

AGREEMENT NO. C000593

THIS AGREEMENT 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 Wells Fargo Bank, N.A. ("Contractor"), a corporation authorized to do business in the State of New York with a principal place of business located at 375 Park Avenue, New York, NY 10152, 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 May 3, 2010, the Department of Civil Service issued an Invitation for Bids entitled, "Banking Services" (collectively, the Invitation for Bids and all amendments and clarification thereto shall hereinafter be referred to as the "IFB," or "Exhibit 1" which is annexed to this Agreement and made a part hereof) to secure the services of a qualified consulting firm to perform the Project Activities set forth in the IFB (hereinafter collectively referred to as "Project Services"); and

WHEREAS, after thorough review and evaluation by the Department of Proposals accepted in response to the IFB, the Contractor's Proposal (collectively, the Proposal and all amendments and clarification thereto shall hereinafter be referred to as the "Proposal," or "Exhibit 2" which is annexed to this Agreement and made a part hereof) 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 IFB and the Contractor's Proposal, pursuant to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I: CONTRACTOR RESPONSIBILITIES AND QUALIFICATIONS

1.1.0 Contractor Responsibilities:

The Contractor shall be solely and fully responsible for providing Project Services, in such a manner so as to be in compliance with the requirements as set forth in this Agreement and the IFB 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. The Contractor shall be solely and fully responsible for the performance of all work and the successful delivery of all contracted deliverables/services, including efforts by its staff and by its Key Subcontractors and their staff.

Throughout the contract term of this Agreement, including any extensions thereto, in addition to the requirements of the State Finance Law § 138, 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 Key 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 this Agreement 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 this 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.

1.2.0 Contract Qualifications:

Contractor acknowledges that this 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 Key Subcontractors, if any, engaged to provide Project Services under this Agreement.

Throughout the term of this Agreement, the Contractor shall:

- 1.2.1 be authorized to conduct business in New York State;
- 1.2.2 complete, obtain and/or perform all registrations, filings, approvals, authorizations, consents and examinations required by any governmental authority for the provision of the delivery of Project Services and comply with any requirements imposed upon it by law;
- 1.2.3 possesses adequate qualified staffing resources, financial resources and organization to perform the type, magnitude and quality of work specified herein this Agreement;
- 1.2.4 not perform Project Services in a state that penalizes New York State vendors;
- 1.2.5 maintain a principal office or branch office in Albany, New York;
- 1.2.6 remain a bank or trust company chartered under Article III of New York Banking Law, or a national bank; must possess the authority to accept deposits held in the name of the State of New York and must agree to pledge securities as collateral for New York State deposits at the State’s Fiscal Agent in accordance with Section 105

of NYS Finance Law, satisfactory in form and amount to the State of New York for the repayment of such deposits;

- 1.2.7 maintain a LACE (Liquidity Asset Quality Capital Earnings) rating of at least a C;
- 1.2.8 make all deposited funds available immediately upon deposit for transfer into the State treasury;
- 1.2.9 maintain on file with the Office of the State Comptroller (OSC) a "State of New York Undertaking for Bank Deposits and Assignment of Securities"; and
- 1.2.10 acknowledge that all data, materials and/or information provided by Enrollees, PA's, PE's and/or the Department or the Department's agents and/or contractors is being provided to the Contractor solely for the purposes of allowing the Contractor to fulfill its duties and responsibilities under this Agreement; acknowledge that said materials are the sole property of the State; and agree that it will not, in perpetuity, share, sell, release, or make the data, materials and/or information available to third parties in any manner without the written consent of the Department, except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law. This provision shall survive the expiration or termination of this Agreement.
- 1.2.11 provide a copy of all bank agreements that may be necessary to perform the Project Services outlined in the IFB and agree to negotiate the terms of the(se) agreement(s) with the State.

In addition to the Termination provisions contained in Article XII, failure to comply with any or all of the requirements set forth in sections 1.2.1 through 1.2.11 above may result in termination, suspension or cancellation of this Agreement, in whole or in part, or the Department taking any other action deemed necessary by the Department.

