Agreement, shall be made in such amounts as determined by the Department to be final. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall apply such amounts as a credit against the monthly fee in accordance with Article X of this Agreement within thirty (30) Days of receiving such notification by the Department.

7.2.0 Performance Guarantees and Credits: The Contractor shall contractually agree to the following performance guarantees and the corresponding credit amounts for failure to meet the guarantees.

7.2.1 Implementation and start-up Guarantee and Credit Amount

7.2.1a Guarantee: The Contractor guarantees that all implementation and start-up activities will be completed the first day of the month following a sixty (60) day Implementation Period after the Office of the State Comptroller

(OSC) approves the Agreement so that the Contractor can assume full operational responsibility for the services required by this IFB for the production and distribution of EBCs, Card Carriers and Envelopes and production of Card Detail Reports and Summary Reports.

7.2.1b Credit Amount: If the Contractor fails to complete all implementation and start-up activities within the Implementation Period, the Contractor shall credit against the Program's fees one thousand dollars (\$1,000) per Day that the Contractor fails to assume full operational responsibility to the satisfaction of the Department.

7.2.2 Production Cycle Guarantee and Credit Amount

7.2.2a Guarantee: The Contractor guarantees that each weekly Production Cycle shall be completed within the following time frames:

For orders $\leq 10,000$ cards, within three (3) Business Days from the date that the EBC Data File is made available by the Department;

For orders $> 10,000$ but $\leq 40,000$ cards, within four (4) Business Days from the date that the EBC Data File is made available by the Department;
and

For orders $> 40,000$ cards, within the number of Business Days equal to the number of EBCs requested in the EBC Data File divided by 10,000, and then rounded up to the next whole number.

7.2.2b Credit Amount: The Contractor shall credit against the Program's fees \$250 per Day, for each weekly Production Cycle that is not completed within the required timeframe as set forth in Section IV.A 2.a.vii of this IFB.

7.2.3 Report Guarantee and Credit Amount

7.2.3a Guarantee: The Contractor guarantees that accurate Card Detail and Card Summary Reports shall be delivered to the Department within two (2) Business Days from the completion of each Production Cycle.

7.2.3b Credit Amount: The Contractor's shall credit against the Program's fees \$250 per Day, for each management report not received within two (2) Business Days from the completion of each Production Cycle.

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 have an impact upon the conduct of this Agreement in such a manner that the Department determines that any design elements or requirements of the Agreement must be revised, the Department 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 Department 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 EBC Program as of the Effective Date and which the Contractor is required to perform or deliver under the Agreement, either Party may submit a written request 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 additional information and

documentation the DCS deems necessary to verify that a modification of the fees or guarantees is warranted. The DCS will agree to modify the fee(s) to the extent necessary to compensate the Contractor for documented additional costs determined by DCS to be reasonable and necessary. The Contractor will agree to modify the fee (s) to the extent necessary to relieve the DCS of the obligation to pay for Program services that are no longer required. The DCS will agree to modify guarantees as determined by DCS to be necessary to reflect EBC Program modifications. Should the Parties agree to modify the fee(s) and/or guarantees, such approval shall be subject to written amendment and approval by OSC and the AG. The Contractor shall implement changes as required by the DCS with or without final resolution of any fee proposal.

ARTICLE IX: DATA SHARING AND OWNERSHIP

9.1.0 All data related to the Department Program is the property of the State.

9.2.0 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/Dependent, the Contractor shall not share, sell, release, or make the data available to third parties in any manner without the prior consent of the Department.

ARTICLE X: PAYMENTS/(CREDITS) TO/FROM THE CONTRACTOR

10.1.0 The Contractor agrees to manage such financial transactions in accordance with the following:

10.1.1 The Contractor will bill the Department monthly.

10.1.2 Any credit amounts due from the Contractor to the Department for failure to meet the performance guarantees set forth in the Agreement shall be applied as a credit against the monthly fees charged to the EBC Program. Alternatively, the Department may request and receive payment of any performance guarantee

amount directly from the Contractor, as opposed to a credit against the monthly fees payable to the Contractor.

10.1.3 Upon final audit determination by the Department, any audit liability amount assessed by the Department shall be paid/credited to the EBC Programs within thirty (30) Days of the date of the Department's final determination.

