



**New York State Department of Civil Service
EMPLOYEE BENEFITS DIVISION**

AGREEMENT #C000589

between

**NEW YORK STATE
DEPARTMENT OF CIVIL SERVICE**

and

BUCK CONSULTANTS, LLC

C000589
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EXHIBITS TO CONTRACT

EXHIBIT A	PRICING SCHEDULES
EXHIBIT B	The RFP, dated November 3, 2008, other than Appendices A, B, and C, as amended via the Department's Official Responses to Offerors' Questions dated, December 15, 2008 and December 18, 2008
EXHIBIT C	The Contractor's Proposal dated, January 14, 2009

THIS Agreement effective June 1, 2009, is entered into by and between New York State **Department of Civil Service** ("Department" or "DCS"), having its principal office at the Alfred E. Smith Office Building, Albany, NY, 12239 and **Buck Consultants LLC** ("Contractor"), a corporation authorized to do business in the State of New York with a principal place of business located at: One Penn Plaza, New York, NY 10119, and collectively hereinafter referred to as "the Parties."

WITNESSETH

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

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

WHEREAS, on November 3, 2008, the Department of Civil Service issued a Request for Proposal entitled, "Actuarial and Benefits Management Consulting Services" ("RFP") to secure the services of a qualified organization to provide actuarial and benefits management consulting services to the Employee Benefits Division ("EBD") of the Department for use in the administration of the New York State Health Insurance Program ("NYSHIP") and other benefits administered by the Department ("Project" or "Project Services"); and

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

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

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

ARTICLE I: CONTRACTOR RESPONSIBILITIES AND QUALIFICATIONS

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

Throughout the contract term of this Agreement, including any extensions thereto, in addition to the requirements of the State Finance Law § 138 (requiring the State's approval of subcontractors), in the event that there is a substantial or material change, as defined below, in the ownership or financial viability of the Contractor, its corporate affiliates, subsidiaries or divisions, the Contractor is required to provide notice and details of any such change to the State in writing immediately when such is first known by Contractor, its corporate affiliates, subsidiaries or divisions, or subcontractors.

"Substantial" or "material" change shall be defined to include, but not be limited to, sale, acquisitions, mergers or takeovers involving the Contractor, its corporate affiliates,

subsidiaries or divisions or partners which result in a change in the controlling ownership or assets of such entity after the submission of the Proposal; or entry of an order for relief under Title 11 of the United States Code; the making of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in bankruptcy of Contractor's, its corporate affiliates, subsidiaries or divisions, or partners' business or property; or action by Contractor, its corporate affiliates, subsidiaries or divisions, or partners under any state insolvency or similar law for the purposes of its bankruptcy, reorganization or liquidation; or court ordered liquidation against Contractor, its corporate affiliates, subsidiaries or divisions, or partners.

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

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

- 2.1.0 The Agreement is for one (1) year commencing on June 1, 2009, and continuing through and including May 31, 2010, with up to two (2) one (1) year optional extension periods, subject to the termination provisions contained herein. Said optional extensions are exercisable at the sole discretion of the Department and the extensions and this Agreement are subject to the approval by the New York State Attorney General's Office ("AG") and the New York State Office of the State Comptroller ("OSC"). Pricing during said extension(s) shall be in accordance with the rates provided in the Agreement.
- 2.2.0 The Agreement is subject to amendment(s) only upon consent of the Parties, reduced to writing and approval by the AG and OSC.

ARTICLE III: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

- 3.1.0 The Agreement shall be composed solely of the following documents which, in the event of an inconsistency or conflicting terms, shall be given precedence in the order indicated:
- 3.1.1. Appendix A (Standard Clauses for All NYS Contracts);
 - 3.1.2. Appendix B (Standard Clauses for All DCS Contracts);
 - 3.1.3. Appendix C (Third Party Connection and Data Exchange Agreement);
 - 3.1.4. Any Amendments to the body of the Agreement;
 - 3.1.5. The body of the Agreement;
 - 3.1.6. Exhibit A - PRICING SCHEDULE
 - 3.1.7. Exhibit B - The RFP, dated November 3, 2008, other than Appendices A, B, and C, as amended via the Department's Official Responses to Offerors' Questions dated, December 15, 2008 and December 18, 2008; and
 - 3.1.8. Exhibit C - The Contractor's Proposal dated, January 14, 2009.
- 3.2.0 Only documents expressly enumerated above shall be deemed a part of the Agreement, and references contained in those documents to additional Contractor documents not enumerated above shall be of no force and effect.
- 3.3.0 All prior agreements, representations, statements, negotiations and undertakings are superseded. All statements made by the Department shall be deemed to be representations and not warranties.
- 3.3.4 Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation, or other entity, other than the Parties hereto and their
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successors in interest and assigns, any rights or remedies under or by reason of the Agreement.

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

ARTICLE IV: LEGAL AUTHORITY TO PERFORM

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

ARTICLE V PROJECT SERVICES

- 5.1.0 During the term of the Agreement, the Contractor will be responsible for the performance of those services/tasks as described herein this Article V of the Agreement and any and all other Project Services as referenced in the RFP.
- 5.2.0 Task #1 - Premium Rate Renewals. Each year, the Department negotiates Empire Plan premium rates with the four (4) Empire Plan carriers. These rates are subject to the approval by the New York State Division of Budget ("DOB"). Since Empire Plan premium rates are directly related to the projected Plan costs, the Department seeks assistance from the Contractor in the review of carriers' rate submissions to provide assurances that implemented rates are reasonable ("Task #1"). Premium rate analysis to be performed by the Contractor shall focus primarily on each Carrier's projected aggregate experience and the justification provided by the Carriers to support their trend projections and rate requests. As part of this task, the Contractor will also evaluate the costs and/or savings associated with any Plan revisions, if applicable. During the term of the Agreement, the Contractor shall:
- 5.2.1 Submit a Task #1 work plan to the Department prior to the beginning of the rate renewal process for the upcoming Plan Year. This Task #1 work plan must be submitted to the Department not later than July 1 and it must be acceptable to the Department. The first Plan Year under the Agreement will begin on January 1, 2010, and as such the first Task #1 work plan under the Agreement is due on July 1, 2009;
- 5.2.2 Submit to the Department Contractor developed independent premium rate requirement estimates not later than August 31 of each year of the Agreement (i.e., "Benefits Management Consultant Independent Experience Projections and Premium Requirements" report);
- 5.2.3 Review and provide a written evaluation of the Empire Plan Carriers' premium rate proposals, including a review of all factors used by the Carriers to determine premium requirements including, but not limited to, projected paid and incurred claims, Carrier retention, margin, and any deficit recoupment load;
- 5.2.4 Provide verbal commentary to the Department on the Empire Plan Carriers' premium rate adjustments for any Plan changes negotiated with the Carriers;