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

- 2.1.0 This Agreement shall be subject to the approval of the NYS Attorney General's Office ("AG") and the NYS Office of the State Comptroller ("OSC"). This Agreement shall commence upon the approval of the Agreement by OSC, with the Implementation Phase of the Project to be completed no later than September 30, 2010, and the Operational Phase to commence on October 1, 2010, and shall continue through and include September 30, 2013, with up to two (2) one (1) year optional extension periods. Said optional extensions are exercisable at the sole discretion of the Department subject to the approval of the AG and the OSC. Pricing during said extension shall be in accordance with the rates provided in this Agreement. The Department shall provide the Contractor notice of at least thirty (30) days prior to the end of the then current term of this Agreement of any such election to extend this Agreement.
- 2.2.0 This 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 This 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 New York State Contracts);
 - 3.1.2. Appendix B and Appendix C of the IFB;
 - 3.1.3. Any Amendments to the body of this Agreement;
 - 3.1.4. The body of this Agreement;
 - 3.1.5. Exhibit 1, the IFB, other than Appendices A, B, and C, as amended via the Department's Official Responses to Offerors' Questions dated May 26, 2010, as supplemented on May 28, 2010;
 - 3.1.6. Exhibit 2, the Contractor's Proposal dated June 7, 2010, including the Contractor's Clarification Responses as follows:
 - Clarification Response #1, dated June 16, 2010;
 - Clarification Response #2, dated June 16, 2010;
 - Clarification Response #3, dated June 17, 2010;
 - Clarification Response #4, dated June 21, 2010; and
 - Clarification Response #5, dated June 28, 2010, as supplemented on June 29, 2010 and July 7, 2010; and
 - 3.1.7. Exhibit 3, Schedule of Fees and Expenses.
- 3.2.0 Only documents expressly enumerated above shall be deemed a part of this 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.
- 3.4.0 Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation, or other entity, other than the Parties hereto and their successors in interest and assigns; any rights or remedies under or by reason of this Agreement.
- 3.5.0 The terms, provisions, representations, and warranties contained in this 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 this 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 this 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 this Agreement or which may affect performance of the Contractor's duties under this Agreement.

ARTICLE V: PROJECT SERVICES

- 5.1.0 During the term of this Agreement, the Contractor will be responsible for the performance of those services/tasks as described herein this Article V, "Project Services", of this Agreement and any and all other Project Services as referenced in the IFB.

- 5.2.0 During the Implementation Phase of the Project, the Contractor must:
- 5.2.1 designate a Contract Officer to serve as the primary contact between the Parties during the entire term of the Agreement. This individual shall be responsible for 1) overseeing the Contractor's and the Contractor's Project Teams performance under the Agreement, 2) serving as the Contractor's liaison with the Department in order to resolve day-to-day operational difficulties; and 3) providing timely responses (one Business Day) to administrative concerns and inquiries posed by the Department;
 - 5.2.2 maintain an organization of sufficient size with the skills and experience necessary to administer, manage and oversee all aspects of the Project during the Implementation Phase, as well as during Ongoing Operations;
 - 5.2.3 undertake and complete all Project implementation activities no later than September 30, 2010, such that the Ongoing Operation Phase of the Project commences on October 1, 2010;
 - 5.2.4 establish and maintain throughout the term of the Agreement, at least two (2) lockboxes with the United States Postal Service (USPS) in New York State, preferably in Albany, NY (one lockbox is for the collections of enrollee payments the second lockbox is for the collection of agency payments); and
 - 5.2.5 if selected, supply the Department with the addresses of the lockboxes no later than August 15, 2010.
- 5.3.0 Throughout the term of the Agreement, the Contractor must
- 5.3.1 be in compliance with applicable federal and New York State statute, rules and regulations for banking institutions;
 - 5.3.2 keep DCS informed of pending State/Federal legislation affecting banking services in a timely manner;
 - 5.3.3 provide advice and recommendations regarding Project Services, including but not limited to technological improvements and innovation, with the understanding that DCS is under no obligation to act on such advice or recommendations;
 - 5.3.4 have quality control procedures in place to assure accuracy and timeliness in processing receipts;
 - 5.3.5 be able and willing to modify existing procedures/reports and/or develop new procedures/reports in cooperation with DCS; and
 - 5.3.6 with regard to, the electronic transfer of data:
 - i. be capable of receiving and transmitting data in a secure electronic format and on a schedule mutually agreed upon by the Contractor and the Department;
 - ii. be able to transmit data in the formats required by the file layouts presented in IFB, Appendices P through S;
 - iii. maintain a HIPAA compliant level of security to protect the confidentiality of information on the Contractor's computer system and in the Contractor's physical work environment; and

- iv. have a disaster recovery plan in place to reasonably ensure the continued delivery of Project Services in the case of an unforeseen event, including but not limited to a disaster or emergency.

5.4.0 Throughout the Ongoing Operational Phase of the Project, the Contractor:

- 5.4.1 will be solely responsible for the timely and accurate processing of items received through the lockboxes;
- 5.4.2 must retrieve all of the items in the lockboxes by 12:00 pm (noon) on each Business Day;
- 5.4.3 must process all lockbox items on the Business Day they are retrieved from the lockbox;
- 5.4.4 must be capable of processing and depositing an anticipated monthly volume of 11,000 receipts per month on the same Business Day as they are retrieved from the lockbox. (Note: Appendix M provides an average of the daily receipts for the most recent fiscal year and a two month count of transactions for the two lockboxes that are currently utilized.); and
- 5.4.5 must adhere to Lockbox Processing Procedures Guidelines as outlined in IFB, Appendix L.

5.5.0 Throughout the Ongoing Operational Phase of the Project, the Contractor:

- 5.5.1 shall on each Business Day, between the hours of 10:00 a.m. and 1:00 p.m. ET, using a courier service provided by the Contractor or overnight delivery (at the discretion of DCS):
 - pick-up non-lockbox deposits from the Department; and
 - deliver to EBD the following items:
 - all items that are deemed Unprocessable; and
 - deposit slip for the prior Business Day's non-lockbox deposits;
- 5.5.2 shall accurately process and deposit all of the non-lockbox deposits picked up from the Department on the day they are picked up; and
- 5.5.3 shall work with the Department to provide Remote Deposit functionality, if during the term of the Agreement, the Department decides to adopt and implement such practices.