10.1.4 This Agreement is subject to Article XI-A of NYS Finance Law. The Contractor agrees that EBC Program Services provided under the Agreement shall continue in full force and effect for a minimum of at least thirty (30) days beyond the payment due date as set forth in this Article X. If after the thirty-fifth (35) calendar day after receipt of an accurate invoice, as set forth in this Article X of the Agreement, the Contractor has not yet received payment from the State for said invoice, the Contractor may proceed under the Dispute Resolution provision in Appendix B and the Agreement shall remain in full force and effect until such final decision is made, unless the Parties can come to a mutual agreement, in which case, the Agreement shall also remain in full force and effect.

10.2.0 The Contractor will be responsible for assessments as follows:

10.2.1 The Contractor shall calculate the applicable EBC each month from the applicable paid claims and may charge the EBC Program at the time this assessment is paid to the regulatory agency/intermediary by the Contractor.

10.2.2 The Contractor shall advise the Department of any new applicable assessments in a timely manner.

10.2.3 The Contractor shall bill the EBC Program for any new assessments within thirty (30) days after the amounts are paid to the regulating entity.

ARTICLE XI: TERMINATION OF AGREEMENT

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

11.1.1 The State retains the right to cancel all or any part of the Agreement without cause and in its sole discretion, provided that the Department must give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination must become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice must be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not be understood as waiving the State's right to terminate the Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision. In the event of cancellation without cause by the State, the State agrees to negotiate a payment based on time, materials and other documented expenses directly attributable to the Agreement actually expended by Contractor;

11.1.2 If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Agreement or may exercise such other remedies as must be available under the Agreement, at law and/or equity;

11.1.3 No delay or omission to exercise any right, power or remedy accruing to the State or the Department upon breach or default by the Contractor under the Agreement must impair any such right, power or remedy, or must be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor must any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing;

- 11.1.4** If, due to default that remains uncured for the period provided herein, a third party must commence to perform Contractor's obligations under the Agreement, the State must thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State must continue to be obliged to pay for any and all Program Services provided prior to any such date. If the State employs a third party to perform Contractor's obligations under the Agreement, Contractor must be liable for the payment of any cost differential that the State incurs as a result of having to employ such third party to cure or resolve the issue;
- 11.1.5** In the event of the Contractor's default, in addition to availing itself of specific remedies set forth in the Agreement, the State may pursue all legal and equitable remedies for breach. In addition to pursuing any other legal or equitable remedies, the State must have the right to take one or more of the following actions:
- 11.1.5a** Terminate the Agreement in whole or in part;
 - 11.1.5b** suspend, in whole or in part, payments due Contractor under the Agreement; and
 - 11.1.5c** pursue equitable remedies to compel Contractor to perform.
- 11.1.6** The Contractor shall be liable for any and all excess costs for remedies pursued by the State, and for costs incurred by the State in procuring alternate Services;
- 11.1.6a** **For Violation of Procurement Lobbying Law:** The Department reserves the right to terminate the Agreement in the event it is determined by the Department in its sole discretion that the certification filed by the Contractor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Department may, at

its sole option, exercise its termination right by providing 10 days written notification to the Contractor, or providing notice in accordance with other written notification terms in the Agreement;

- 11.1.6b** **For Violation of Section 5a of the Tax Law:** The Department reserves the right to terminate the Agreement in the event that Contractor fails to file a certification pursuant to Section 5-a of the Tax Law or the Tax Department or OFT discovers that the certification(s) filed by the Contractor pursuant to Section 5-a of the Tax Law is/are false. Upon such finding(s), the Department may exercise its termination right by providing written notification to the Contractor;
- 11.1.6c** **Termination Notice:** Notices required by this section must be provided consistent with Appendix B, Section 9 of this Agreement; and
- 11.1.6d** **Mitigation of Costs:** The Contractor must not undertake any additional or new Contractual obligations on or after the date of return receipt notice without the prior written approval of the State. On or after the date of return receipt notice and during the termination notice period, the Contractor must take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