- 5.2.5 Support the Department in its negotiation of the Empire Plan rates with the Carriers, including attendance at and participation in meetings as deemed necessary by the Department;
- 5.2.6 Assist the Department in presenting premium rate proposals to GOER, DOB, the Joint Labor Management Committee, and other entities, as the Department deems necessary. At least two (2) all day presentation meetings are anticipated annually as part of the Premium Rates Renewal process. (Note: While the Contractor may be called upon to make presentations to or brief other NYS entities involved in the NYSHIP, the New York State Department of Civil Service, Employee Benefits Division is the "client", and as such, the Contractor is accountable to DCS, EBD staff.);
- 5.2.7 Support the Department by providing comparative analyses, as requested, using data of other large employers;
- 5.2.8 Submit a final written report with recommendations on the proposed premium rates (i.e., the final "Benefits Management Consultant Final Report and Recommendations" report);
- 5.2.9 Ensure that principal project staff is available to EBD management for ad hoc discussion of any aspect of Task # 1 throughout the Premium Rate Renewal process; and
- 5.2.10 Participate in and adhere to the following Premium Rate Renewal process and cycle:

Date (Note: All dates shown are on or about)	Premium Rate Renewal Process activity
July 1	The Contractor submits its Task #1 work plan for the upcoming Plan Year.
Early-August	The Department sends each Carrier a rate renewal call letter which outlines the minimum documentation required to support the rate requests and anticipated premium rate adjustments. See Appendix P entitled "Sample Call Letter" for an example call letter.
August 31	Contractor develops and submits independent premium requirement estimates (i.e., "Benefits Management Consultant Independent Experience Projections and Premium Requirements" report).
August 31	The Carriers submit rate renewal proposals and supporting documentation to the Department and the Contractor.
Beginning in the 1st week of September and continuing throughout the Premium Rate Renewal process	The Department and the Contractor work together to ensure consistent understanding of the Carriers' rate renewal proposals

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

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

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

- 5.3.1 Review and prepare comments on the Empire Plan Carriers' first and fourth quarter reports. Said quarterly reports are based on calendar year; the 1st quarter is January through March and the 4th quarter is October through December. The required reviews will be conducted twice per calendar year, during April/May for the 1st quarter reports and January/February for the 4th quarter reports.
- 5.3.2 Provide a written report of its review of each of the Carriers' reports. (The Carrier reports are due no later than the 23rd day of the month following the last month of the quarter under review.) The report shall include the Contractor's assessment of the reasonableness of the Carriers' projected current year experience and

projected rates for the subsequent year, the Contractor's projected annual claim amount by Carrier for the calendar year (January 1 - December 31), and the Contractor's observed and projected trends, including any other factors that may impact the projected incurred claims experience. Final copy of the required report ("Quarterly Contractor Commentary Report") must be submitted to the Department within forty-five (45) calendar days from the end of the quarter under review. These reports must be acceptable to the Department.

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

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

5.4.1 Task #3 Activities Timelines/Due Dates. As described in further detail below, the first Valuation to be performed by the Contractor shall be as of April 1, 2010, and the resultant Valuation Report shall be due not later than October 31, 2010. The Valuation shall be performed in accordance with the Contractor's actuarial assumptions as set forth in the Contractor's NYS/SUNY Actuarial Assumptions Report which is due not later than June 15, 2010. For the year that follows, the Contractor shall produce, by May 31, 2011, a Year Two Roll Forward report.

During the term of the Agreement, the Contractor shall perform, at a minimum, two (2) Valuations and two (2) Year Two Roll Forwards, and may be required to perform a third Valuation and third Year Two Roll Forward, if the Agreement is extended in accordance with the schedule set forth in the table (The three (3) Valuations and thee (3) Year Two Roll Forwards are identified by their associated report names) as follows:

Report Name	Due Date	Deliverable During Contract Year
2010 Valuation Report	10/31/2010	Year 2
2011 Year Two Roll Forward Report	5/31/2011	Year 2
2012 Valuation Report	10/31/2012	Year 4
2013 Year Two Roll Forward Report	5/31/2013	Year 4
2014 Valuation Report (possible)	10/31/2014	Year 6
2015 Year Two Roll Forward Report (possible)	5/31/2015	Year 6

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

5.4.2.1 Perform an actuarial valuation of the State’s and SUNY’s OPEB every two (2) years and produce a comprehensive report by October 31 of the valuation year to present the results of the Valuation (“Valuation Report”). The first Valuation to be performed by the Contractor under the Agreement (“2010 Valuation”) shall be as of April 1, 2010 for employers’ Financial Statement as follows:

Employer	Financial Statements for the year ending
NYS (excluding all of SUNY)	3/31/2012
SUNY Campus	6/30/2011
SUNY Stony Brook Hosp	6/30/2011
SUNY Brooklyn Hosp	6/30/2011
SUNY Syracuse Hosp	6/30/2011
SUNY Construction Fund	3/31/2011

The results of 2010 Valuation shall be set forth in the Contractor’s 2010 Valuation Report.

5.4.2.2 Prior to the production of the Valuation Report, produce, by June 15 of the Valuation year, a report that presents the actuarial assumptions the Contractor will use for the Valuation along with the rationale for those assumptions (“NYS/SUNY Actuarial Assumptions Report”). The NYS/SUNY Actuarial Assumptions Report associated with the 2010 Valuation is due not later than June 15, 2010

5.4.2.3 Provide two (2) reports by November 15th of the Valuation year, that present the actuarial assumptions used for the State’s Valuation, one for distribution to PEs (“PE Actuarial Assumptions Report”) and the other to PAs (“PA Actuarial Assumptions Report”), to provide assistance in performing their GASB 45. The two reports associated with the 2010 Valuation are due no later than November 15, 2010.