5.6.0 Throughout the Ongoing Operational Phase of the Project, the Contractor:

- 5.6.1 shall post all deposits on the Business Day retrieved/received and make funds available within one (1) Business Day of deposit;
- 5.6.2 must cooperate with the Department and any other contractor if the Department, during the term of the Agreement, decides to accept premium payments online. (Offerors are advised that during the term of the Agreement, the Department may wish to offer NYSHIP enrollees and agencies the option to pay premiums via various online services.);

- 5.6.3 be able to accept and accurately process wire transfers from PAs/PEs (Occasionally an Agency makes payment via wire transfer vs. by check, the Department anticipates that this will continue during the term of the Agreement, the anticipated volume is less than 200 per year);
- 5.6.4 be able to process checks that arrive at the lockbox without remittance advice documents but with an account number on the check; and
- 5.7.0 Throughout the Ongoing Operational Phase of the Project, the Contractor must:
 - 5.7.1 make available various reports of payment transaction deposits as required by DCS for its use in the review, management, and analysis of the payment transactions;
 - 5.7.2 verify the accuracy of all reports produced, regardless of the medium;
 - 5.7.3 make available reports available in an electronic format, mutually agreed upon between the Contractor and the Department and in a format that allows DCS to load the reports to its mainframe or PC based computer system and to print the reports, as needed;
 - 5.7.4 must make available separate files for each of the two (2) lockboxes; and
 - 5.7.5 must make available the following daily and monthly reports/files as specified below:
 - (a) Daily Reports/Files:
 - i. Payment Detail Transaction File - The Contractor must provide, in a format acceptable to the Department, a Payment Detail Transaction File for lockbox and non-lockbox payments combined for each of the payment types (enrollee and agency). The Payment Detail Transaction File must be electronically transmitted to DCS, or be available to retrieve from the Contractor using a secure internet connection by 8:00 p.m. ET on the day of the deposit. Refer to Appendix P - Enrollee Lockbox Reporting Specifications and Appendix Q- Agency Lockbox Reporting Specifications.
 - ii. Payment Detail Transaction Report - The Contractor must provide, in a format acceptable to the Department, a Payment Detail Transaction Report for lockbox and non-lockbox payments combined for each of payment types (enrollee and agency). The Payment Detail Transaction Report must be provided within one (1) Business Day of deposit. The reports can be made available through a secure internet connection or transmitted electronically in a secure format to DCS. Preference is for the reports to be Microsoft Excel format. The report should include functionality to allow the sorting/searching on the unique fields of each transaction. Refer to Appendix R for report specifications.
 - iii. Daily Balance Report - The Office of State Comptroller (OSC), Cash Management Unit requires on-line access using a secure internet connection to the account for previous day balance reporting and funds transfer capabilities. Balance reporting must include ledger balance, available balance, and previous day detailed activity; the reporting must

be available in BA12 format. The report must be available by 10 a.m. ET the Business Day following the day of deposit.

- iv. Imaged Payment Remittance Forms, Checks and Correspondence File - The Contractor must image and store each individual payment remittance form, check and any correspondence, including envelopes (where an address change is indicated). The Contractor must make available to DCS the capability to search and download online using a secure internet connection for specific individual payment remittance forms/payments/correspondence, view and print the imaged payment remittance form/check/correspondence. Imaged documents must be available to retrieve online for the entire duration of the Agreement plus one (1) full year after the termination of the Agreement. The images must be made available the day after they are imaged.

(b). Monthly Reports

- i. Transaction Summary Report - The Contractor must provide, in a format acceptable to the Department, a Transaction Summary Report of daily deposits for each lockbox within five (5) Business Days from the end of the month. The reports can be made available using a secure internet connection or transmitted electronically in a secure format to DCS. Preference is for the reports to be Microsoft Excel format. The report should include functionality to allow the sorting/searching on the unique fields of each transaction. Refer to Appendix S for report specifications.
- ii. Account Analysis Statement - The Office of State Comptroller (OSC), Cash Management Unit requires on-line access to a monthly account analysis statement using a secure internet connection itemizing all charges with volume and detailed unit costs; the statement must be provided in an 822 electronic account analysis format.

5.5.0 Performance Guarantees

5.5.1 Implementation Guarantee

The Contractor guarantees that all implementation activities will be completed no later than September 30, 2010 and agrees to pay to the DCS a penalty of \$1,250 per day and further agrees to pay the sum of the penalty amounts established for Performance Guarantees 5.5.2 through 5.5.7, below, for each day after September 30, 2010 that all implementation activities are not completed.

5.5.2 Lockbox Retrieval Guarantee

The Contractor guarantees that by 12:00 pm (noon) of each Business Day all of the items in the DCS's lockboxes will be retrieved from the lockboxes and agrees to pay to the DCS a penalty of \$125 each time the Contractor fails to meet this guarantee. The Contractor also agrees that failure to meet this performance guarantee does not relieve the Contractor of its responsibility to satisfy the associated Business Day's performance guarantees 5.5.3, 5.5.5, and 5.5.6, below.