ARTICLE XII: TRANSITION

- 12.1.0** The State may require the Contractor to provide uninterrupted Project Services after Agreement termination/expiration as the State deems reasonable and necessary and/or as necessary for the State to comply with all legal requirements for establishing a new contract to continue the provision of Project Services (“Transition Period”). Transition Services, as defined below, shall be governed as follows:

-
- 12.1.1 Transition Period:** The transition period shall be determined by the State, and Contractor will be notified of the period in writing. The State shall consult with the Contractor prior to making such determination. The State reserves the right to subsequently amend the transition period upon thirty (30) days advance written notice to the Contractor.
- 12.1.2 No Interruption in Service:** At all times during the transition period and unless directed otherwise in writing by the State, the Contractor shall continue all contractual obligations set forth in the Agreement until such time as the State (i) has approved the Contractor's proposed transition plan, and (ii) an orderly transition to the State, a third party, or the successor Contractor has been completed pursuant to the approved transition plan. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.
- 12.1.3 State Responsibilities for Transition:** The State shall assume responsibility for Transition project management. A project manager responsible for coordinating Transition activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed.

ARTICLE XIII: AUDIT AUTHORITY

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

- 13.1.1** The Contractor acknowledges that the Department has the authority to conduct performance audits of the Contractor's delivery of the Program Services in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities.

- 13.1.2** The Contractor must 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, procedure manuals and system access.
- 13.2.3** Credit amounts due from the Contractor to the Department as a result of performance audits performed must be made in such amounts as determined by the Department to be final. Upon such determination, the Department must notify the Contractor in writing, and the Contractor must apply such amounts as a credit against the Program's fee within fourteen (14) Days of receiving such notification from the Department.
- 13.2.0** In addition to the Audit Authority requirements specified in Appendices A and B to this Agreement, the following provisions shall apply:
- 13.2.1** The Contractor acknowledges that the Department 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;
- 13.2.2** Such audit activity may include, but not necessarily be limited to, the following activities:
- 13.2.2a** Assessment of the Contractor's information to the extent necessary to verify accuracy of data in the reports provided to the Department in accordance with this Agreement.
- 13.2.2b** The Contractor shall maintain and make available documentary evidence necessary to perform the 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, pertinent contracts, key subcontracts, and correspondence;

13.2.2c 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 the Department's discretion, be submitted to the Department in machine-readable format, or the data may be extracted by the Department, or by the Contractor under the direction of the Department;

13.2.3 The Contractor shall support audits conducted by the Department, Office of the State Comptroller or any designee of these agencies, as follows, including but not limited to:

13.2.3a Providing ample audit resources including access to the Contractor's online system to the Department and OSC at their respective offices through the date of the final financial settlement of the Agreement;

13.2.3b Providing full cooperation with all Department and/or OSC audits consistent with the requirements of Appendices A and B and as set forth in this Agreement including provision of access to all confidential information when required for audit purposes as determined by the Department and/or OSC as appropriate. The Contractor must respond to all State (including OSC) audit requests for information and/or clarification within fifteen (15) Business Days. The Contractor must perform timely reviews and respond in a time period specified by the Department to preliminary findings submitted by the Department or the OSC's audit unit in accordance with the requirements of Article XIII "Audit Authority" in this Agreement. The Contractor shall, at the Department's request, and in a time period specified by the Department, 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;

13.2.3c The Contractor shall comment on the contents of any audit report prepared by the Department and transmit such comments in writing to the Department within thirty 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 provision set forth in Appendix B of this Agreement;

13.2.3d 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 Department within ten (10) Days after receipt of such audit report by the Contractor; and

13.3.0 The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the OSC 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 Department Contracts.

ARTICLE XIV: CONFIDENTIALITY

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

14.1.1 All enrollee 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 set forth in Section VII of this Agreement, and for

providing the Department with material and information as may be specified elsewhere in this Agreement;

- 14.1.2** 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/Dependent, no records may be otherwise used or released to any party other than the Department by the Contractor, its officers, employees, agents, consultants, Key Subcontractors or Affiliates either during the term of the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement;
- 14.1.3** The Contractor, its officers, employees, agents, consultants and/or any Key Subcontractors or Affiliates 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 Protection 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 and Dependents;
- 14.1.4** The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, employees, agents, consultants and/or Key Subcontractors or Affiliates contains a provision that strictly conforms to the various confidentiality provisions of this Agreement; and
- 14.1.5** 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, but not limited to, requests for any material and information provided by the Department, except as required by Key

Subcontractors or Affiliates solely for the purpose of fulfilling the Contractor's obligations under this Agreement or as required by law.