5.4.2.4 In the year following a Valuation, produce, by May 31 of that year, a “Year Two Roll Forward” report that:

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

The first Two Year Roll Forward report due under the Contact shall be the 2011 Year Two Roll Forward Report for employers' Financial Statement as follows:

Employer	Financial Statements for the year ending
NYS (excluding all of SUNY)	3/31/2013
SUNY Campus	6/30/2012
SUNY Stony Brook Hosp	6/30/2012
SUNY Brooklyn Hosp	6/30/2012
SUNY Syracuse Hosp	6/30/2012
SUNY Construction Fund	3/31/2012

(Note: the 2009 Year Two Roll Forward reports is not a defined deliverable under the Agreement.)

- 5.4.2.5 Provide Task #3 related support to the Department, on an as needed basis, in areas including, but not limited to, assisting the Department in:
 - (a) Responding to requests for information from DOB and/or OSC;
 - (b) Preparation for legislative testimony; and
 - (c) Responding to questions on completed valuation(s) posed by auditors contracted to audit the State's financial records.

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

- 5.5.1 Provide the Department with a full range of ad hoc benefit consulting services. In its delivery of ad hoc services, the Contractor's analysis should consider and make use of the most current employee benefit data and information in the marketplace. The Contractor shall be expected to possess and/or obtain and make available to the Department a full breadth of benefit consulting services, including such areas as:
 - o plan design consulting,
 - o consulting on selection of vendors,
 - o regulatory and compliance consulting,
 - o wellness programs, and
 - o disease management.

- 5.5.2 As requested by the Department on a case-by-case basis, analyze and prepare comprehensive cost and benefit analysis ("Ad Hoc Projects"), often undertaken

and completed within very limited timeframes; frequently within 2-3 days of the request and, on occasion, within a twenty-four (24) hour period for certain high priority. The Contractor shall be required to submit final deliverable(s) required for completion of an Ad Hoc Project within timeframes mutually agreed upon by the Department and the Contractor.

- 5.5.3 Provide a full range of benefit consulting services, including, but are not limited to:
- 5.5.3.1 Assisting the Department with the analysis, design and/or review of solicitation instruments (e.g., requests for proposals) and their associated evaluation criteria developed by the Department for any of the benefit programs administered by the Department and/or the evaluation of specified proposals received in regard thereto;
 - 5.5.3.2 Performing an actuarial equivalence comparison of the NYSHIP drug plan to Medicare Part D benefits for the same period and file the resultant attestation of such equivalence with the Centers for Medicare and Medicaid Services (CMS);
 - 5.5.3.3 Providing the Department with analysis of federal and state legislative proposals, including advice on compliance with such legislation;
 - 5.5.3.4 In addition to those services required by Task #1 for Empire Plan premium renewal activities, assisting the Department with benefit and premium renewal activities for any of the other benefit programs administered by the Department;
 - 5.5.3.5 In addition to those services required by Task #3 for GASB 45 Valuation, assisting the Department with any actuarial valuations;
 - 5.5.3.6 Providing recommendations regarding proposed benefit/plan design changes;
 - 5.5.3.7 Performing cost/savings analyses of collectively bargained plan changes; and
 - 5.5.3.8 Reviewing Carrier contract provisions and provide recommendations.

ARTICLE VI: PERFORMANCE GUARANTEES

6.1.0 The Parties agree that the following guarantees and the corresponding penalty(ies) for failure to meet the guarantee shall be implemented effective June 1, 2009. The Contractor acknowledges and agrees that failure to perform a task(s) in such a manner which either meets or exceeds any and/or all of the associated Performance Guarantee(s) as set forth in this Article VI of the Agreement and/or fails to make any payment(s) of any such penalty(ies) for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties and obligations as otherwise set forth in the Agreement. Payment for failure to meet the Turnaround Guarantees shall take the form of a credit against the associated task for which payment was due.

6.1.1 Turnaround Time Guarantees – Task #1.

The Contractor guarantees to support the Department during the Premium Renewal Negotiation Process, including performing the timely completion and submittal of reports and final deliverables as specified in RFP, §3.01.1. The

Contractor guarantees it will adhere to the timeline included in the final work plan, provided that the required electronic data is received by the Contractor from all carriers by July 15th of each renewal cycle and the carrier renewals are received by no later than the first week in September. If the Contractor does not receive the data and/or renewals by the specified dates, different due dates shall be agreed upon in writing by the Parties and guaranteed by the Contractor. If the Contractor fails to meet this guarantee, then for each twenty-four (24) hour period, or part thereof, that a Task #1 report or final deliverable is not provided to the Department by the report(s)/deliverable(s)' due date, the Contractor shall pay the Department \$1,000 per day, until such time that the report(s)/deliverable(s) is provided to the Department. The aggregate total penalty amount shall not exceed the actual cost incurred by the Contractor in its performance of the associated Task #1 activity.

6.1.2 Turnaround Time Guarantees – Task #2.

The Contractor guarantees that Quarterly Contractor Commentary Reports will be provided in accordance with the requirements set forth in RFP, §3.01.2, not later than forty-five (45) calendar days from the end of the quarter under review, provided that the required electronic data is received by the Contractor from all carriers within 15 days of the close of the quarter, and the carrier reports within 23 days of the close of the quarter. If the Contractor does not receive the data and/or carrier reports by the specified dates, the due date shall be extended by one day for each day the data and/or carrier reports are late. If the Contractor fails to meet this guarantee, then for each twenty-four (24) hour period, or part thereof, beyond a given Quarterly Contractor Commentary Reports' due date that the final Quarterly Contractor Commentary Reports is not provided to the Department by the Contractor, the Contractor shall pay the Department \$1,000 per day, until such time as the required final Quarterly Contractor Commentary Reports are provided to the Department. The aggregate total penalty amount shall not exceed the actual cost incurred by the Contractor in its performance of the associated Task #2 activity.