5.5.3 Lockbox Processing Guarantee

The Contractor guarantees that all items retrieved from the lockboxes will be processed on the Business Day that they are retrieved and agrees to pay to the DCS a penalty of \$125 each time the Contractor fails to meet this guarantee. The Contractor also agrees that failure to meet this performance guarantee does not

relieve the Contractor of its responsibility to satisfy the associated Business Day's performance guarantees 5.5.5 and 5.5.6, below.

5.5.4 Courier Pickup Guarantee

The Contractor guarantees that each Business Day deposits from EBD will be picked up between the hours of 10:00 a.m. and 2:00 p.m. ET and agrees to pay to the DCS a penalty of \$125 each time the Contractor fails to meet this guarantee. The Contractor also agrees that failure to meet this performance guarantee does not relieve the Contractor's responsibility to satisfy the associated Business Day's performance guarantees 5.5.5 and 5.5.6, below.

5.5.5 Deposit Guarantee

The Contractor guarantees that all deposits retrieved by 12:00 pm (noon) from the lockboxes and all deposits received from EBD via courier will be posted on the Business Day retrieved or received, as applicable and agrees to pay to the DCS a penalty of \$125 each time the Contractor fails to fully meet this guarantee. The Contractor also agree that failure to meet this performance guarantee does not relieve the Contractor's responsibility to satisfy the associated Business Day's performance guarantee 5.5.6, below.

5.5.6 Deposited Funds Availability Guarantee

The Contractor guarantees that all funds deposited are available within 24 hours of deposit for transfer into the State treasury and agree that the Contractor shall pay to the DCS a penalty of \$125 each day the Contractor fails to fully meet this guarantee.

5.5.7 Electronic Files Availability Guarantee

The Contractor guarantees the availability of daily Business Day electronic files for retrieval by 6:30 pm ET for each lockbox and non-lockbox deposit giving daily item counts and monetary totals in an EDP format that enables DCS to load information to its mainframe or PC based computer system and agrees to pay to the DCS a penalty of \$125 for each time the Contractor fails to fully meet this guarantee.

ARTICLE VI PUBLICITY

6.1.0 Neither the Contractor nor any of its officers, directors, employees, subsidiaries affiliates, partners, agents or Key Subcontractors, shall at any time, either during the term of or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the services performed or data collected under this Agreement, without prior written approval of the Department, unless otherwise required by law.

6.2.0 If pursuant to this Article VI, "Publicity", of this Agreement, the Contractor publishes a work related to any aspect of performance under this Agreement, or the results and accomplishments attained in such performance, the Department shall have, in addition to any rights and remedies it may have under this Agreement and at no additional cost to the State, a perpetual, royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

6.3.0 Neither Party grants the other the right to use any of its trademarks, trade names, logos, seals, or other designations, whether in any promotion, publication, or otherwise, without the other Party's prior written consent.

ARTICLE VII: PAYMENT FOR SERVICES

- 7.1.0 The DCS agrees to reimburse the Contractor in accordance with the provisions of the IFB, in particular IFB, §4.04, IFB, Appendix B, Article 41, and IFB, Exhibit R, at the fees/rates as proposed by the Contractor in its Proposal, said fees/rates having been attached hereto the body of the Agreement as Exhibit #3, for Project Services as rendered and, assuming the Department chose to implement one or more of the Optional Service as proposed by the Contractor in its Proposal, such Optional Service(s) as rendered.
- 7.2.0 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: NOTICES

- 8.1.0 All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - (a) via certified or registered United States mail, return receipt requested;
 - (b) by facsimile transmission;
 - (c) by personal delivery;
 - (d) by expedited delivery service; or
 - (e) by e-mail.

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

State of New York Department of Civil Service

Name: Ms. Anne Hopko
Title: Contract Manager
Address: AESOB, Employee Benefits Division, 6th Floor, Albany, NY 12239
Telephone Number: (518) 473-1788
Facsimile Number: (518) 402-2835
E-Mail Address: Anne.Hopko@cs.state.ny.us

Contractor

Name: Mr. Bernardo Ramos
Title: Senior Vice President
Address: 375 Park Avenue, New York, NY 10152
Telephone Number: (518) 932-4228
Facsimile Number: (336) 726-7113
E-Mail Address: Bernardo.ramos@wachovia.com

- 8.2.0 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- 8.3.0 The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other Party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE 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 this 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 this 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 IX, "Modification Of Required Services" of this 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 this 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 this 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.

ARTICLE X: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

- 10.1.0 For purposes of this Article X, "Use And Disclosure Of Protected Health Information" of this 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 collectively 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 Parts 160 and 164, and that each of those group health plans consequently is a "covered entity" under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, DCS is a responsible for the administration of these "covered entities" under HIPAA. The Contractor further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA), respectively. The Contractor further acknowledges that the Contractor is a HIPAA "business associate" of 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 to the extent that such services extend beyond the NYSHIP OHCA or Empire Plan

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

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

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

10.6.0 Breach Notification

a) Reporting. The Contractor shall report to DCS any breach of unsecured PHI, including any use or disclosure of the DCS' PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. 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. The Contractor shall notify DCS within five (5) business days of the date the Contractor becomes aware of the event.