ARTICLE XV: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

15.1.0 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."

15.2.0 The Contractor acknowledges that the Department administers on behalf of New York State several group health plans as that term is defined in the Health Insurance Portability and Accountability Act's (HIPAA) implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a "covered entity" under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these "covered entities" under HIPAA. The Contractor further acknowledges that the Contractor is a HIPAA "business associate" of the Department as a consequence of the Contractor's provision of services to and/or on behalf of the Department within the context of the Contractor's performance under this Agreement, and that the Contractor's provision of such services may involve the disclosure to the Contractor of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Contractor's disclosure to the Department of

individually identifiable health information as a consequence of the services performed under this Agreement.

15.3.0 Permitted Uses and Disclosures of the Department's PHI: The Contractor may use and/or disclose the Department's PHI solely in accordance with the terms of this Agreement. In addition, the Contractor may use the Department's PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Contractor may use and disclose the Department's PHI for the proper management and administration of the Contractor if such use is necessary for the Contractor's proper management and administration or to carry out the Contractor's legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

15.4.0 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.

15.5.0 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.

15.6.0 Breach Notification

15.6.1 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.

15.6.2 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:

15.6.2a the date of the breach incident;

15.6.2b the date of the discovery of the breach;

15.6.2c a brief description of what happened;

15.6.2d a description of the types of unsecured PHI that were involved;

15.6.2e identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

15.6.2f 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

15.6.2g any other details necessary to complete an assessment of the risk of harm to the individual.

15.6.3 The Department will be responsible for providing 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.

15.6.4 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.

15.6.5 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.

15.6.6 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.

15.7.0 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.

15.8.0 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.

15.9.0 Amendment of the Department's PHI: The Contractor shall make the Department's PHI available to the Department as the Department may require to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Contractor shall, as directed by the Department, incorporate any amendments to the Department's PHI into copies of the Department's PHI as maintained by the Contractor.

15.10.0 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.

15.11.0 Termination

15.11.1 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.

15.11.2 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.

15.12.0 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.

15.13.0 Miscellaneous

15.13.1 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.

15.13.2 Survival: The respective rights and obligations of the Business Associate (Contractor), and Covered Entity under HIPAA as set forth in this Article shall survive termination of this Agreement.

15.13.3 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.

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

ARTICLE XVI: NOTICES

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

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

16.1.2 by facsimile transmission;

16.1.3 by personal delivery;

16.1.4 by expedited delivery service; or

16.1.5 by e-mail.

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

State of New York [Agency Name]

Name: (TBD)

Title: Director, Employee Benefits Division

Address:

Telephone Number: (TBD)

Facsimile Number: (TBD)

E-Mail Address: (TBD)

[Contractor Name]

Name: (TBD)

Title: (TBD)

Address: (TBD)

Telephone Number: (TBD)

Facsimile Number: (TBD)

E-Mail Address: (TBD)

16.2.0 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.

16.3.0 The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other Party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE XVII: IRAN DIVESTMENT ACT

17.1.0 As a result of the Iran Divestment Act of 2012 (for purposes of this section only hereinafter referred to as “Act”), Chapter 1 of the 2012 Laws of New York, a new provision was added to the State Finance Law (“SFL”), §165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (“OGS”) was charged with the responsibility to develop a list (“prohibited entities list”) of “persons” who are

engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list was posted on the OGS website on August 10, 2012.

17.2.0 By entering into the Agreement, Contractor certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on the Agreement any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend the Agreement, it must provide the same certification at the time the Agreement is renewed or extended. Contractor also agrees that any proposed Assignee of the Agreement will be required to certify that it is not on the Prohibited Entities List before the Department may approve a request for Assignment of the Agreement.