6.1.3 Turnaround Time Guarantees – Task #3.

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

6.1.4 Turnaround Time Guarantees – Task #4.

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

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

ARTICLE VII: PAYMENT FOR SERVICES

- 7.1.0 The DCS agrees to reimburse the Contractor in accordance with the provisions of the RFP, in particular RFP, §4.04 and RFP, Exhibit S, at the Fixed Hourly Rates, as proposed by the Contractor in its Financial Proposal, set forth in Exhibit A as attached, subject to any not-to-exceed or total project cost amounts, as applicable, as set forth in Exhibit A, plus Department approved travel expenses and less any credits due to the Department for Contractor non-performance. The Contractor shall invoice the Department, in the format required by the Department, monthly in arrears, for Project Services rendered during the preceding month, together with full supporting detail(s) to the Department's satisfaction. Charges for Project Services rendered shall be based on the Contractor's Fixed Hourly Rates for actual hours worked by Contractor personnel. Said invoicing will include, as supporting detail, at a minimum the name(s) of individual(s) for whom the Department is being billed along with his/her Position Title, Fixed Hourly Rate and total hours worked by the individual(s) for the given billing.
- 7.2.0 After the Department has approved the Contractor's invoice, the Department shall process the Contractor's invoice to OSC for payment. OSC shall render payment for invoices under the Agreement in accordance with ordinary State procedures and practices. The Contractor shall certify the accuracy of all Contractor invoices prior to their submission to the Department and the Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law. Submission of an invoice and payment thereof shall not preclude the Department from reimbursement or demanding a price adjustment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Agreement.
- 7.3.0 The Contractor warrants that all of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope and volume of services.

If, during the course of this Agreement, the Contractor enters into arrangements with any other customers providing benefits which are equal to or greater than those benefits to be provided under this Agreement at more favorable terms, this Agreement shall thereupon be deemed amended to provide the same to the DCS.

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

ARTICLE VIII: RECORDS AND INFORMATION TO BE FURNISHED

- 8.1.0 The DCS and the Carriers shall furnish to the Contractor all information which the Contractor may reasonably require with regard to any matters pertaining to the delivery of Project Services under this Agreement.

ARTICLE IX: MODIFICATION OF REQUIRED SERVICES

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

ARTICLE X: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

- 10.1.0 For purposes of this Article X of the Agreement, 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 DCS or may be created or received by the Contractor on behalf of DCS. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein as "DCS' PHI".
- 10.2.0 The Contractor acknowledges that the DCS administers on behalf of New York State several "group health plans" as that term is defined in HIPAA's implementing regulations at 45 CFR 160.103, 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, the Vision Plan, and NYPERL, the long term care insurance plan. In this capacity, DCS is a responsible for the administration of these "covered entities" under HIPAA. The Contractor further acknowledges that the Contractor is a HIPAA "business associate" of DCS as a consequence of the Contractor's provision of services to and/or on behalf of DCS within the context of the Contractor's performance under this Agreement, and that the Contractor's provision of services may involve the disclosure to the Contractor of individually identifiable health information from DCS or from other parties on behalf of DCS, and also may involve the Contractor's disclosure to DCS of individually identifiable health information as a consequence of the services performed under this Agreement.
- 10.3.0 Permitted Uses and Disclosures of DCS' PHI. The Contractor may use and/or disclose DCS' PHI solely in accordance with the terms of this Agreement. [45 CFR §164.504(e)(2)(i)]. In addition, the Contractor may use DCS' PHI to provide data aggregation services relating to the health care operations of DCS. [45 CFR §164.504(e)(2)(i)(B)].
- 10.4.0 Nondisclosure of DCS' PHI. The Contractor shall not use or further disclose DCS' PHI otherwise than as permitted or required by this Agreement or as otherwise required by law. [45 CFR §164.504(e)(2)(ii)(A)].
- 10.5.0 Safeguards. The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of DCS' PHI otherwise than as provided for by this Agreement. [45 CFR §164.504(e)(2)(ii)(B)]. 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 DCS pursuant to this Agreement and shall provide said program to the State, if requested by the State.
- 10.6.0 Reporting of Disclosures. The Contractor shall report to DCS any use or disclosure of DCS' PHI otherwise than as provided for by this Agreement of which the Contractor becomes aware. [45 CFR §164.504 (e)(2)(ii)(C)]. Further, the Contractor shall report to DCS 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.

- 10.7.0 Associate's Agents. The Contractor shall ensure that any agents or subcontractors to whom it provides DCS' PHI, whether received from DCS or created or received by the Contractor on behalf of DCS, agree to the same restrictions and conditions that apply to the Contractor with respect to DCS' PHI under this Agreement. [45 CFR §164.504(e)(2)(ii)(D)].
- 10.8.0 Availability of Information to DCS. The Contractor shall make available to DCS such information as DCS may require to fulfill DCS' obligations to provide access to, to provide a copy of, and to account for disclosures with respect to DCS' PHI in accordance with HIPAA and its implementing regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR §164.504(e)(2)(ii)(E) and (G)].
- 10.9.0 Amendment of DCS' PHI. The Contractor shall make DCS' PHI available to DCS as DCS may require to fulfill DCS' obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations, including, but not limited to, 45 CFR Section 164.526. The Contractor shall, as directed by DCS, incorporate any amendments to DCS PHI into copies of such DCS PHI maintained by the Contractor. [45 CFR §164.504(e)(2)(ii)(F)].
- 10.10.0 Internal Practices. The Contractor shall make its internal practices, books, and records relating to the use and disclosure of DCS' PHI, whether received from DCS or created or received by the Contractor on behalf of DCS, available to DCS and to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Contractor's compliance with HIPAA and its implementing regulations. [45 CFR §164.504(e)(2)(ii)(H)].
- 10.11.0 Disposition of DCS' PHI. At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of DCS' PHI, whether received from DCS or created or received by the Contractor on behalf of DCS, 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 DCS PHI infeasible. [45 CFR §164.504(e)(2)(ii)(I)].
- 10.12.0 Termination under HIPAA. This Agreement shall be terminated at DCS's discretion if DCS determines that the Contractor has violated a material term of this Article X of the Agreement with respect to the Contractor's obligations under this Article X of the Agreement. [45 CFR §164.504(e)(2)(iii)].