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

- i. the date of the breach incident;

- ii. the date of the discovery of the breach;
 - iii. a brief description of what happened;
 - iv. a description of the types of unsecured PHI that were involved;
 - v. identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
 - vi. a brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals and to protect against any further breaches; and
 - vii. any other details necessary to complete an assessment of the risk of harm to the individual.
- c) DCS will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a breach, as well as the Secretary and the media, as required by 45 CFR Part 164.
 - d) The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to DCS upon request.
 - e) For purposes of this Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI.
 - f) The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by this Agreement.
- 10.7.0 Associate's Agents. The Contractor shall require all of its agents or 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 on the access, use and disclosure of PHI that apply to the Contractor with respect to DCS' PHI under this Agreement.
- 10.8.0 Availability of Information to DCS. The Contractor shall make available to DCS such information and documentation as DCS may require regarding any disclosures of PHI by the Contractor to fulfill DCS' obligations to provide access to, to provide a copy of, and to account for disclosures of DCS' PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department.
- 10.9.0 Amendment of 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. The Contractor shall, as directed by DCS, incorporate any amendments to DCS PHI into copies of such DCS PHI maintained by the Contractor.
- 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 in a time and manner designated by DCS and/or the Secretary for purposes of determining DCS' compliance with HIPAA and its implementing regulations.

10.11.0 Termination under HIPAA.

- a) This Agreement may be terminated by DCS at the DCS' discretion if DCS determines that the Contractor, as a business associate, has violated a material term of this Article or of the Agreement with respect to the Contractor's obligations under this Article.
- b) Disposition of the Department's PHI: At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of the 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 DCS' PHI infeasible.

10.12.0 Indemnification.

The Contractor agrees to indemnify, defend and hold harmless the State and DCS and its respective employees, officers, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by the Contractor or its employees, officers, subcontractors, agents or other members of its workforce. Accordingly, the Contractor shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Contractor's acts or omissions hereunder. The Contractor's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

10.13.0 Miscellaneous.

- a. Amendments. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of the Regulations.
- b. Survival. The respective rights and obligations of Business Associate and Covered Entity as set forth here this Agreement shall survive termination of this Agreement.
- c. Regulatory References. Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended or modified.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit covered entities to comply with HIPAA.

ARTICLE XI: NOTICE TO STATE

- 11.1.0 The Contractor shall immediately notify the State upon learning of any situation that can reasonably be expected to adversely affect the delivery of Project Services under this 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 Article 9 of Appendix B.

ARTICLE XII: SUSPENSION OF WORK

12.1.0 Notwithstanding any other provision of this Agreement, DCS reserves the unconditional right to suspend any or all activities under this Agreement, at any time, with or without cause and 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 either authorizing a resumption of work or providing notice of the Department's intent to pursue the DCS's rights pursuant to Article XVII, "Termination" of this Agreement.

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 this Agreement.

13.2.0 In addition to any other remedies available to DCS under this 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 this 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 this 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 IFB 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, "Warranties" of this Agreement shall be deemed a "material breach" for purposes of default under this 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 this Agreement

whether or not the Contractor, or Key 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 this Agreement, including all appendices.

15.1.2 Workmanship Warranty. That during the term of this Agreement, Contractor will provide the necessary levels of qualified personnel to ensure proper performance by Contractor of its obligations and responsibilities under this 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 this Agreement. Prior to award and during this Agreement term and any extension thereof, Contractor must establish to the satisfaction of DCS that it meets or exceeds all requirements of this Agreement and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation (see IFB, Appendix I), and shall provide such proof as required by DCS. Failure to do so may constitute grounds for DCS to cancel or suspend this 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 this Agreement shall survive the termination of this Agreement.

ARTICLE XVI: DATA SHARING AND OWNERSHIP

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

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

ARTICLE XVII: TERMINATION

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

- 17.1.0 The State retains the right to cancel this 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 this Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision.
- 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 this Agreement for cause or may exercise such other remedies as shall be available under this 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 this 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 In the event of the Contractor's default, in addition to availing itself of specific remedies set forth in this 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 this Agreement in whole or in part;
 - 2) suspend, in whole or in part, payments due Contractor under this 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.

- 17.5.0 For Violation of Procurement Lobbying Law. DCS reserves the right to terminate this Agreement for cause 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 this Agreement.
- 17.6.0 For Violation of Section 5-a of the Tax Law. DCS reserves the right to terminate this Agreement for cause 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.

17.7.0 Termination Notice. Notices required by this section shall be provided consistent with Article 9 of Appendix B and Article VIII.

17.8.0 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: MERGERS/ACQUISITIONS

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

ARTICLE XIX: TRANSITION

19.1.0 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:

19.1.1 Transition Period. The transition period shall be determined by the State, and Contractor will be notified of the period in writing. The State shall consult with the Contractor prior to making such determination. The State reserves the right to subsequently amend the transition period upon thirty (30) days advance written notice to the Contractor.