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

17.4.0 The Department reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension or assignment of the Agreement, and pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

ARTICLE XVIII: VENDOR RESPONSIBILITY

18.1.0 The Contractor is required to provide the Department with an updated Vendor Responsibility Questionnaire when requested to do so by the Department throughout the

term of the Agreement. Regardless, the Contractor is required to report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.

- 18.2.0** The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- 18.3.0** Suspension of Work (for Non-Responsibility): The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that call into question the responsibility of the Contractor. In the event of such suspension, the Contractor must comply with the terms of the suspension order. Agreement activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Agreement
- 18.4.0** Termination (for Non-Responsibility): Upon written notice to the Contractor, a reasonable opportunity to be heard with the appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of the Department or his or her designee to be non-responsible. In such an event, the Commissioner or his or her designee may complete the requirements of the Agreement in any manner he or she may deem advisable and pursue legal or equitable remedies for breach.

Contractor: _____

Agreement Number: C000631

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

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

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:
ERIC SCHNEIDERMAN
ATTORNEY GENERAL

Approved:
THOMAS P. DINAPOLI
COMPTROLLER

By: _____

By: _____

Date: _____

Date: _____

Section VIII: Glossary of Terms

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.

Agreement means the contract that results from this IFB between the Department and the Contractor.

Bid means the submission by the Offeror in response to the IFB.

Business Day(s) means every Monday through Friday, except for days designated as Business Holidays by the State.

Business Holiday(s) means legal holidays observed by the State. including New Year's Day; Martin Luther King, Jr. Day; President's Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; Christmas Day.

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

Card Carrier means a paper, cardstock or other acceptable medium designed to function as a holder (whether the cards are spot glued or perforated as a part of the holder), and able to carry printed content, for the benefit cards.

Card/Employee Benefit Card means an employee identification card that meets the specifications of this IFB.

Cardholder means an individual covered by The Empire Plan for which an EBC has been requested to be produced or has been produced by the Contractor.

Contractor means (TBD), the successful Offeror selected as a result of the evaluation of Offerors' Proposals submitted in response to this IFB and the Contractor who executes a Contract with the Department to provide Program Services.

Day(s) means calendar days unless otherwise noted.

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

Defective EBC(s), Card Carrier(s) and/or Envelopes means an EBC, Card Carrier and or Envelope that does not meet the Program specifications set forth in the IFB, or, if after having been mailed, it is determined that the EBC was not properly matched with its associated Card Carrier. An EBC is defective if the Cardholder information contained in the EBC Data File is not properly displayed on the EBC. A Card Carrier is defective if the Cardholder information contained in the EBC Data File is not properly displayed on the Card Carrier. An Envelope is defective if it does not contain the correct logo and text.

Dependent means the spouse, domestic partner, and children under twenty-six (26) years of age of an Enrollee. Young adult dependent children age twenty-six (26) 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 New York State Health Insurance Program.

EBC Data File means the electronic file transmitted by the Department to the Contractor containing the information, as set forth in Exhibit II.B, necessary to produce and distribute EBCs.

EBC Program/ Program/ Program Services or Services means the entire scope of services to be provided by the Contractor pursuant to the terms and conditions of the Agreement.

The Empire Plan means the self-insured comprehensive health benefit program administered by the New York State Department of Civil Service.

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

Employee Benefit Card(s) or EBC means benefit cards that meet the specifications of this IFB #EBC-2014-1.

Employee Benefits Division means the functional unit within the Department of Civil Service which has responsibility for administering various employee benefit programs.

Employer means “Employer” as defined in 4 NYCRR Part 73, as amended.

Enrollee means a State, PE, or PA employee, former State, PE or PA employee, or other individual determined by the DCS to be eligible to enroll as the result of law, regulation, rules and/or collective bargaining, who is enrolled in the Empire Plan.

Envelope means a flat paper container with windows and a sealable flap, used to enclose the card carrier and employee benefit card(s).

ET means prevailing Eastern Time.

HIPAA means Health Insurance Portability and Accountability Act of 1996.

Implementation Period means the 60-day period of time subsequent to the Office of the State Comptroller’s approval of the Agreement that results from this IFB.

IFB or Procurement means the Invitation For Bid #EBC-2014-1 entitled “The Empire Plan Employee Benefit Card” dated October 1, 2014, Exhibit B to this Agreement, including all clarifications and supplemental requests for information made subsequent to the release of the IFB.