ARTICLE XI: NOTICE TO STATE

- 11.1.0 The Contractor shall immediately notify the State upon learning of any situation that can reasonably be expected to adversely affect the delivery of Project Services under the Agreement. If such notification is verbal, the Contractor shall submit to the State a written description of the situation and a recommendation for its resolution within seven (7) Business Days of learning of the situation. Notice shall be provided consistent with Appendix B, Section 9 of this Agreement.

ARTICLE XII: SUSPENSION OF WORK

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

may resume at such time as DCS issues a formal written notice authorizing a resumption of work.

ARTICLE XIII: GENERAL PROVISION AS TO REMEDIES

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

13.2.0 In addition to any other remedies available to DCS under the Agreement, DCS has the following additional remedies which may include, but are not limited to, the following:

13.2.1 The right for DCS to withhold payment of some or all of the amounts due and owed under the Agreement until Contractor's performance is brought within the specified parameters.

13.2.2 The application of credits against amounts due and owed by DCS under the Agreement.

ARTICLE XIV: COOPERATION WITH INVESTIGATIONS AND AUDITS

14.1.0 In addition to the Audit Authority requirements specified in Appendices A and B to this Agreement, the Contractor agrees to cooperate with DCS, any other authorized State or Federal Department, and any law enforcement authority, in the investigation, documentation and litigation of any alleged illegal act, misconduct or unethical behavior related to the RFP and/or Agreement, or in connection with any audit.

ARTICLE XV: WARRANTIES

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

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

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

15.1.3 Contractor Compliance. To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws,

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

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

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

ARTICLE XVI: REPORTS OWNERSHIP & ERROR CORRECTIONS

16.1.0 In addition to ownership provisions set forth elsewhere in Appendices A and B, the Contractor agrees that information and documents developed pursuant to the Agreement are the property of the State of New York and that the Contractor will not discuss such information, documents and systems with a third party without the express authorization of DCS.

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

ARTICLE XVII: TERMINATION

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

17.1.0 The State retains the right to cancel the Agreement without cause and in its sole discretion, provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not be understood as waiving 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;

- 17.2.0 If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Agreement or may exercise such other remedies as shall be available under the Agreement, at law and/or equity;
- 17.3.0 No delay or omission to exercise any right, power or remedy accruing to the State or DCS upon breach or default by the Contractor under the Agreement shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing;
- 17.4.0 If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under the Agreement, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Project Services provided prior to any such date. If the State employs a third party to perform Contractor's obligations under the Agreement, Contractor shall 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;
- 17.5.0 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 shall have the right to take one or more of the following actions:
- 1) terminate the Agreement in whole or in part;
 - 2) suspend, in whole or in part, payments due Contractor under the Agreement; and
 - 3) pursue equitable remedies to compel Contractor to perform.

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

- 17.6.0 For Violation of Procurement Lobbying Law. DCS reserves the right to terminate the Agreement in the event it is determined by DCS in its sole discretion that the certification filed by the Contractor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, DCS may, at its sole option, exercise its termination right by providing 10 days written notification to the Contractor, or providing notice in accordance with other written notification terms in the Agreement;
- 17.7.0 For Violation of Section 5-a of the Tax Law. DCS reserves the right to terminate the Agreement in the event that Contractor fails to file a certification pursuant to section 5-a of the Tax Law or the Tax Department or OFT discovers that the certification(s) filed by the Contractor pursuant to section 5-a of the Tax Law is/are false. Upon such finding(s), DCS may exercise its termination right by providing written notification to the Contractor;
- 17.8.0 Termination Notice. Notices required by this section shall be provided consistent with Appendix B, Section 9 of this Agreement; and

17.9.0 Mitigation of Costs. The Contractor shall not undertake any additional or new contractual obligations on or after the date of return receipt notice without the prior written approval of the State. On or after the date of return receipt notice and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

ARTICLE XVIII: TRANSITION

18.1.0 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:

18.2.0 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.

18.3.0 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.

18.4.0 Transition Plan. Within fifteen (15) days of receipt of a notice of termination or three (3) months prior to the end of the term of the Agreement, whichever event occurs first, the Contractor shall provide for approval by the State a detailed written plan for Transition ("Transition Plan") which outlines, at a minimum, the tasks, milestones and deliverables associated with the smooth transition of Services to the State, a third party or the successor contractor. Contractor agrees to amend the Transition Plan to include all other information deemed necessary by the State.

18.5.0 Contractor Transition Services. "Transition Services" shall be deemed to include Contractor's responsibility for all tasks and services outlined in the Agreement and for transferring in a planned manner specified in the Transition Plan all tasks and services to the State, a third party or the successor contractor. It is expressly agreed between the Parties that the level of service during the transition period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Agreement, provided, however, that where, during the Transition Period, tasks or services are transitioned to or assumed by the State, a third party or the successor contractor, Contractor shall not be held responsible for the negligent acts or negligent omissions of the State, a third party or the successor contractor or for service degradation resulting from the negligent acts or negligent omissions of the State, a third party or the successor contractor.

18.6.0 Compensation for Transition Services. Contractor shall be reimbursed for Transition Services performed during the Transition Period at the rates set forth in the Agreement.

18.7.0 State Responsibilities for Transition. The State shall assume responsibility for Transition project management. A project manager responsible for coordinating Transition activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed.

ARTICLE XIX: CONTRACTOR QUALIFICATIONS AND KEY PERSONNEL

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

ARTICLE XX: SECURITY RESPONSIBILITIES AND FEDERAL OR STATE DISCLOSURE PROHIBITIONS

- 20.1.0 The Contractor shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in performance of its activities under the Agreement. Contractor shall ensure that its personnel, agents, officers and subcontractors, if any are fully aware of the obligations arising under this section and shall take all commercially reasonable steps to ensure compliance. The Agreement may be terminated by the State for cause for a material breach of this Article XX.
- 20.1.1 Security Responsibilities:
Contractor warrants, covenants and represents that it shall comply fully with all security procedures and policies of the State, which procedures and policies are communicated to the Contractor by DCS during the performance of the Agreement, including but not limited to Article X of this Agreement and Department's Information Security Policy (See RFP, **Appendix C**). Contractor shall hold the State harmless from any loss or damage to the State resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, while performing services under the Agreement.
- 20.1.2 Federal or State Disclosure Prohibitions:
In the event that it becomes necessary for Contractor to receive Confidential Information, which Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees to return or destroy all such Confidential Information that has been received from the State when the purpose that

necessitated its receipt by Contractor has been completed. In addition, Contractor agrees not to retain any Confidential Information which Federal or State statute or regulation prohibits from disclosure after termination of the Agreement.