19.1.2 No Interruption in Service. At all times during the transition period and unless directed otherwise in writing by the State, the Contractor shall continue all contractual obligations set forth in the Agreement until such time as the State (i) has approved the Contractor's proposed transition plan, and (ii) an orderly transition to the State, a third party, or the successor contractor has been completed pursuant to the approved transition plan. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.

19.1.3 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.

- 19.1.4 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.
- 19.1.5 Compensation for Transition Services. Contractor shall be reimbursed for Transition Services performed during the Transition Period at the rates set forth in the Agreement.
- 19.1.6 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 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 this Agreement. Contractor shall ensure that its personnel, agents, officers and Key Subcontractors, if any are fully aware of the obligations arising under this section and shall take all commercially reasonable steps to ensure compliance. This 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 this Agreement, including but not limited to Article X, "Use And Disclosure Of Protected Health Information" of this Agreement and Department's Information Security Policy (See IFB, Appendix J). 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 this 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 this Agreement.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of this 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 this Agreement for cause if it determines that Contractor has violated a material term of this Article XX, "Security Responsibilities and Federal or State Disclosure Prohibitions" of this Agreement. The terms of this Article XX, "Security Responsibilities and Federal or State Disclosure Prohibitions" of this Agreement 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, "Security Responsibilities and Federal or State Disclosure Prohibitions" of this Agreement.

ARTICLE XXI: RESPONSIBILITY TERMS

- 21.1.0 The Contractor covenants and represents that it has, to the best of its knowledge, truthfully and thoroughly completed Contractor's Vendor Responsibility Questionnaire (hereinafter "Vendor Responsibility Questionnaire") provided to the Contractor by the Department prior to execution of this Agreement. The Contractor further covenants and represents that as of the date of execution of this Agreement, there are no material events, omissions, changes, or corrections to such document requiring an amendment to the Vendor Responsibility Questionnaire.
- 21.2.0 The Contractor shall provide to the Department updates to the Vendor Responsibility Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Vendor Responsibility Questionnaire becomes available.
- 21.3.0 Notwithstanding 21.2.0 hereinabove, the Department reserves the right, in its sole discretion, at any time during the term of this Agreement, (i) to require updates or clarifications to the Vendor Responsibility Questionnaire upon written request, (ii) to inquire about information included in or require information omitted from the Vendor Responsibility Questionnaire, and (iii) to require Contractor to provide such information to the Department within a reasonable timeframe.
- 21.4.0 The Department reserves the right to make a final determination of Contractor's non-responsibility (hereinafter "Determination of Non-responsibility") at any time during the term of this Agreement based on (i) any information provided in the Vendor Responsibility Questionnaire and/or in any updates, clarifications, or amendments thereof; or (iii) the Department's discovery of any other material information which pertains to Contractor's responsibility.
- 21.5.0 If the Department preliminarily determines Contractor to be non-responsible, the Department shall provide written notice to Contractor detailing the reason(s) for the preliminary determination, and shall provide Contractor with an opportunity to be heard.

21.6.0 Upon a Determination of Non-responsibility of Contractor, the Department reserves the right to terminate this Agreement for cause in accordance with the provisions of Article XVII, "Termination" of this Agreement.

ARTICLE XXII: CONFLICTS OF INTEREST

22.1.0 In addition to the Conflict of Interest provision contained in Appendix B to this Agreement, if the Contractor has a conflict of interest based upon its other business relationships which would render the Contractor unable to legally perform the work required under this Agreement, the Department may require that the contractual or employment relationship be terminated. The Contractor shall notify the Department of any such conflict upon becoming aware of such conflict.

22.2.0 The Contractor shall avoid having the provision of services under this Agreement by the Contractor, its employees, subsidiaries, affiliates, partners, agents or Key Subcontractors result in such a conflict of interest, or in the appearance of such a conflict of interest.

22.3.0 The Contractor represents and covenants that it has, and will maintain during the term of this Agreement, quality control systems to prevent such a conflict of interest from occurring, and that it maintains, and will maintain during the term of this Agreement, adequate safeguards to comply with this requirement.

22.4.0 If the Department terminates this Agreement, pursuant to 22.1.0 hereinabove, as a result of the Contractor establishing a new relationship with a third party, the Contractor shall compensate the Department for any and all reasonable, documented, direct costs that the Department incurs to re-procure a new contractor to perform the portion of the services not yet performed by the Contractor as of the effective date of termination and costs attributable to any delays suffered by the Department in the project, in each case to the extent resulting from such termination and re-procurement.

ARTICLE XXIII: ALL LEGAL PROVISIONS DEEMED INCLUDED

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

ARTICLE XXIV: ENTIRE AGREEMENT

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

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

Agency Code: 08000
Contract Number: C000593

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

NEW YORK STATE
DEPARTMENT OF CIVIL SERVICE
Nancy G. Groenwegen
COMMISSIONER

CONTRACTOR
Wells Fargo Bank, N.A.