Key Subcontractor(s) means those vendor(s) with whom the Contractor subcontracts to provide Program Services and incorporated as a part of the Contractor’s Program Team.

NYS means New York State.

NYSHIP means the New York State Health Insurance Program.

Offeror means a person or entity that submits a Proposal in response to this IFB.

OSC means the New York State Office of the State Comptroller.

Participating Agency (PA) means any unit of local government such as school districts, special districts and district or municipal corporations which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.

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 Health Insurance Program.

President means the President of the Civil Service Commission who is also the Commissioner of the Department of Civil Service.

Production Cycle means the time period that elapses from when the Department, or its agent, makes the EBC Data File available to the Contractor until the Contractor presents the associated EBCs to the U.S. Postal Service for delivery to the Cardholder, exclusive of any time period where EBCs are stored by the Contractor prior to mailing at the Department' direction.

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

Regulations of the President of the New York State Civil Service Commission means those regulations promulgated by the President of the Civil Service Commission under the authority of Civil Service Law, Article XI, as amended, and including, but not limited to those regulations to be promulgated as 4 New York Code of Rules and Regulations (NYCRR) Part 73.

Retiree means any person defined as a Retiree pursuant to the terms of 4 NYCRR Part 73, as amended.

Specifications means a detailed description of Employee Benefit Card including Card Stock, Card Carrier Stock, Envelope Stock and Card Processing and Design.

State means New York State as a whole.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

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

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

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

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

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

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

the contract, the Department of Civil Service and the State Comptroller.

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

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

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

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

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

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

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

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

APPENDIX B
STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

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1. INTEGRATION

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

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

2. EXECUTORY PROVISION

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

3. CHOICE OF LAW

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

4. DISPUTE RESOLUTION

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

5. WAIVER OF BREACH

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

6. NEW YORK STATE REQUIREMENTS

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

7. OUTSIDE OF SCOPE

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

8. NON-ASSIGNABILITY

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

9. NOTIFICATION

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

10. INDEMNIFICATION

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

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

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

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

11. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT

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

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

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

12. DATE/TIME WARRANTY

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

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

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

13. VIRUS WARRANTY

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

14. TITLE AND OWNERSHIP WARRANTY

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

15. USE RESTRICTIONS AND INTELLECTUAL PROPERTY

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

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

16. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES

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

(A) Definitions

1. Product(s):

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

2. Existing Product(s):

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

3. Custom Product(s):

Product(s), preliminary, final or otherwise, which are created or developed by the Contractor, or its subcontractors, partners, employees, or agents under the Agreement for the benefit of the Department.

(B) Title to Project Deliverables

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

1. Existing Product(s):

a) Hardware - Title and ownership of Existing Hardware Product shall pass to Department upon acceptance.

b) Software - Title and ownership to Existing Software Product(s) delivered by the Contractor under the Agreement which is normally commercially distributed on a license basis by the Contractor or other independent software vendor/proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or other independent software vendor/proprietary owner ("ISV"). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless the Contractor advises the Department as part of the Contractor's bid proposal that adaptation will violate existing agreements or statutes and the Contractor demonstrates such to the Department's satisfaction) and distribute Existing Licensed Product to the Department up to the license capacity stated in the work order with all license rights necessary to fully effect the general business purpose(s) stated in the Agreement and (b) recognize the State of New York as the licensee. Where these rights are not otherwise covered by the ISV's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Department shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

2. Custom Product(s):

Effective upon creation of Custom Product(s), the Contractor hereby conveys, assigns and transfers to State the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Product(s) are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under the Agreement in the course of the Contractor's business.

Where payment for Custom Product does not involve Certificates of Participation (COPS) pursuant to Article 5-A of the State Finance Law or other third party

financing, the Department may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of State taking exclusive ownership and title to such Products. In such case, the Department shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated herein.