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

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

ARTICLE XXI: DEPARTMENT ACCEPTANCE OF DELIVERABLES

21.1.0 Each final deliverable prepared by the Contractor associated with a given task is subject to Department review and acceptance. The Department will evaluate each final deliverable submitted by the Contractor for conformity and compliance to its stated scope, functionality or purpose. The Department shall have the right to accept or reject each final deliverable. If the Department rejects a final deliverable, the Department's Contract Manager will so notify the Contractor within five (5) Business Days of the Department's receipt of the final deliverable and forward its comments to the Contractor outlining deficiencies noted. At the Department's sole discretion, the Contractor will be provided with an opportunity to correct the deficiency(ies) cited by the Department, and resubmit the final deliverable for Department acceptance within a timeframe established by the Department. Any resubmission of a rejected final deliverable shall include responses to all Department comments, in addition to corrections for the noted deficiencies. Resubmitted final deliverables will likewise be subject to Department acceptance or rejection. The Department will evaluate each correction made by the Contractor and either accept or reject the resubmitted final deliverable. If the Department rejects a resubmitted final deliverable, the Department's Contract Manager will so notify the Contractor within five (5) Business Days of the Department's receipt of the resubmitted final deliverable and forward its comments to the Contractor outlining deficiencies noted. The Department may provide verbal comments to the Contractor, during, and in addition to, the formal deliverable review process described above. If the Contractor does not receive Department approval of a final deliverable or resubmitted final deliverable, if applicable, the Contractor will return any monies paid associated with the task for which the deliverable was prepared. If the Department does not notify the Contractor within five (5) Business Days of its acceptance or rejection of a final deliverable or resubmitted final deliverable, if applicable, then the final deliverable or resubmitted deliverable, if applicable shall be deemed to have been accepted by the Department.

APPENDIX A
Standard Clauses for New York State Contracts

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APPENDIX A**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, licensor, 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

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

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any

employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-c 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.

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

affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the Department contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting Department 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 Department; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting Department is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for

the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

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

(b) at the request of the contracting Department, the Contractor shall request each employment Department, 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 Department, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

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

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

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

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

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

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

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

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

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

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

Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business
Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

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

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

result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

June 2006

APPENDIX B
STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

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INTEGRATION

The Contract executed between the Department and the Contractor (or Purchase Order issued by the Department) is hereinafter referred to as this Agreement. This Agreement, including all Exhibits, Attachments and Appendices, copies of which are attached hereto, and incorporated herein by reference, constitutes the entire agreement between the Parties. All prior agreements, representations, statements, negotiations and undertakings are superseded hereby.

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

1. EXECUTORY PROVISION

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

2. CHOICE OF LAW

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

3. DISPUTE RESOLUTION

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

4. WAIVER OF BREACH

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

5. NEW YORK STATE REQUIREMENTS

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

6. OUTSIDE OF SCOPE

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

7. NON-ASSIGNABILITY

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

8. NOTIFICATION

Any notice required by this Agreement to be given by one Party to the other shall be sent by registered or certified mail, return receipt requested, by delivery service with proof of receipt provided by such service, or shall be delivered in hand and a receipt granted.

9. INDEMNIFICATION

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

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

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

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

10. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT

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

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

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

11. DATE/TIME WARRANTY

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

must perform as a package or system, this warranty shall apply to the products and/or services as a system.

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

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

12. VIRUS WARRANTY

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

13. TITLE AND OWNERSHIP WARRANTY

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

14. USE RESTRICTIONS AND INTELLECTUAL PROPERTY

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

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

15. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES

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

(A) Definitions1. Products:

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

2. Existing Products:

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

3. Custom Products:

Products, preliminary, final or otherwise, which are created or developed by The Contractor, or its subcontractors, partners, employees, or agents under this Agreement for the benefit of the Department.

(B) Title to Project Deliverables

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

1. Existing Products:

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

b) Software - Title and ownership to Existing Software Product(s) delivered by The Contractor under this Agreement which is normally commercially distributed on a license basis by the Contractor or other independent software vendor/proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or other independent software vendor/proprietary owner ("ISV"). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless the Contractor advises the Department as part of the Contractor's bid proposal that adaptation will violate existing agreements or statutes and the Contractor demonstrates such to the Department's satisfaction) and distribute Existing Licensed Product to the

Department up to the license capacity stated in the work order with all license rights necessary to fully effect the general business purpose(s) stated in this Agreement and (b) recognize the State of New York as the licensee. Where these rights are not otherwise covered by the ISV's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Department shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

2. Custom Products:

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

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

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

3. Documentation, Data & Reports

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

16. FORCE MAJEURE

Neither Party to this Agreement shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accident, fire, explosions, earthquakes, floods, the elements, acts or omissions of public utilities or strikes, work stoppages, slow downs

or other labor interruptions due to labor/management disputes involving entities other than the Parties to this Agreement, or any other causes not reasonably foreseeable or beyond the control of a Party. The Parties are required to use best efforts to eliminate or minimize the effect of such events during performance of this Agreement and to resume performance of this Agreement upon termination or cessation of such events.

17. TIME OF THE ESSENCE

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

18. RIGHTS AND REMEDIES

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

19. FEDERAL AND STATE COMPLIANCE

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

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

20. 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.

21. INDEPENDENT CONTRACTOR

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

22. NO THIRD PARTY BENEFICIARIES

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

23. HEADINGS OR CAPTIONS

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

24. PARTIAL INVALIDITY

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

25. CONFLICT OF INTEREST

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

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

26. AUDIT AUTHORITY

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

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

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

27. CONFIDENTIALITY

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

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

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

28. INFORMATION REQUIREMENTS

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law section 889-aa, Sate Technology Law section 208). Contractor shall be liable for the costs associated with noncompliance if caused by the Contractor's negligent or willful acts of omissions, or the negligent or willful acts of omissions of the Contractor's agents, officers, employees, or subcontractors.