By: _____

By: _____

Date: _____

Name: _____

Title: _____

Date: _____

INDIVIDUAL, CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF _____ }
 : **SS.:**
COUNTY OF _____ }

On the ____ day of _____ in the year 20__, before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at _____, Town of _____, County of _____, State of _____; and further that:

[Check One, as applicable]

(**If a corporation**): he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(**If a partnership**): he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

Notary Public

Approved as to form: Approved:

Andrew M. Cuomo
ATTORNEY GENERAL

Thomas P. DiNapoli
STATE COMPTROLLER

By: _____

By: _____

Date: _____

Date: _____

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the 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-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

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.

STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

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41. CONTRACT PAYMENT

1. INTEGRATION

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

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

2. EXECUTORY PROVISION

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

3. CHOICE OF LAW

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

4. DISPUTE RESOLUTION

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

5. WAIVER OF BREACH

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

6. NEW YORK STATE REQUIREMENTS

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

7. OUTSIDE OF SCOPE

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

8. NON-ASSIGNABILITY

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

9. NOTIFICATION

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

10. INDEMNIFICATION

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

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

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

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

11. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT

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

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

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

12. DATE/TIME WARRANTY

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

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

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

13. VIRUS WARRANTY

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

14. TITLE AND OWNERSHIP WARRANTY

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

15. USE RESTRICTIONS AND INTELLECTUAL PROPERTY

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

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

16. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES

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

(A) Definitions

1. Products:

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

2. Existing Products:

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

3. Custom Products:

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

(B) Title to Project Deliverables

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

1. Existing Products:

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

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

2. Custom Products:

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

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

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

3. Documentation, Data & Reports

The Department shall own title to all documentation, drawings, (e.g., engineering drawings, system diagrams, logic/schematics, plans, reports, training, maintenance or operating manuals), including network design, equipment configurations and

other documentation prepared or developed pursuant to this Agreement, whether preliminary, final or otherwise. The Contractor shall deliver to the possession of the Department all work-in-progress documentation as it becomes available, but in no case longer than thirty (30) days after creation.

17. FORCE MAJEURE

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

18. TIME OF THE ESSENCE

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

19. RIGHTS AND REMEDIES

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

20. FEDERAL AND STATE COMPLIANCE

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

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

21. TAXES

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

22. INDEPENDENT CONTRACTOR

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

23. NO THIRD PARTY BENEFICIARIES

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

24. HEADINGS OR CAPTIONS

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

25. PARTIAL INVALIDITY

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

26. CONFLICT OF INTEREST

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

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

27. AUDIT AUTHORITY

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

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

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

28. CONFIDENTIALITY

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

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

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

29. INFORMATION SECURITY REQUIREMENTS

In accordance with the Information Security Breach and Notification Act (ISBNA) (General Business Law §889-aa, State Technology Law §208), Contractor shall be responsible for complying with provisions of the ISBNA and the following terms contained herein with respect to any private information (as defined in ISBNA) received by Contractor under this Project (Private Information) that is within the control of the Contractor either on the Department's information security systems or the Contractor's information security system (System). In the event of a breach of the security of the System (as defined by ISBNA), Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and restore security of the System to prevent any further breaches. Contractor shall also notify the Department of any breach of the security of the System immediately following discovery of such breach.

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

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

Contemporaneous with the execution of this Agreement, the Contractor and its designees shall execute the Department's Third Party Connection and Data Exchange Agreement and any other protocol required by the Department, and shall ensure its employees, agents and

designees complete the related Third Party Acceptable Use Policy and Agreement if applicable, to ensure the security of data transmissions and other information related to the administration of this Agreement. This request may be waived by the Department in its sole discretion.

30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

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

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

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

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

This representation shall survive termination of this Agreement.

31. FREEDOM OF INFORMATION LAW

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

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

The Department's receipt of the Contractor's submission of material and the Contractor's request for protection of the material from FOIL disclosure does not constitute a determination that the information is exempt from disclosure under FOIL. In the event any information or

material is requested pursuant to FOIL, the Department will address each party's interests fully in accordance with the procedures required by Article 6 of the Public Officers Law.

32. TERMINATION OF AGREEMENT

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

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

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

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

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

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

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

33. CONTRACTOR PERSONNEL

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

The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its personnel. These functions

shall be carried out by the Contractor in accordance with the provisions of this Agreement and with all applicable federal and State laws and regulations.