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

3. Documentation, Data & Reports

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

17. FORCE MAJEURE

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

18. TIME OF THE ESSENCE

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

19. RIGHTS AND REMEDIES

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

20. FEDERAL AND STATE COMPLIANCE

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

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

21. TAXES

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

22. INDEPENDENT CONTRACTOR

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

23. NO THIRD PARTY BENEFICIARIES

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

24. HEADINGS OR CAPTIONS

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

25. PARTIAL INVALIDITY

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

26. CONFLICT OF INTEREST

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

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

27. AUDIT AUTHORITY

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

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

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

28. CONFIDENTIALITY

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

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

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

29. INFORMATION SECURITY REQUIREMENTS

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

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

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

<http://www.cscic.state.ny.us/security/securitybreach>

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

30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

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

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

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

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

This representation shall survive termination of the Agreement.

31. FREEDOM OF INFORMATION LAW

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

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

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

32. TERMINATION OF AGREEMENT

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

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

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

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

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

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

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

33. CONTRACTOR PERSONNEL

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

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

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

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

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

34. OPERATIONAL CONTACTS

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

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

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

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

35. SUBCONTRACTING

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

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

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

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

36. PUBLICITY AND COMMUNICATIONS

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

No public discussion or news releases relating to the Agreement shall be made or authorized by the Contractor or the Contractor's agent without the prior written approval of the Department, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Agreement and answer any questions relating thereto to any State or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

37. CONSULTANT DISCLOSURE REQUIREMENTS

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

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

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

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

39. VENDOR RESPONSIBILITY

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

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

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

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

41. CONTRACT PAYMENT

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

May 2011



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.



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- 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:

Robert W. DuBois

Division:

Employee Benefits Division

Office Location:

NYS Department of Civil Service
Albany, New York 12239

Phone Number:

518-473-1977

Email Address:

Robert.DuBois@cs.state.ny.us

Back-up Point of Contact: (Data Custodian)

Name:

Barbara Vaughn

Division:

Employee Benefits Division

Office Location:

NYS Department of Civil Service
Albany, New York 12239

Phone Number:

518-549-2328

Email Address:

Barbara.Vaughn@cs.state.ny.us

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:			

<i>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.</i>	
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)

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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

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

CONTRACTOR REQUIREMENTS AND OBLIGATIONS UNDER NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A (PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS)

I. General Provisions

- A. The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all “State contracts” as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the “Department”), to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of the Contract, the Department established an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation as subcontractors and suppliers, as relates only to the administrative cost component of the overall cost of the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in section II-A above, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

<http://www.nylovesmwbe.ny.gov/cf/search.cfm>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on this Contract.

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

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

III. Equal Employment Opportunity (EEO)

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

- B. Contractor shall comply with the following provisions of Article 15-A:
 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department of proposed award of the Contract to the Contractor.
 3. If Contractor or subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or subcontractor a model statement (see Form EEO-102 entitled "Minority and Women-Owned Business Enterprises M/WBE - Equal Employment Opportunity (EEO) Policy Statement).
 4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of sections (a) through (c) of this subsection 4 and paragraph "E" of this section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

- C. Form EEO-100 – EEO Staffing Plan

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To ensure compliance with this section III, the Contractor shall submit an EEO Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the EEO Staffing Plan form and submit it as part of its Proposal or within a reasonable time, but no later than the time of proposed award of the Contract.

- D. Form EEO-101 - Workforce Utilization/Compliance Report (“Workforce Report”)
1. Once proposed contract award has been made and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted EEO Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
 2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
 3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan Form (MWBE-100) and Certification of Good Faith Efforts (Form MWBE-104)

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

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- B. Contractor agrees to use such MWBE Utilization Plan, as accepted by the Department, for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in section III-A of this Appendix D.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waiver Requests (MWBE-101)

- A. For Waiver Requests Contractor should use Form MWBE-101 – Request for Waiver Form.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver Form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the Waiver Request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Department, upon review of the MWBE Utilization Plan and updated Quarterly M/WBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly M/WBE Contractor Compliance Report (Form MWBE-103)

Contractor is required to submit a Quarterly M/WBE Contractor Compliance Report (Form MWBE-103) to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

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

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pursuant to subdivision 8 of section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

VII. Further Information:

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

New York State Department of Economic Development
633 Third Avenue
New York, NY 10017
Telephone: (212) 803-2414

New York State Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl Street
Albany, NY 12245
Telephone: (518) 292-5150

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