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

29. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

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

- (a) information that is previously rightfully known to the receiving party without restriction on disclosure;

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

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

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

This representation shall survive termination of this Agreement.

30. FREEDOM OF INFORMATION LAW

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

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

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

31. TERMINATION OF AGREEMENT

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

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

The Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including

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

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

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

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

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

32. CONTRACTOR PERSONNEL

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

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

The Contractor is required to commit key personnel for the administration of all aspects of this Agreement. In the event that any of the key personnel will be or are unavailable for the performance of their duties, the Contractor will designate and

propose to the Department an equally qualified alternate with full authority to act for the unavailable key person.

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

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

33. OPERATIONAL CONTACTS

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

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

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

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

34. SUB-CONTRACTORS

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

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

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

The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract or which may affect the performance of the Contractor's duties under this Agreement.

The Department's requirement of prior approval of any subcontract under this Agreement shall not make the Department or the State of New York a party to any subcontract or create any right, claim, or interest in the sub-contractor or proposed sub-contractor against the Department.

Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of this Agreement.

35. PUBLICITY AND COMMUNICATIONS

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

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

36. CONSULTANT DISCLOSURE REQUIREMENTS

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

**37. PROCUREMENT LOBBYING RESTRICTIONS UNDER STATE FINANCE LAW
SECTIONS 139-J AND 139-K**

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

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

38. VENDOR RESPONSIBILITY

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

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

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

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

May 2008

APPENDIX C

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*

Buck Consultants, LLC

with principal offices at

One Pennsylvania Plaza

New York, NY 10119-4798

(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:

Attachment 1: Third Party Connection and Data Exchange Agreement Terms and Conditions

Attachment 2: Third Party Connection and Data Exchange Request Requirements Document

Attachment 3: Third Party Acceptable Use Policy and Agreement

Attachment 4: DCS Equipment Loan Agreement (Applicable: Yes No)

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

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

Third Party Name:

Buck Consultants, LLC

Authorized Signature



Name (Print)

Harvey Sobel

Date 6/16/2009

NYS Department of Civil Service (DCS)

Authorized Signature



Name (Print)

DEIRDRE A. TAYLOR

Date

JUN 17 2009

**DEPUTY COMMISSIONER
FOR ADMINISTRATION**

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT**ATTACHMENT 1 – SECURITY REQUIREMENTS****1. Right to Use Connection**

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

2. Data Exchange

- 2.1 Third Party may only use the data obtained for purposes outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2) and the contract or Memoranda of Understanding, if any, that exists between DCS and Third Party for the provision of goods or services or governing conduct between DCS and Third Party with respect to the access to and use of DCS data.
- 2.2 Data exchange may be conducted only by methods and/or services outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2). Third Party should expect that access to information and services may be limited, as determined or required by DCS.

3. Network Security

- 3.1 Third Party will allow only its own employees approved in advance by DCS ("Third Party Users") to access the Network Connection or any DCS-owned equipment. Third Party shall be solely responsible for ensuring that Third Party Users are not security risks, and upon DCS' request, Third Party will provide DCS with any information reasonably necessary for DCS to evaluate security issues relating to any Third Party User.
- 3.2 Third Party will promptly notify DCS whenever any Third Party User leaves Third Party's employ or no longer requires access to the connection or DCS-owned Equipment.
- 3.3 Each Party will be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (a) such party's use of the connection (and Third Party's use of DCS-owned Equipment) is secure and is used only for authorized purposes, and (b) such Party's business records and data are protected against improper access, use, loss alteration or destruction.
- 3.4 The preferred connectivity method is via the Internet to a DCS-approved or DCS-provided Virtual Private Network (VPN) device. If the device is DCS-provided, DCS will loan the Third Party, in accordance with the DCS Equipment Loan Agreement, the required client software for establishing VPN connections with DCS. Normal DCS perimeter security measures will control access to the internal network.
- 3.5 Extranet – Designated routers are used in combination with firewall rules to allow access to be managed. A second authentication may be required.

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

4. Notifications

- 4.1 Third Party shall notify DCS in writing promptly of any change in its Users for the work performed over the Network Connection or whenever Third Party believes a change in the connection and/or functional requirements of the connection is necessary.

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: Buck Consultants, LLC	NYS Department of Civil Service Albany, New York 12239
Address: 500 Plaza Drive, Secaucus, NJ 07096	
Attention: Harvey Sobel	Attention: Anne Hopko

5. Citizen Notifications

5.1 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 Department 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

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

7. Confidentiality

7.1 Information exchanged for the business purposes outlined in Attachment 2 will be held confidential by the Parties to the maximum extent permitted by law. Each Party may internally use the information received from the other Party hereunder in connection with and as specifically necessary to accomplish the Business Purpose set forth in Attachment 2 and for no other purposes. Each Party may otherwise share such information with other third parties (e.g. consultants, subcontractors, control agencies) as required or permitted by law in order to effect the business purposes outlined in Attachment 2 and for no other purposes, provided that such third parties agree to the confidentiality restrictions set forth herein and as may be required otherwise by State and federal law.

7.2 Third Party must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the sensitive information that it creates, receives, maintains, or transmits on behalf of DCS.

7.3 Unencrypted DCS information must not be transmitted over email.

-
- 7.4 Third Party must ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it and report to the DCS Help Desk any security incident of which it becomes aware.

8. Third Party Users

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

9. DCS-owned Equipment

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

10. Term, Termination and Survival

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

11. Severability

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

12. Waiver

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

13. Assignment

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

14. Force Majeure

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

15. Partial Invalidity

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

July 2005

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 2 – REQUEST REQUIREMENTS

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

Part 1 – Business Justification

A. DCS Sponsor (Division Director)

Name:	Division:
Robert DuBois	Employee Benefits Division
Office Location:	Phone Number:
Alfred E. Smith Building, Albany, NY 12239	518-473-1977
Email Address:	
Robert.DuBois@cs.state.ny.us	

Back-up Point of Contact: (Data Custodian)

Name:	Division:
Barbara Vaughn	Employee Benefits Division
Office Location:	Phone Number:
Alfred E. Smith Building, Albany, NY 12239	518-486-6735
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.