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

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

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

34. OPERATIONAL CONTACTS

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

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

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

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

35. SUB-CONTRACTORS

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

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this Agreement. Such functionally identical and

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

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

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

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

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

36. PUBLICITY AND COMMUNICATIONS

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

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

37. CONSULTANT DISCLOSURE REQUIREMENTS

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

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

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

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

39. VENDOR RESPONSIBILITY

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

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

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

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

41. CONTRACT PAYMENT

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

January 2010

Schedule of Fees and Expenses
Direct Fee

Schedule 1 (Page 1 of 1)

Schedule of Rates for Payment and Billing
Direct Fees

PROJECT SERVICE	UNIT RATES				
	INITIAL CONTRACT TERM			OPTIONAL EXTENSION PERIODS	
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Lockbox Services ⁽¹⁾	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Courier Pick-Up ⁽²⁾	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Check Paid/Deposits Processed ⁽³⁾	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Wires in /Wires out ⁽⁴⁾	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Footnotes:

- ⁽¹⁾ Lockbox Services must be quoted on a "Per Envelop Processed" basis
- ⁽²⁾ Courier Pick-Up must be quoted on a "Per Day" basis
- ⁽³⁾ Check Paid/Deposits Processed must be quoted on a "Per Check or Money Order Processed" basis
- ⁽⁴⁾ Wires in /Wires out must be quoted on a "Per Wire" basis
- ⁽⁵⁾ Lockbox Services Projected Annual Cost for each year equals that year's associated "Per Envelop Processed" fee times 118,000
- ⁽⁶⁾ The Projected Yearly Volume amount of 260 calculated as: 5 days per week, 52 weeks per year. Courier Pick-Up Projected Annual Cost for each year equals that year's "Per Day" fee times 260
- ⁽⁷⁾ Check Paid/Deposits Processed Projected Annual Cost for each year equals that year's "Per Check or Money Order Processed" fee times 142,000
- ⁽⁸⁾ Wires in /Wires out Projected Annual Cost equals that year's "Per Wire" fee times 180
- ⁽⁹⁾ TOTALS for each year equals the sum of that year's Lockbox, Non-Lockbox, Check Paid/Deposits Processed and Wires In/Wires Out Projected Annual Cost amounts
- ⁽¹⁰⁾ PROJECTED FIVE YEAR COST equals the sum of the Year 1, Year 2, Year 3, Year 4 and Year 5 TOTALS amounts

**Schedule of Fees and Expenses
Compensation Balance**

Schedule 2 (Page 1 of 1)

**Schedule of Rates for Payment and Billing
Compensation Balance**

PROJECT SERVICE	UNIT RATES				
	INITIAL CONTRACT TERM			OPTIONAL EXTENSION PERIODS	
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Lockbox Services ⁽¹⁾	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Courier Pick-Up ⁽²⁾	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Check Paid/Deposits Processed ⁽³⁾	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Wires in /Wires out ⁽⁴⁾	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Footnotes:

- ⁽¹⁾ Lockbox Services must be quoted on a "Per Envelop Processed" basis
- ⁽²⁾ Courier Pick-Up must be quoted on a "Per Day" basis
- ⁽³⁾ Check Paid/Deposits Processed must be quoted on a "Per Check or Money Order Processed" basis
- ⁽⁴⁾ Wires in /Wires out must be quoted on a "Per Wire" basis
- ⁽⁵⁾ Lockbox Services Projected Annual Cost for each year equals that year's associated "Per Envelop Processed" fee times 118,000
- ⁽⁶⁾ The Projected Yearly Volume amount of 260 calculated as: 5 days per week, 52 weeks per year. Courier Pick-Up Projected Annual Cost for each year equals that year's "Per Day" fee times 260
- ⁽⁷⁾ Check Paid/Deposits Processed Projected Annual Cost for each year equals that year's "Per Check or Money Order Processed" fee times 142,000
- ⁽⁸⁾ Wires in /Wires out Projected Annual Cost equals that year's "Per Wire" fee times 180
- ⁽⁹⁾ TOTALS for each year equals the sum of that year's Lockbox, Non-Lockbox, Check Paid/Deposits Processed and Wires In/Wires Out Projected Annual Cost amounts
- ⁽¹⁰⁾ PROJECTED FIVE YEAR COST equals the sum of the Year 1, Year 2, Year 3, Year 4 and Year 5 TOTALS amounts

**Schedule of Fees and Expenses
Optional Services**

Schedule 3 (Page 1 of 1)

**Schedule of Rates for Payment and Billing
Optional Services**

The Offeror is proposing Optional Services beyond the Project Services as required by the IFB as part of its Proposal.

ID# ⁽¹⁾	Header Name ⁽²⁾	Component Description ⁽³⁾	Unit Rate ⁽⁴⁾ / Pricing Methodology ⁽⁵⁾	Pricing Assumptions ⁽⁶⁾
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

- ⁽¹⁾ Assign an identification number to each Optional Service proposed and to each subcomponent of each service, if any.
- ⁽²⁾ Briefly identify the nature of the Optional Service proposed.
- ⁽³⁾ For each Optional Service briefly identify each subcomponent, if any.
- ⁽⁴⁾ For each Optional Service and each of its subcomponents, if any, quote the unit rate for the service/component proposed. All unit rates quoted must remain fixed for the potential five year term of the Agreement. If a service has multiple separately priced components either provide the sum of the components if possible or leave blank and so note in the Pricing Assumptions box.
- ⁽⁵⁾ Identify the basis upon which the proposed pricing is based; e.g., annual, per transaction processed, etc.
- ⁽⁶⁾ Indicate whether or not the Offeror's quoted rate is based on certain assumptions and if so list those assumptions on a separate document and attach it to the Schedule 3 submitted.