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

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

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

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

Access Controls:

Audit Controls:

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

Method of Disposal of media and paper:

User Account Management, including review of accounts:

Physical Security:

Other:

E. Estimated number of hours of use each week?

1 - 20

21 - 40

More than 40 hours per week

F. Anticipated normal hours of use?

M - F, 8:00 - 5:00 pm Eastern time

Other (specify):

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

H. Approximately how long will the connection be needed?

Up to 6 months

6 - 12 months

More than 12 months

Specific time period:

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

I. Other useful information

I. 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*):

J. 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 (*print*):

Organization:

Telephone Area code Number Extension
Number:

Office Address:

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

User Signature:

Date:

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

**MAIL: NYS Department of Civil Service, Albany, NY 12239
 Attention: Help Desk
FAX: 518-485-5588**

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT**ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT****I. Protection of DCS Information**

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

II. DCS Log-on Banner

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

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

III. Passwords

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

IV. Shared Accounts

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

V. Virus Protection

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

VI. Acceptable Use

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

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

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

VII. Software Protection

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

VIII. Reporting Incidents

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

IX. DCS Rights

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

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

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

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

X. Penalties

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

EXHIBITS TO CONTRACT

EXHIBIT A – PRICING SCHEDULES

Task #1 - Premium Rate Renewals

(Link **54.04.1**)

Exhibit S, Form S-1
Page 1 of 1

Years 1 through 3	Year 1			Year 2			Year 3		
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost
	Position Title								
Principal		57			57			57	
Lead Consultant		95			95			95	
Consultant		15			15			15	
Analyst		55			55			55	
Administrative Assistant		2			2			2	
Not-To-Exceed Total Cost									

Years 4 through 6	Year 4			Year 5			Year 6		
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost
	Position Title								
Principal		57			57			57	
Lead Consultant		95			95			95	
Consultant		15			15			15	
Analyst		55			55			55	
Administrative Assistant		2			2			2	
Not-To-Exceed Total Cost									

Year 7	Year 7			Task #1 Seven Year Total		
	Fixed Hourly Rate	# Hours	Total Projected Cost			
	Position Title					
Principal		57				
Lead Consultant		95				
Consultant		15				
Analyst		55				
Administrative Assistant		2				
Not-To-Exceed Total Cost						

Exhibit A
Page 2 of 6

Task #2 - Quarterly Analysis

Exhibit S, Form S-2
Page 1 of 3

Year 1	Year 1 1st Quarter			Year 1 4th Quarter			Year 1 Totals
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	
Principal		15			15		
Lead Consultant		52			60		
Consultant		10			15		
Analyst		28			50		
Administrative Assistant		2			2		
Not-To-Exceed Total Cost							

Year 2	Year 2 1st Quarter			Year 2 4th Quarter			Year 2 Totals
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	
Principal		15			15		
Lead Consultant		52			60		
Consultant		10			15		
Analyst		28			50		
Administrative Assistant		2			2		
Not-To-Exceed Total Cost							

Year 3	Year 3 1st Quarter			Year 3 4th Quarter			Year 3 Totals
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	
Principal		15			15		
Lead Consultant		52			60		
Consultant		10			15		
Analyst		28			50		
Administrative Assistant		2			2		
Not-To-Exceed Total Cost							

Task #2 – Quarterly Analysis

Exhibit S, Form S-2
Page 2 of 3

Year 4	Year 4 1st Quarter			Year 4 4th Quarter			Year 4 Totals
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	
Principal		15			15		
Lead Consultant		52			60		
Consultant		10			15		
Analyst		28			50		
Administrative Assistant		2			2		
Not-To-Exceed Total Cost							

Year 5	Year 5 1st Quarter			Year 5 4th Quarter			Year 5 Totals
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	
Principal		15			15		
Lead Consultant		52			60		
Consultant		10			15		
Analyst		28			50		
Administrative Assistant		2			2		
Not-To-Exceed Total Cost							

Year 6	Year 6 1st Quarter			Year 6 4th Quarter			Year 6 Totals
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	
Principal		15			15		
Lead Consultant		52			60		
Consultant		10			15		
Analyst		28			50		
Administrative Assistant		2			2		
Not-To-Exceed Total Cost							

Task #2 - Quarterly Analysis

Exhibit S, Form S-2
Page 3 of 3

Year 7 Position Title	Year 7 1st Quarter			Year 7 4th Quarter			Year 7 Totals
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	
Principal		15			15		
Lead Consultant		52			60		
Consultant		10			15		
Analyst		28			50		
Administrative Assistant		2			2		
Not-To-Exceed Total Cost							

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

Task #2 Seven Year Total amount ⁽²⁾	\$678,407
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(2) = Sum of Year 1 Total amount through Year 7 Totals amount.

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

Exhibit S, Form S-3
Page 1 of 1

Fixed Hourly Rates							
Position Title	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Principal							
Lead Consultant							
Consultant							
Analyst							
Administrative Assistants							

Tasks #3 Projected Hours Per Position Per Activity

Exhibit S, Form S-4
Page 1 of 1

Projected Hours Per Position Task #3 Activity						
Position Title	2010 Valuation Report	2011 Year Two Roll Forward Report	2012 Valuation Report	2013 Year Two Roll Forward Report	2014 Valuation Report (optional)	2015 Year Two Roll Forward Report (optional)
Principal	60	5	55	5	55	5
Lead Consultant	100	25	90	20	90	20
Consultant	145	15	140	10	140	10
Analyst	220	0	200	0	200	0
Administrative Assistants	4	2	4	2	4	2

EXHIBIT B

PLACE HOLDER FOR EXHIBIT B

The RFP, dated November 3, 2008, other than Appendices A, B, and C, as amended via the Department's Official Responses to Offerors' Questions dated, December 15, 2008 and December 18, 2008

EXHIBIT C

PLACE HOLDER FOR EXHIBIT C

The Contractor's Proposal dated, January 14, 2009